



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *IR v Canada Employment Insurance Commission*, 2021 SST 188

Tribunal File Number: GE-21-60

BETWEEN:

I. R.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: January 29, 2021

DATE OF DECISION: February 4, 2021

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that he had good cause for the delay in applying for benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's application can't be treated as though it was made earlier.¹

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on December 11, 2020. He asks that the application be treated as though it was made earlier, on October 8, 2020. The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] I have to decide whether the Claimant has proven that he had good cause for not applying for benefits earlier.

[5] The Claimant says he had good cause for the delay in applying for benefits. He had only applied for EI once before. At that time, a professional told him that he needed record of employment (ROE) for the application. He based his actions on his past experience, and waited until he had the ROE to apply for benefits in this case.

[6] The Commission says that the Claimant didn't have good cause because a reasonable person would have contacted the Commission to clarify his rights and obligations in the application process. Instead, the Claimant assumed he needed his ROE to apply for benefits, so he delayed his application while waiting for his former employer to issue the ROE.

The start date for the claim

[7] The reconsideration file includes the Claimant's original antedate request made on December 12, 2020. This request states the Claimant is asking for his claim to be antedated to October 11, 2020.²

¹ Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.

² GD3-14.

[8] At the hearing, the Claimant said that he did not ask for his claim to be started on October 11, 2020. Rather, he told the Commission that he wanted his claim to start on October 8, 2020, which was his last day of work.

[9] I accept the Claimant's statements that he wanted his claim to start on his last day of work. So, I find that October 8, 2020, is the correct date for his antedate request.

Issue

[10] Can the Claimant's application for benefits be treated as though it was made on October 8, 2020? This is called antedating (or, backdating) the application.

Analysis

[11] To get your application for benefits antedated, you have to prove these two things:³

- a) You had good cause for the delay during the entire period of the delay. In other words, you have an explanation that the law accepts.
- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

[12] The main arguments in this case are about whether the Claimant had good cause. So, I will start with that.

[13] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ In other words, he has to show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[14] The Claimant has to show that he acted this way for the entire period of the delay.⁵ That period is from the day he wants his application antedated to until the day he actually applied. For the Claimant, the period of the delay is from October 8 to December 11, 2020.

³ See section 10(4) of the EI Act.

⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[15] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁶ This means that the Claimant has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Claimant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.⁷

[16] The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he had good cause for the delay.

[17] The Claimant says that he had good cause for the delay because he was waiting to receive the ROE from his former employer.

[18] The Claimant had applied for benefits once before, in 2016. At that time, he was living in a rural location without internet access. He asked a local accountant for assistance with the application. The accountant advised him that he needed to provide several documents before he could apply for benefits. One of those documents was his ROE. For this 2016 application, the Claimant received his ROE in the mail and brought it to the accountant, who applied for benefits on his behalf.

[19] The Claimant said that he believed the EI process would be the same for his application in 2020. After being laid off in mid-October, he waited to receive his ROE in the mail. By mid-November, he hadn't received the ROW. So, he contacted his former employer to ask about it. The employer took several weeks to get back to him and then told the Claimant that his ROE had been sent electronically to Service Canada.

[20] The Claimant applied for a login to see his ROE on the Service Canada website. He received the login information two weeks later, but he couldn't see his ROE on the website. He contacted Service Canada, who told him the ROE wasn't there and that he had to contact the employer again. The Claimant did so, and the employer resubmitted the ROE in mid-December 2020. The Claimant applied for benefits immediately afterward.

⁶ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[21] The Claimant said that he was occupied during this time by looking for a new job, studying for certification exams, and caring for his elderly mother. He testified that these circumstances did not contribute to the delay in his application for benefits. Rather, they indicate that he wasn't solely engaged with his EI application. He thought there wasn't a rush for him to apply for benefits. He believed that he could apply for benefits when he received his ROE and he would be paid benefits retroactively from the date of his layoff.

[22] The Commission says that the Claimant hasn't shown good cause for the delay because he made no efforts to verify his rights and obligations in the application process. Specifically, it says the Claimant assumed he couldn't apply for benefits until he had received his ROE and that he failed to contact the Commission to verify that assumption.

[23] The Claimant submits that his belief that he needed his ROE for the EI application wasn't an assumption. He based this belief on his previous experience in 2016. At that time, an accountant advised him that the ROE was required before he could apply for benefits. He argues that he acted as a reasonable person because he had no reason to believe this information was incorrect.

[24] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits because he did not act as a reasonable and prudent person in the same circumstances would have throughout the period of the delay.

[25] The Claimant acknowledged that he had limited experience with EI. He had only applied for benefits once before, with the help of an accountant. Based on this experience, he believed that he needed his ROE before he could apply for benefits.

[26] I find that a reasonable person in the Claimant's situation would have taken steps to verify this information for several reasons:

- First, this was the Claimant's first time applying for benefits on his own. I find that a reasonable person would have searched online for information about the process or called the Commission to verify what steps he had to take and what information he required.

- Second, four years have passed since the Claimant's last application for benefits. I find that a reasonable person in these circumstances would have sought information about applying for EI benefits, to verify their understanding of the process and to check if any of the requirements had changed.

[27] The Claimant testified that he did not contact the Commission or search online for information about EI benefits. There is no evidence that the Claimant sought any additional advice about the steps he should take to protect his claim for benefits. From this, I find the Claimant has not proven that he took reasonably prompt steps to understand his entitlement to benefits and his obligations under the law.⁸

[28] The Claimant has not proven there were any exceptional circumstances that made it difficult for him to apply for benefits or ask the Commission for advice about his situation. I accept that the Claimant was busy during this period looking for another employment, caring for his mother, and studying for challenge exams. But, I put weight on the Claimant's testimony that these circumstances did not contribute to his delay in applying for benefits. The Claimant has been clear and consistent that the sole reason for his delay in applying for benefits was because he was waiting for his ROE.

[29] I recognize that the Claimant acted with the best of intentions. He thought he was acting carefully by waiting to receive his ROE before he applied for benefits. However, he was required to take reasonably prompt steps in relation to his claim for benefits. The Claimant may feel this to be unfair, but he was required to submit his application in a timely manner. This requirement is more than just a technicality. Timeliness is required for the orderly administration of the *Employment Insurance Act*.⁹

[30] The obligation and duty to promptly file a claim is seen as very demanding and strict. This is why the "good cause for delay" exception is cautiously applied.¹⁰

⁸ The Federal Court of Appeal stated in

⁹ The Federal Court of Appeal in *Canada (Attorney General) v. Beaudin*, 2005 FCA 123, states that the antedate provision at subsection 10(4) of the EI Act "is not the product of a mere legislative whim. It contains a policy, in the form of a requirement, which is instrumental in the sound and efficient administration of the Act."

¹⁰ *Canada (Attorney General) v. Brace*, 2008 FCA 118.

[31] The circumstances presented by the Claimant do not demonstrate that he had good cause for the delay in making his claim for benefits. They also do not show that there were exceptional circumstances that excused him from acting as a reasonable person in his situation would have done. For these reasons, his claim cannot be antedated.

[32] I don't need to consider whether the Claimant qualified for benefits on the earlier day. If the Claimant doesn't have good cause, his application can't be treated as though it was made earlier.

Conclusion

[33] The Claimant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[34] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

HEARD ON:	January 29, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	I. R., Appellant