



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KX v Canada Employment Insurance Commission*, 2021 SST 196

Tribunal File Number: GE-20-2289

BETWEEN:

K. X.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Paul Dusome

HEARD ON: March 25, 2021

DATE OF DECISION: March 29, 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 The Claimant has also failed to prove that he did apply for employment insurance (EI) benefits in November 2017.

Overview

[3] The Claimant applied for EI benefits on May 26, 2020. During discussions with the Canada Employment Insurance Commission (Commission), he said that he had applied for EI benefits in November 2017. The Commission said it had no record of an application by him in 2017. The Commission said it could not grant benefits based on such an application. The Claimant then asked that the May 2020 application be treated as though it was made earlier, on October 22, 2017. The Commission refused this request.

[4] I have to decide whether the Claimant has proven that he made an application in November 2017. If he did not, I also have to decide whether he had good cause for not applying for benefits until May 2020. The Commission conceded that the Claimant had enough hours of insurable employment in November 2017 to qualify for EI benefits.

[5] The Commission says that it has no record of an application for EI benefits by the Claimant in 2017. The Claimant says that he did apply, but has no documents to confirm that.

[6] The Commission says that the Claimant didn't have good cause because he had applied for EI benefits in 2013 and 2019, and had asked for an antedate in 2019 for the 2013 matter. He did not explain why he had not applied for an antedate in 2019 for the 2017 matter. He did not show why he delayed until 2020 to seek antedate for the 2017 matter. His narrative of events was not reliable.

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

[7] The Claimant disagrees and says that he did not know he could apply for an antedate for the 2017 matter until he spoke with the Commission in September 2020. The antedate in 2019 was on a totally different issue. He also has medical issues that limit him.

The Claimant requested and received two adjournments

[8] This matter was scheduled for hearing on January 6 and March 11, 2021. I adjourned both hearings at the Claimant's request, for the reasons set out in the notice of hearing documents (GD9 and GD10). The hearing concluded on the third date, March 25, 2021.

Issues

[9] First, did the Claimant make an application for EI benefits in November 2017? Second, if he did not, can the Claimant's May 2020 application for benefits be treated as though it was made in November 2017? This is called antedating the application.

Analysis

Was there an application in 2017?

[10] The legal issue here is not antedate.² The issue here is whether, as a matter of fact, the Claimant did make an application for EI benefits in November 2017. The Commission says he did not, because it has no record of such an application. The legal issue here is credibility of the two parties.³

[11] I find that the Claimant has not proven that he did make an application for EI benefits in November 2017. Two Records of Employment (ROE) show that the Claimant had 828 hours of insurable employment from May 29 to October 20, 2017. These are the basis for the Commission conceding that he had enough hours of insurable employment to qualify for benefits in November 2017. The Claimant was in a position to apply for EI benefits in late October 2017.

[12] The Claimant's evidence that he did apply for benefits in November 2017 is his memory. He has no documents to support his recollection. He testified that he did apply online then. He did not print out a copy of his application. He did copy the confirmation number, but has lost it.

² CUB 11725, CUB 5050.

³ CUB 5349.

He did call the Commission about one and one-half months later to follow up. The Commission told him that he did not qualify as he did not have enough hours of insurable employment. He could not recall in testimony the number of hours, though it may have been 630. He tried calling the Commission three times in 2018 to pursue the matter. He could not get through. He did not know that he could ask for a reconsideration until May 2019, when he attended a Commission information session for a different application for EI benefits. That May 2019 date is inconsistent with his later testimony that he learned of the request for reconsideration from the Commission's decision letter dated July 14, 2020. He made a request on December 23, 2020, to Employment and Social Development Canada (ESDC) for a copy of his EI file, to look for the 2017 application. He did receive a copy, but did not find anything in it to show that he did apply for EI in 2017.

[13] The Commission relies on the absence of evidence from its files that there was an application made by the Claimant in November 2017. It also challenged the credibility of the Claimant for a number of reasons. In written documents and in conversations with the Commission, the Claimant said that when he spoke to the Commission agent a month and one-half later about his 2017 application, the agent said that he did not qualify for EI benefits because he did not have the minimum 630 hours of insurable employment. On other occasions, he said the agent told him he did not have enough hours. The Commission filed a printout showing the unemployment rate in the Claimant's region in October – November 2017 (5.9% and 5.8%) and in May 2020 (8.0%). The number of hours needed to qualify for EI benefits was 700 in October–November 2017 and 630 in May 2020.⁴ The Commission submits that the Claimant's claim that in 2017 the agent told him he needed 630 hours cannot be true. He needed 700 hours in 2017, so an agent would not have told him 630 hours. In addition, the two ROEs from 2017 showed 828 hours, so an agent would have seen that, and not told the Claimant he did not have enough hours. On my review, the ROEs are dated October 4 and November 7, 2017. Both state that Service Canada has already received a copy of this electronic ROE.

[14] I find that the Claimant has not proven that he applied for EI benefits in November 2017. There are no documents from the Commission, or from ESDC, that show the Claimant made an application. The Claimant does not have the confirmation number. The Claimant's reference to

⁴ Section 7(2) of the EI Act.

630 hours needed to qualify in 2017 is wrong. The Commission's decision letter dated July 14, 2020, stated that he did not qualify for benefits because he had zero hours of insurable employment in 2019 – 2020, but needed 630 hours. The Claimant referred in writing to being refused benefits in 2017 because he did not have 630 hours. This was in two requests for reconsideration in August and October 2020. The first was against the refusal to pay benefits in his application on May 26, 2020. The second was the refusal of his request to antedate the May 2020 application to November 2017. The Claimant also mentioned the 630 hours in his notice of appeal to the Tribunal. The Claimant confirmed in testimony that he wrote and typed the text in these reconsiderations requests, and that he signed them. It is a reasonable conclusion that the Claimant got the 630 hour figure from the July 14, 2020, decision letter. He did not get that figure from a conversation in 2017, because the correct figure then was 700. In addition, the Claimant's reference to being told in 2017 that he did not have enough hours to qualify is wrong. The two ROEs on file with the Commission when he spoke to the agent showed that he had 828 hours, enough to qualify.

Can the 2020 application be antedated?

[15] To get your application for benefits antedated, you have to prove these two things:⁵

- 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).

[16] The only argument in this case is about whether the Claimant had good cause.

[17] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁶ 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.

⁵ See section 10(4) of the EI Act.

⁶ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[18] The Claimant has to show that he acted this way for the entire period of the delay.⁷ That period is from the day he wants his application antedated to until the day he actually applied. So, for the Claimant, the period of the delay is from November 2017 to May 26, 2020.

[19] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁸ 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.⁹

[20] 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.

[21] The Claimant says that he had good cause for the delay for two reasons. First, the Commission agent in 2017 did not tell him there was no application on file. This prevented him from filing for EI benefits at that time. Secondly, the Claimant has obsessive compulsive disorder (OCD). His mental health has greatly affected his life since 2016. He is in a vulnerable group due to the OCD, and he has limited knowledge of EI benefits.

[22] The Commission says that the Claimant hasn't shown good cause for the delay because he did not provide an explanation regarding the delay from November 2017 to May 26, 2020.

[23] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits because he has not shown that he took the steps that a reasonable and prudent person would have taken from November 2017 to May 26, 2020. He has not shown that he had limited knowledge of EI matters. He has not shown that his OCD interfered with his ability to deal with EI matters.

[24] A review of the Claimant's dealings with the Commission will be helpful in reaching the conclusion on this issue.

⁷ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[25] The Commission stated that the only claims on file made by the Claimant were in November 2012, February 2019, and May 26, 2020. These are confirmed by documents the Claimant filed in relation to each of these claims. On June 10, 2019, he filed an application to antedate benefits for extra weeks in 2013. He had received EI benefits ending in October 2013, as shown by a request for reconsideration he filed on September 18, 2019. In both the antedate application and the request for reconsideration, he stated “I did not have the full knowledge of EI benefits until I attended the information session on May 30, 2019 at Service Canada Centre.” In both, he stated that was the reason for waiting until June 7, 2019 to file his claim. In the request for reconsideration, he added “The foregoing facts are good cause.” The Claimant did not make an antedate request about the November 2017 application until September 18, 2020.

[26] The Claimant next dealt with the Commission on the May 26, 2020 application. The Commission denied the application because the Claimant did not have the 630 hours of insurable employment needed to qualify for benefits. The Claimant made an antedate application by phone on September 18, 2020. The reasons for the delay related to the November 2017 denial of his application by the Commission’s agent. The Commission denied the request to antedate because he had not proven good cause to apply late. The Claimant filed a reconsideration request for each of those decisions. In both, his reasons focused on his claim that he had applied for EI benefits in November 2017, had received wrong information, and had not received a decision letter. He was not told of his right to request reconsideration, so was deprived of benefits by the fault of the Commission’s agent. In the request for reconsideration dealing with the antedate issue, the Claimant stated that “The foregoing facts are good cause.”

[27] In the 2012, 2019 and 2020 applications, the Claimant stated that no one assisted him in completing the applications. He confirmed that in testimony. He confirmed that he prepared, typed and signed the written reconsideration requests and the 2019 antedate application. They show the Claimant’s ability to express himself well, and to deal with EI forms. In both the 2019 antedate application and the 2019 request for reconsideration, he stated “I did not have the full knowledge of EI benefits until I attended the information session on May 30, 2019 at Service Canada Centre.” In testimony, he stated that he understood from the information session that the antedate only applied to his 2013 benefits. He said there was a big difference between that antedate, and the current one. I do not find that convincing.

[28] Based on this review of the Claimant's dealings with the Commission, I do not accept that he had limited knowledge of EI matters. He prepared and completed his own documents. In his request for reconsideration in September 2019, asking for an increased number of weeks of benefit, he referred to having visited and reviewed relevant websites and found that the previous EI decision was incorrect. He attached a printout of estimated unemployment rates for March 2019, showing 6.6% for his region. His statement that he did not have full knowledge of EI benefits until the information session in May 2019 supports an inference that he had a good knowledge of EI benefits at that time. For these reasons, I conclude that the Claimant did have a more than limited knowledge of EI matters.

[29] Dealing next with the issue of good cause for the delay, the Claimant has not shown good cause for the delay from November 2017 to May 26, 2020. A reasonable and prudent person would have taken the following steps to deal with the 2017 application. He would have followed up after speaking to the Commission's agent in late 2017 to find out what had happened to the application, and to ask about remedies. He did not do so. He attempted three phone calls, then did nothing further until 2020. A reasonable and prudent person would have asked in the 2019 information session if he could make an antedate application for the 2017 application. He assumed it would not apply, so did not apply for antedate then. He did visit and review relevant websites about another EI decision in 2019. He testified that he did not know he could apply for antedate for the 2017 application until his telephone conversation with the Commission's agent on September 18, 2020. I do not accept that as true.

[30] The Claimant failed to take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.¹⁰ He did not show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. On the evidence, he took almost no steps from November 2017 until he applied for benefits in March 2019. In May 2019 he attended an information session and learned about EI benefits. He visited some websites to get information to support a request for reconsideration in September 2019. He did not take steps to find out about an antedate application for his September 2017 application. He did not file an antedate request until September 18, 2020, and then did so over the telephone during a

¹⁰ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

conversation with the Commission's agent about the 2017 application. During that conversation, the Claimant said that he had only recently become aware of the reconsideration process, and he filed his request. He confirmed his testimony that he only became aware of the request for reconsideration from the July 2020 letter from the Commission. He later testified that he first learned of the reconsideration request in 2019. I do not accept that the Claimant only knew that he could request a reconsideration in July 2020. He had filed two requests for reconsideration in 2019. One of those requests was for an antedate decision related to 2013 EI benefits. He completed an antedate request form for the 2013 benefits in on June 7, 2019. The Claimant was aware of his right to request a reconsideration, and to make an antedate claim, in June 2019. He took no steps to deal with the 2017 application until he requested a reconsideration of the July 14, 2020 decision to deny EI benefits. Only at that point did he raise the 2017 application.

[31] Based on the above review, it is clear that the Claimant cannot show that he acted as a reasonable and prudent person during the whole period from November 2017 to May 26, 2020.

[32] Finally, the Claimant relied on his mental health condition of OCD interfered with his ability to deal with EI matters. Because the Claimant did not take prompt steps as required, he must show that there were exceptional circumstances that explain why he didn't do so.¹¹

[33] The Claimant does not succeed in this. He relied on an April 11, 2018 letter from a psychiatrist providing a diagnosis of OCD with depressive features. He has been taking medication. His obsessive behaviour has worsened since a car accident in February 2016. Medication had been increased. The doctor estimated that symptoms have increased 20-30% since the accident. The Claimant later filed with the Tribunal three patient medical information sheets, showing three medications from 2018 and 2019. These give two to three pages of information on each medication, including side effects. The Claimant testified that he has continued taking medications since 2018. His symptoms have remained the same since 2018. He suffers all the side effects of the medications. The medications interfere with his ability to communicate with the Commission in the following ways. He is very tired and has to nap during the day because the medications keep him awake at night. He also has headaches and dizziness.

¹¹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[34] I find that the Claimant has not proven exceptional circumstances that excuse him from the obligation to act as a reasonable and prudent person would. He has a diagnosed condition, for which he has taken medications for a number of years. However, his dealings with the Commission in 2019 and 2020 show that he is able to use the internet to search for EI information. Those dealings also show that he can complete EI documents, and give detailed reasons for his requests to the Commission.

[35] 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. In addition, the Commission conceded on this issue.

Conclusion

[36] The Claimant has not proven that he made an application for EI benefits in November 2017. The Claimant has not proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[37] The appeal is dismissed.

Paul Dusome

Member, General Division - Employment Insurance Section

HEARD ON:	March 25, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. X., Appellant