



Citation: *SM v Canada Employment Insurance Commission*, 2021 SST 367

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: S. M.
Representative: Shannon Hogan

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (416657) dated February 25, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference
Hearing date: April 26, 2021
Hearing participants: Appellant
Appellant's representative

Decision date: April 30, 2021
File number: GE-21-513

Decision

[1] The appeal is dismissed. The Tribunal disagrees with S. M. (the Claimant.)

[2] The Claimant has not shown that she had good cause for the delay in applying for employment insurance (EI) benefits. In other words, the Claimant has not given an explanation that the law accepts. This means that the Claimant's application for EI benefits can not be treated as though it was made earlier.¹

Overview

[3] The Claimant applied for EI benefits on November 16, 2020. She is now asking that the application be treated as though it was made earlier, on September 23, 2020. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Claimant didn't have good cause because she did not act like a reasonable person in her circumstances would have acted. She treated the general information on the Commission's website as a personal response from the Commission to her situation and did not make an application. The Commission says that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause.

[6] The Claimant disagrees and says that when she looked into benefits the Commission website said that benefits were available to people who lost their job. The website did not define what was meant by losing a job. She did not consider the end of her teaching assistant contract to mean that she lost her job.

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

Matters I have to consider first

[7] After the hearing, the Claimant sent an email to the Tribunal on April 28, 2021. I am admitting the email into evidence because the document is relevant to my decision.

[8] In her email the Claimant wrote that she received the documents for her appeal the night before the hearing and had not been able to review them as “closely as she hoped before the hearing.”

[9] I note the Claimant did not raise any objection to proceeding with the hearing. She was represented at the hearing. Her Representative presented argument and led her through a series of questions to establish her position and provide evidence. The Claimant also responded to my questions. When asked, at the end of the hearing, the Claimant and the Representative both indicated that they did not have anything further to add and both indicated they had enough time to present their case. I then adjourned the hearing. This evidence tells me the Claimant was prepared for the hearing and there is no need to re-open the hearing.

[10] The Claimant also wrote in her email that the Commission submission, at pages GD3 and GD4, confused the case she cited in her request for reconsideration. She noted the Commission wrote “I actually visited a Service Canada employment counsellor about another issue and had asked about EI benefits.” The Claimant wrote this was not the case and hoped “to reflect this in my file.” This concern is addressed in my decision.

Issue

[11] Can the Claimant’s application for benefits be treated as though it was made on September 23, 2020? This is called antedating (or, backdating) the application.

Analysis

[12] To get your application for benefits antedated, you have to prove these two things:²

- 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).

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

[14] To show good cause, the Claimant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.³ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[15] The Claimant has to show that she acted this way for the entire period of the delay.⁴ That period is from the day she wants her application antedated to until the day she actually applied. For the Claimant, the period of the delay is from September 23, 2020, to November 16, 2020.

[16] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁵ This means that the Claimant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, then

² See section 10(4) of the *Employment Insurance Act*.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139. This is how I refer to the court decisions that have principles that apply to the circumstances of this appeal.

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

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

she must show that there were exceptional circumstances that explain why she did not do so.⁶

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

[18] The Claimant testified that she was employed as a teaching assistant at the university where she was completing her master's degree. She said that in addition to having grants and bursaries, the teaching assistant job was part of the package of compensation she received as a graduate student. She received two years' funding to complete her master's degree. The teaching assistant jobs coincided with the semesters.

[19] The Claimant said she lost some time from her graduate work due to the COVID-19 restrictions. This meant that she had continue her research beyond the two years she had expected. Her faculty advisor secured additional funding for her and she was able to defend her thesis on September 23, 2020. Once her thesis was defended the Claimant considered that her schooling was complete and she began to look for work. The Claimant considered that her job Monday to Friday was to look for work. Her job search became her main focus. She would spend a few hours a day looking for work. She looked at job boards, reached out to her network for leads on positions in her industry, and she applied for jobs.

[20] Around the same time when she began to look for work in late September, early October 2020, the Claimant also went online to see what COVID-19 benefits might be available to her. She was directed to the EI website from the Government of Canada website. When she reached the EI website she looked at the criteria for benefits and concluded she did not apply based on their criteria. So she doubled down on her job search.

[21] The Claimant said she had saved some money while in graduate school in anticipation of not having a job immediately after she finished her program. In

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

November 2020 her funds were dwindling and she spoke to Mother about her situation. Her Mother suggested she apply for EI benefits as the worst that could happen was she would be denied. The Claimant applied the same day and was approved. In a later conversation, the Claimant's Mother suggested that the Claimant ask that her claim be backdated. The Claimant called the Commission and requested that her claim be made effective September 23, 2020. She chose that date because that was when she finished her studies and was no longer receiving an income from the university. The Claimant noted that there was no option to backdate a claim on the application for EI benefits.

[22] The Representative argued the Claimant met the test for antedate because she has shown good cause for the delay in applying for benefits. She submitted that it was necessary to first find "who" would be the reasonable person in this case. The Claimant completed her studies on September 23, 2020. She promptly did what the reasonable person in her situation would have done: she started looking for a job. The Representative submitted that the reasonable person is the person whose focus is pulled towards looking for a job. It was reasonable for the Claimant to rely on her savings while she was looking for work and to reconsider applying for EI as her savings dwindled.

[23] The Representative submitted that the Claimant was unfamiliar with the EI system as this was her first claim for EI benefits. She did not know the consequences of applying late. In the Claimant's case she did take steps to find out whether she would qualify for EI benefits shortly after she defended her thesis. The Claimant went on line to see what benefits were available. This is what a reasonable person in same situation as the Claimant would have done to see if they qualified for EI benefits.

[24] The Claimant said that she did not receive a Record of Employment (ROE) from the university when she finished the teaching assistant position. She said it was the norm that she would be terminated at the end of a semester and then rehired at the start of the next semester. The ROEs in the appeal file show the Claimant stopped working on April 30, 2020, and then began working again on May 1, 2020.

[25] The Commission says that the Claimant hasn't shown good cause for the delay because she did not act like a reasonable person in her situation would have done to verify her rights and obligations under the *Employment Insurance Act*. It says that the source of the Claimant's confusion with the wording on the website included her preconceived notion that her employment was not a typical job that would be insurable. The Commission says that the Claimant cannot reasonably expect to treat information provided in general terms on its website as if it were personally provided to her from the Commission in response to a question on her eligibility. It says that it is much less reasonable to treat general information as the Commission's response when she believed that her situation to be unique and atypical.

[26] The test for good cause is one of reasonability, informed by the claimant's subjective appreciation of the circumstances, assessed on an objective standard. The assessment of the reasonableness of a claimant's conduct is objective, situated in the particular facts of the case.⁷

[27] With respect to the Claimant's email submitted after the hearing, I reviewed the Claimant's request for reconsideration and noted she cited a Canada Umpire Benefits 17192 and *A.G. Canada v. Albrecht* (1985) 1 F.C. 710, FCA.⁸ I have read both decisions. I also reviewed the notes of the interview the Commission had with the Claimant on February 24, 2021, concerning her request for information.⁹ I note that at the last line of page GD3-23, the Service Canada agent explained to the Claimant that "we saw they had noted jurisprudence in their request for reconsideration." At the top of page GD3-24, the Service Canada agent noted that it was explained "that in the case noted it states that if the client has other valid reasons which may include ignorance of the law and antedate can be possibly allowed ..." The Service Canada agent goes on to say, "This case does involve a student, but during the delay they visited a Service Canada centre for assistance and consulted an employment counsellor." It is clear to me that the Service Canada agent is not referring to the Claimant but is referring to the

⁷ *Quadir v. Canada (Attorney General)*, 2018 FCA 21

⁸ See page GD3-20 of the appeal file.

⁹ See pages GD3-23 and GD3-24 of the appeal file.

fact situation outlined in CUB 17192 because those are the facts found in CUB 17192.¹⁰ I have considered and applied the principles contained in *Albrecht* to this decision.¹¹

[28] With respect to the Commission's assertion that the Claimant "discussed her situation with a Service Canada employee" the Claimant's testimony was that she discussed her EI claim with her Mother, who she identified to the Commission as a "tax auditor for the CRA" who was "working the phone lines for CRA for CERB."¹² I accept the Claimant's testimony that it was her Mother she spoke with about applying for EI because the Claimant gave her evidence before me under affirmation. The Claimant's Mother's occupation is not relevant to my decision. What is relevant to, and considered in, my decision is that the Claimant's conversation with her Mother led her to apply for EI and to later request antedate.

[29] The Claimant's reasons for not initially applying for EI are based on her ignorance of the EI system. I accept the Claimant's testimony that she had no knowledge of the EI system before she started to look at the Government of Canada's website to see if there were any COVID-19 related benefits available to her. Her testimony is that she started to look online once she was no longer in school and searching for work. Her online search took place around late September 2020 / early October 2020. She explained that she was directed from the Government of Canada website to the EI website. The Claimant said that she read on the EI website that she could get EI benefits if she lost a job. But, because she did not consider herself to have lost a job she looked further on the web site to see what losing a job meant. She was unable to find a definition and so she stopped looking. She did not speak to anyone about what losing a job meant and she did not try to contact Service Canada for an answer.

[30] The Claimant's ignorance of the law was dispelled when she went on-line in late September 2020 / early October 2020. At that time, she learned that EI benefits were available to people who lost a job. When she could not find a definition of that term she

¹⁰ I am not bound by Canada Umpire Benefits (CUBs).

¹¹ *Attorney General of Canada v. Albrecht*, A-172-85

¹² See pages GD3-13 and GD3-15

stopped looking. I think a reasonable person in the Claimant's situation would have looked for further information about the meaning of the term "lost a job" before concluding that the lack of definition of that term on the Commission's website meant she was not entitled to EI benefits.

[31] The Claimant applied for EI benefits on November 16, 2020, after her Mother suggested she do so. Her claim was established effective November 15, 2020. The Claimant did not ask to have her claim antedated or backdated until after she spoke to her Mother who told her that people were applying to have their CERB¹³ backdated. She made that request on December 12, 2020. The Claimant said that she did not think she qualified for EI because she did not think she had lost her job. She formed that opinion in late September 2020 / early October 2020. Yet, in mid-November 2020 she knew she could get EI by the fact that her claim was approved and she started to receive EI benefits. There was no change to her circumstances from when she first looked at the EI website. I think that having been approved for EI benefits, a reasonable person would have looked into whether she was entitled to EI benefits from the time she believed she was no longer engaged in her studies and looking for work. She did not do so. As a result, I find the Claimant did not act as a reasonable person in her situation would have done.

[32] Even though ignorance of the law does not constitute "good cause", it does not necessarily preclude a finding of good cause. Many reasons, including ignorance of the law, may still constitute good cause, provided the claimant is able to establish that she acted as a reasonable and prudent person.¹⁴

[33] I find the Claimant has not established that, on a balance of probabilities, there were any exceptional circumstances that could excuse her delay in applying for benefits.¹⁵ The Claimant testified that there was nothing preventing her from applying for EI benefits. It is true that she applied immediately once she learned about EI from her Mother, but that action, while taken promptly, does not negate the fact that she took

¹³ The Canada Emergency Response Benefit

¹⁴ *Canada (A.G.) v. Caron* (1986), 69 N.R. 132 (F.C.A.); *Attorney General of Canada v. Albrecht*, A-172-85

¹⁵ *Canada (Attorney General) v. Somwaru*, 2010 FCA 336

no action from the time she formed her opinion that she was not entitled to EI benefits to when she applied for EI benefits, and also took no action once her claim was approved to when she requested antedate, to find out about her rights and obligations under the *Employment Insurance Act*.

[34] Accordingly, I find that, on a balance of probabilities, the reasons the Claimant provided for delaying her application for EI benefits do not demonstrate good cause. Additionally, I find the Claimant has not shown that there were exceptional circumstances that excused her from acting as a reasonable person in her situation would have done. For these reasons, her claim cannot be antedated.

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

Conclusion

[36] The Claimant has not proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[37] The appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section