[TRANSLATION]

Citation: *VB v Canada Employment Insurance Commission*, 2021 SST 325

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	V. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (419924) dated April 22, 2021 (issued by Service Canada)

Tribunal member:	Normand Morin
Type of hearing:	Videoconference
Hearing date:	June 2, 2021
Hearing participant:	Appellant
Decision date:	June 11,2021
File number:	GE-21-711

Canada

Decision

[1] The appeal is dismissed. I find that the Appellant's initial claim for benefits cannot be antedated to April 5, 2019.[1] The Appellant has not shown that she had good cause for the delay in claiming Employment Insurance (EI) benefits. This means that her claim for benefits cannot be treated as though it was made earlier.

Overview

[2] From June 26, 2018, to September 9, 2018, inclusive, the Appellant worked as a raft guide for the employer X. She then worked as a ski tech for the employer X, from January 11, 2019, to April 7, 2019, inclusive.

[3] On December 18, 2019, the Appellant made an initial claim for EI benefits (regular benefits).[2]

[4] On December 19, 2019, the Canada Employment Insurance Commission (Commission) informed her that she had 485 hours of insurable employment between December 16, 2018, and December 14, 2019, but that she needed 665 hours of insurable employment to be entitled to benefits.[3]

[5] On December 18, 2020, she made an antedate request to the Commission so that her claim for benefits made on December 18, 2019, could begin on April 5, 2019.[4]

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[1] Section 10(4) of the *Employment Insurance Act* (Act) uses the term "initial claim" to talk about the claimant's first claim for benefits, which determines whether the person qualifies to establish a benefit period.
[2] See GD3-3 to GD3-18.
[3] See GD3-23 and GD3-24.
[4] See GD3-27 and GD3-28.

[6] On March 3, 2021, the Commission informed her that it could not establish a benefit period from April 5, 2019, because she had failed to show that she had good cause for the delay in claiming benefits for the period from April 5, 2019, to November 22, 2020.[5]

[7] On April 22, 2021, after a request for reconsideration, the Commission informed her that it was upholding the March 3, 2021, decision about her antedate request.[6]

[8] The Appellant explains that she was absent from Canada from early April 2019 to December 2019. She says she did not apply for benefits during her time outside the country. She knew she could not receive benefits, given that she was outside Canada and that she was not available for work. The Appellant applied for benefits on December 18, 2019, after returning to the country. She argues that she was sincere and acted in good faith, based on her knowledge of EI, when she applied for benefits after returning to Canada. She notes that she is not familiar with EI. After she applied, the Commission told her that she did not have enough insurable hours to be entitled to benefits. The Appellant argues that the Commission could take into account her hours worked with the two employers she worked for from June 26, 2018, to September 9, 2018, and from January 11, 2019, to April 7, 2019, so she could qualify for benefits, given that she would then have enough hours. On April 28, 2021, the Appellant challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

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[5] See GD3-29—In its arguments, the Commission explains that the notice of decision sent to the Appellant on March 3, 2021, contains a clerical error. It says this document indicates that the Appellant was unable to show good cause for the delay in claiming benefits for the period from April 5, 2019, to November 22, 2020, whereas it should read as follows: [translation] "[…] the Employment Insurance benefits established for your claim cannot start as of April 5, 2019, because you were unable to show good cause for the delay in making your claim for the period from April 7, 2019, to December 14, 2019"—GD4-3 and GD4-4.

[6] See GD3-36 and GD3-37.

Issues

[9] I have to determine whether the Appellant's initial claim for benefits can be antedated to April 5, 2019.[7]

[10] To do so, I must answer the following questions:

- Has the Appellant proven that she qualified for EI benefits from on an earlier day than the day the claim was made?
- Did the Appellant have good cause for the delay in claiming benefits, therefore justifying her antedate request?

Analysis

[11] Antedating a claim for EI benefits allows a late claim for benefits to be considered as having been made on an earlier day than the day it was actually made.

[12] Antedating an initial claim for benefits relies on the following two conditions:

a) The claimant has to prove that they qualified for EI benefits on an earlier day than the day the claim was made.

b) The claimant has to prove that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day the claim was made.[8]

[13] Good cause is an explanation for the delay that is acceptable under the *Employment Insurance Act* (Act). Showing good cause means that a claim for benefits can be treated as though it was made earlier.

[14] The Federal Court of Appeal (Court) has established that a claimant who does not make their claim on time must show that they had good cause for the delay in

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[7] See section 10(4) of the Act.
[8] See section 10(4) of the Act.

making their claim and that they acted as a reasonable person in the same situation would have acted.[9]

[15] According to the Court, having good cause means doing what a "reasonable person" would have done to satisfy themselves as to their rights and obligations under the Act.[10]

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

[17] The claimant also has to prove this for the entire period of the delay.[11] That period is from the day they want their initial claim antedated to until the day they made that claim. In this case, the period of the delay is from April 7, 2019, to December 14, 2019, based on the correction the Commission made to the March 3, 2021, decision.[12]

[18] The claimant also has to show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the Act.[13] This means that the claimant has to show that they tried to learn about their rights and responsibilities as soon as possible and as best they could. If the claimant did not take these steps, then they must show that there were exceptional circumstances that explain why they did not do so.[14]

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[9] The Court reiterated this principle in the following decisions: *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.
[10] The Court established or reiterated this principle in the following decisions: *Burke*, 2012 FCA 139; *Persiiantsev*, 2010 FCA 101; *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.
[11] The Court established this principle in *Burke*, 2012 FCA 139.
[12] See GD3-29, GD4-3, and GD4-4.
[13] The Court reiterated this principle in the following decisions: *Somwaru*, 2010 FCA 336; and *Kaler*, 2011 FCA 266.
[14] The Court reiterated this principle in the following decisions: *Somwaru*, 2010 FCA 336; and *Kaler*, 2011 FCA 266.

Issue 1: Has the Appellant proven that she qualified for EI benefits on an earlier day than the day the claim was made?

[19] I find that the evidence on file shows that the Appellant qualified for EI benefits on an earlier day than the day the claim was made—that is, December 18, 2019.

[20] In its arguments, the Commission explains that the Appellant has proven that she is entitled to benefits from April 7, 2019, considering the fact that she needed a minimum of 665 insurable hours to be entitled to regular benefits and that she had 869 hours during her qualifying period,[15] established from April 8, 2018, to April 6, 2019.[16]

[21] Based on the Commission's analysis, the Appellant's employment periods, from June 26, 2018, to September 9, 2018, and from January 11, 2019, to April 7, 2019, show that she qualifies for EI benefits on an earlier day than the day the claim was made—that is, December 18, 2019.

[22] I now have to determine whether the Appellant had good cause for the delay in claiming benefits, therefore justifying her antedate request.

Issue 2: Did the Appellant have good cause for the delay in claiming benefits, therefore justifying her antedate request?

[23] I find that the Appellant's reasons for not applying for benefits within the deadline do not constitute good cause for such a delay, under the Act.

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[15] Section 8(1)(a) of the Act says that the qualifying period is, among other things, the 52-week period immediately before the beginning of a benefit period.
[16] See GD3-38 to GD3-46 and GD4-3.

[24] The Appellant argues that she had good cause for the delay in claiming benefits. Her testimony and statements to the Commission indicate the following:

a) The Appellant says she did not contact the Commission between the time she stopped working, on April 7, 2019, and the time she applied for benefits, on December 18, 2019, to get information on her entitlement to benefits.[17]

b) The Appellant explains that, about a week after her job ended, on April 7, 2019, she traveled outside Canada to study and have better job opportunities in her field of study—tourism. She was outside the country for eight months, from April 2019 to December 2019.[18]

c) The Appellant knew that she could not receive benefits while she was outside Canada, given that she was outside the country and that she was not available for work. The Appellant figured it was useless to apply for benefits while she was outside Canada. She figured she would wait until she was back in the country, when she would be back in the labour market and available for work, before applying, which she did on December 18, 2019. The Appellant specifies that she has no reason other than her trip abroad to explain the delay in claiming benefits.[19]

d) The Appellant explains that she did not understand how EI works.[20] It was with the knowledge she had of EI that she made the decision to apply for benefits on December 18, 2019. She notes that she was sincere and acted in good faith in making this decision. The Appellant thought she was doing the right thing when she applied for benefits after returning to the country.[21]

e) When the Appellant received the Commission's December 19, 2019, letter, informing her that she did not have enough insurable hours to receive

[17] See GD2-9 to GD2-11.
[18] See GD3-35.
[19] See GD3-35.
[20] See GD3-27 and GD3-28.
[21] See GD2-9 to GD2-11.

benefits, it did not tell her that she had not met the deadline to apply for benefits.[22]

f) The Appellant argues that she had enough insurable hours to be entitled to benefits.[23] She explains that, by adding her hours worked with the two employers she worked for from June 2018 to April 2019, she would have enough to be entitled to benefits. She says she knew it was possible to go back up to two years, after applying for benefits, to recognize insurable hours worked so that a person can be entitled to receive benefits. On this point, the Appellant calls attention to the information obtained from the press secretary to the Member of Parliament for the riding of Pierre-Boucher-Les Patriotes-Verchères in an email dated March 16, 2021.[24] In this email, the press secretary told the Appellant that, when she applied to receive benefits as part of the Employment Insurance Emergency Response Benefit (EI ERB),[25] an 18-month period was taken into account to calculate her hours, which allowed her to receive that type of benefit.[26]

g) The Appellant is asking whether, despite her mistake of not applying for benefits earlier, it is possible to go back about 18 months, before the day her claim for benefits was made—that is, December 18, 2019, to take into account the hours she worked during the two employment periods with the two employers in question (period from June 2018 to December 2019). In doing so, she would be entitled to receive benefits, since she would have enough insurable hours. The Appellant points out that the Government of Canada manages both the Canada Emergency Response Benefit (CERB or EI ERB) and Service Canada.

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[22] See GD2-9 to GD2-11.
[23] See GD2-9 to GD2-11, GD3-33, and GD3-34.
[24] See GD5-1.
[25] This type of benefit is also known as the Canada Emergency Response Benefit (CERB).
[26] See GD5-1.

h) The Appellant finds it unfortunate that, because of her mistake, she cannot receive benefits for the period she could have received them, once she returned to Canada in December 2019.

i) The Appellant made an antedate request on December 18, 2020, after receiving information from the Commission about it. She learned that it was possible, in some cases, for the Commission to antedate a claim for benefits. The Appellant therefore filled out documents for this purpose, with the Commission's help. She wonders why the Commission gave her the opportunity to make an antedate request if an antedate cannot be granted except in [translation] "serious," "extreme," or "rare" cases.

[25] In this case, I find that, considering all the circumstances of her case, the Appellant has not shown that she had good cause for the delay in claiming benefits.

[26] I find that the fact that the Appellant was outside the country during the period from April 2019 to December 2019 does not show good cause for the delay in claiming benefits.

[27] I do not accept the Appellant's argument that she waited until December 18, 2019, before applying for benefits because she knew she was not entitled to receive them, since she was not available for work due to her absence from Canada.

[28] I find that nothing shows that, during her time outside Canada, from April 2019 to December 2019, the Appellant was unable to apply for benefits within the deadline, after she stopped working on April 7, 2019.

[29] I find that nothing was stopping her either from asking the Commission for information about what she needed to qualify for benefits.

[30] The Appellant's explanations that she applied for benefits based on her knowledge of EI and that she was sincere and acted in good faith also cannot be accepted in her favour.

[31] Even though the Appellant may not consider herself familiar with EI, and without questioning her good faith, I find that this situation is not good cause under the Act for the delay in claiming benefits.

[32] The Court tells us that good faith and ignorance of the Act are not, in themselves, good cause for the delay in claiming benefits.[27]

[33] I also do not accept the Appellant's argument that, by adding her hours worked with the two employers she worked for from June 2018 to April 2019, she would have enough to be entitled to receive benefits. She notes that, in some cases, for a person to be entitled to receive benefits, it is possible to go back up to two years, after applying for benefits, to recognize insurable hours worked.

[34] Even though the Appellant qualified on an earlier day than the day the claim was made, as a Tribunal member, I cannot decide whether she qualified on December 18, 2019, the day she made her claim.

[35] I note that the issue is not whether the Appellant had enough insurable hours to be entitled to receive benefits, assuming that the calculation of the hours in question would be done over a different period than the one established by the Commission in its December 19, 2019, decision.[28]

[36] On this point, I note that, as a Tribunal member, I cannot decide on an issue that is not before me. The Tribunal can hear only appeals of the Commission's reconsideration decisions.[29] In this case, the Commission's reconsideration decision, dated April 22, 2021, deals with the Appellant's antedate request to have her claim for benefits established on April 5, 2019.[30] So, I have to make a decision on that issue.

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[27] The Court established or reiterated this principle in the following decisions: *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Kaler*, 2011 FCA 266; and *Mauchel*, 2012 FCA 202.
[28] See GD3-23 and GD3-24.
[29] See section 113 of the Act.
[30] See GD3-36 and GD3-37.

[37] I also note that the Commission explains that the required number of insurable hours to establish a benefit period, as well as the duration of the qualifying period,[31] are not issues under appeal.[32]

[38] I am of the view that a reasonable person, under the Act, would have applied for benefits without delay after their job ended or would have asked the Commission for information about their entitlement to benefits.

[39] I find that the Appellant's situation was not exceptional, and nothing prevented her from taking such an initiative.

[40] I find that what the Appellant did to miss the deadline is not what a "reasonable person" would have done in circumstances similar to hers.

[41] I find that the Appellant was responsible for taking the necessary steps to apply for benefits within the deadline or to ask the Commission for the relevant information.

[42] The Appellant's explanations for why she did not do this within the deadline cannot exempt her from the requirements of the Act.

Conclusion

[43] I find that the Appellant has not shown that she had good cause for the delay in claiming EI benefits.

[44] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section

[31] In its arguments, the Commission explains that the 384 insurable hours that the Appellant accumulated from June 26, 2018, to September 9, 2018, with the employer X, could not be considered for her initial claim for benefits under section 8(1) of the Act—GD3-19, GD3-20, and GD4-4.
[32] See GD4-4.