



[TRANSLATION]

Citation: *PT v Canada Employment Insurance Commission*, 2021 SST 533

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

Decision

Appellant: P. T.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (423423) dated May 20, 2021
(issued by Service Canada)

Tribunal member: Charline Bourque
Type of hearing: Teleconference
Hearing date: June 22, 2021
Hearing participant: Appellant
Decision date: July 2, 2021
File number: GE-21-947

Decision

[1] The appeal is allowed in part.

[2] The Appellant hasn't shown that he had good cause for delaying his reports for his claim for Employment Insurance (EI) benefits for the period from January 29, 2021, to February 19, 2021. In other words, the Appellant hasn't given an explanation that the law accepts.

Overview

[3] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.¹ You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.²

[4] The Appellant submitted his reports after the deadline. He wants them to be treated as though they were submitted earlier, on December 7, 2020.

[5] For this to happen, the Appellant has to prove that he had good cause for the delay.

[6] The Commission decided that the Appellant didn't have good cause, and it found that the Appellant wasn't entitled to EI benefits from December 7, 2020, to February 19, 2021. The Commission says that the Appellant doesn't have good cause because he didn't try to contact the Commission to learn about his entitlement and didn't ask for help submitting his reports on time.

[7] The Appellant disagrees and says that he truly thought he would go back to work for his employer after his suspension. This suspension was related to a medical

¹ See section 49 of the Employment Insurance Act (EI Act).

² See section 26 of the *Employment Insurance Regulations*.

restriction. Additionally, the Appellant had asked for retroactive pay and thought he could go back to work quickly.

Issue

[8] Did the Appellant have good cause for the delay in claiming EI benefits?

Analysis

[9] The Appellant wants his reports for his EI benefits to be treated as though they were submitted earlier, before December 26, 2020. This is called antedating (backdating) the reports.

[10] To get a claim antedated, a claimant has to prove that they had good cause for the delay during the entire period of the delay.³ 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.

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

[12] A claimant also has to show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law.⁵ 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 didn't take these steps, then they must show that there were exceptional circumstances that explain why they didn't do so.⁶

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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.

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

[13] A claimant has to show that they acted this way for the entire period of the delay.⁷ That period is from the day they want their claim antedated until the day they actually made the claim. So, for the Appellant, the period of the delay is from December 7, 2020, to February 19, 2021.

[14] The Appellant says that he had good cause for the delay because he thought he would go back to his employer. He thought there had been a misunderstanding and that he would be able to go back to his position. His employer was taking steps to that end, and the Appellant was waiting for a return-to-work date.

[15] The Commission says that the Appellant hasn't shown good cause for the delay. He has failed to prove that he had good cause for the delay in submitting his reports because he didn't try to contact the Commission to learn about his entitlement and to ask for help so he could submit his reports on time. The Claimant admitted that he was aware of the requirements of the law and that he had experience with claims for EI benefits, but that he had made no effort to ask about his rights and fulfill his responsibilities. Even though he says he feared he wasn't entitled to the type of benefit he was claiming, the Claimant didn't try to check with the Commission and, as a result, didn't do what a reasonable person would have done in his situation. The Claimant could have contacted the Commission to ask for help submitting his reports before March 2, 2021.

[16] I note that the Appellant made his EI claim on December 14, 2020. The claim was made effective December 6, after the Appellant had stopped working on December 3, 2020. He had until December 26 to submit his reports.

[17] On December 22, 2020, the Appellant tried to submit an electronic report. It wasn't completed because of a change of address or a change to his bank account. The Appellant didn't follow up right away.

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

[18] On March 2, 2021, the Appellant tried to submit an electronic report again but was unsuccessful because it was late. He says he then contacted the Commission, having come to terms with the fact that he would not go back to his employer.⁸

[19] The Appellant explains that he applied for EI sickness benefits at the employer's request due to a medical restriction that had caused him to turn down work. At the time, the employer told him that it hadn't been aware of this medical restriction and suspended him from his job. The Appellant explains that he filed a grievance and thought he would go back to his job. The employer brought in an ergonomist to check his workstation. Because of the developments he was seeing, the Appellant still thought that he would go back to work. Additionally, he had asked to be paid his salary retroactively.

[20] In the end, the employer asked him for a financial settlement without reinstatement. The Appellant realized that he should have applied for regular benefits because he had always been available for work and could work with his medical restriction. He then took steps to correct his claim and contacted the Commission at that time about his reports.

[21] I note that the settlement agreement between the Appellant and his employer was signed on January 28, 2021. Yet, the Appellant made no attempt to submit a report and didn't try to contact the Commission before March 2, 2021.⁹ The Appellant says that he then contacted the Commission, having come to terms with the fact that he would not go back to his employer. The Appellant confirms that he was slow to take steps with the Commission.

[22] Following the Appellant's efforts, I note that the Commission reactivated the Appellant's claim for EI benefits as of February 20, 2021.

[23] In my view, the Appellant could have taken the necessary steps to check with the Commission as soon as his first report was rejected. Still, I am of the view that the

⁸ See the Commission's Supplementary Record of Claim (GD3-28).

⁹ See the claimant report dated March 2, 2021 (GD3-14).

Appellant had good cause for the delay until he signed the agreement with his employer. So, in my view, after January 28, 2021, the Appellant had to have known that he would not go back to work for his employer. He signed an agreement to that effect.

[24] So, I am of the view that the Appellant has shown good cause for the delay in submitting his reports until that date. But, in my view, the Appellant hasn't shown good cause for the delay in submitting his reports for the rest of the period, from January 29, 2021, to February 19, 2021.

[25] The Appellant waited until March 2, 2021, before taking steps with the Commission about his reports. So, I am of the view that he hasn't shown good cause for the delay in submitting his reports for the period from January 29, 2021, to February 19, 2021.

Conclusion

[26] The Appellant hasn't proven that he had good cause for delaying his reports for his EI benefits for the period from January 29, 2021, to February 19, 2021.

[27] The appeal is allowed in part.

Charline Bourque
Member, General Division – Employment Insurance Section