



Citation: *RK v Canada Employment Insurance Commission*, 2021 SST 576

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

Decision

Appellant: R. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (422036) dated April 26, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: June 16, 2021

Hearing participant: Appellant

Decision date: June 24, 2021

File number: GE-21-858

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown that she had good cause for the delay in applying for benefits. In other words, the Claimant has given an explanation that the law accepts. This means that the Claimant's application can be treated as though it was made earlier.¹

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on February 18, 2021. She is now asking that the application be treated as though it was made earlier, on November 22, 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 chose not to apply based on her assumption that she did not have enough hours to qualify for EI benefits. It also says that she did not make any efforts to ask about her rights and responsibilities under the *Employment Insurance Act*.

[6] The Claimant disagrees. She was laid off from one job and had to resign from another job due to medical issues. She says that she did call the Service Canada office to find out if she qualified for benefits and was told she did not qualify.

Issue

[7] Can the Claimant's application for benefits be treated as though it was made on November 22, 2020? This is called antedating (or, backdating) the application.

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

Analysis

[8] 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).

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

[10] 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.

[11] 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 November 22, 2020 to February 18, 2021.

[12] 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 she must show that there were exceptional circumstances that explain why she didn't do so.⁶

² See section 10(4) of the EI Act.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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] 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.

[14] The Claimant testified that she was working for two different employers in the hotel industry. Before the COVID-19 pandemic she would be laid off in mid-December during the winter months when business traditionally slowed down. She was laid off from employer "H" as part of a mass layoff in March 2020 due to COVID-19 restrictions. The other employer "C" laid her off as well. The Claimant returned to work with "C" on September 4, 2020. She resigned from that job due to medical conditions on October 10, 2020. The Record of Employment (ROE) issued for the job with "C" shows that the Claimant earned 183 hours of insurable employment.

[15] At the time the Claimant resigned from her position she already had an EI claim open. That claim ended on November 21, 2020. The Claimant was aware that her EI claim was ending. She thought she needed over 400 hours to qualify for EI. She has applied for EI in the past and her knowledge of the hours needed was based on those applications. The Claimant knew she had 63 or 83 hours from her employment with "H." She looked on line and saw that she had 183 hours with "C."

[16] The Claimant testified that she telephoned the Service Canada general line in November 2020 to see if she should apply for EI benefits. The Claimant said she decided to call Service Canada because she believed they would be the best source for information. She explained to the Service Canada agent that she had resigned from her job because her doctor put her off work. The Claimant said the agent asked her if she had a doctor's note. The Claimant replied, "I most certainly do." The Claimant said that she was told "Unfortunately, you're not going to qualify" or words to that effect. She understood that would not qualify because of the lack of hours and because she resigned. The Claimant applied for and received the Canada Emergency Response Benefit (CERB) for approximately two months.

[17] The Claimant said that she heard about the additional hours available to EI claimants in January 2021.⁷ She looked online for information about it but did not find anything.

[18] The Claimant testified that she was at a family gathering in February 2021 when her sister asked if she was getting her EI. The Claimant replied no. The Claimant's sister told her about the additional hours and that she would qualify with her hours. The Claimant applied for EI benefits the next day.

[19] The Commission says that the Claimant hasn't shown good cause for the delay because the evidence was clear the Claimant did not make an application prior to February 18, 2021, due to her own assumption that she did not qualify for benefit.

[20] The Claimant said that it was not her own assumption that she would not qualify for EI based on the hours she had. She was told by a Service Canada agent that she would not qualify. The Claimant said once she was told she would not qualify there was no need for her to check further with Service Canada. The Claimant said it would have been easier for her to apply after her claim ended in November 2020. It was not until her sister told her that she would indeed qualify that she called Service Canada again to find out about applying for EI benefits. As soon as she found out she applied.

[21] The Claimant submitted that she acted as reasonable person. She acted on the information she was given by a Service Canada agent. She could see the hours she had online. There was no reason to not believe the agent when she was told she would not qualify.

[22] The Commission noted that the Claimant acknowledged that at the end of her final claimant report on November 27, 2020, she was presented with a message that advised her to contact Service Canada if she was still unable to work and required further assistance. The Commission says the evidence on file shows that the Claimant did not contact the Commission regarding her benefit entitlement until February 19,

⁷ In September 2020, Parliament enacted temporary measures to increase access to EI benefits. This included a credit of additional hours that would be added to a claimant's first claim for benefits after a certain date. This is set out in section 153.17 of the *Employment Insurance Act*.

2021. The Commission says the actions of the Claimant do not amount to what a reasonable person would have done as she made no efforts to ascertain her rights and obligations in the application process prior to February 2021.

[23] I accept the Claimant's testimony that she contacted the Commission in November 2020 to see if she would qualify for EI benefits. Her testimony is consistent with the statements that she made to Service Canada agents she spoke with on April 8, 2021, and on April 26, 2021. The Claimant appeared before me and gave direct evidence under affirmation. I was able to ask her questions about the conversation she had with a Service Canada agent in November 2020. That the Commission does not have a record of the call is not determinative of the matter.

[24] The Claimant testified that she called the Service Canada's "general line." She was aware of the number of hours she had worked for both employers because she could see the ROEs online. She was also aware, having applied for EI in previous years that she required at least 400 hours to qualify for EI benefits. The Claimant said she knew she did not have that many hours. The Claimant said that she was told by a Service Canada agent that she would not qualify for EI benefits because she had resigned from her job and she did not have enough hours. She also told the Service Canada agent that she had a doctor's note that put her off work from her last job.

[25] I am satisfied that the Claimant took reasonably prompt steps to inform herself of her rights and obligations under the *Employment Insurance Act* and therefore has shown good cause for the delay in applying for benefits.

[26] The Claimant stopped working for "C" in October 2020. Her claim was ending in November 2020, so she went online to see how many hours she had. The Claimant believed that she needed at least 400 hours to qualify for EI benefits, based on her experience with past claims. But she did not rely on this assumption. She contacted the Service Canada general line to get specific information about whether she could qualify for benefits. This evidence tells me the Claimant did take reasonably prompt steps to inform herself of her rights and obligations under the *Employment Insurance Act*.

[27] I find the Claimant acted as a reasonable person in her situation would have done.

[28] The Claimant has made claims in prior years for EI benefits. Those claims were made prior to changes to the *Employment Insurance Act* that increased claimants' access to EI benefits. She believed that she needed at least 400 hours to qualify for EI benefits. She did not have that many hours. She was not aware that there were additional hours available. I note that the availability of additional hours did not form part of the messaging to the Claimant when she filed her last claim report on November 27, 2020.

[29] The Claimant made an inquiry to the Commission regarding her benefit entitlement in November 2020 and was told that she would not qualify for benefits. That information taken together with her knowledge of the hours required for past claims led the Claimant to believe that she would not qualify for EI benefits. I find that once the Claimant had the subjective appreciation of her circumstances that she would not qualify for EI benefits she acted as any other reasonable person would have in her circumstances and did not pursue her entitlement to benefits any further at that time.

[30] When the Claimant was given information from a family member about the additional hours that may be available to her, she applied for benefits immediately. This was also a reasonable action and demonstrated the Claimant's diligent pursuit of her entitlement to benefits.

[31] The Claimant has proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay. I must now consider whether the Claimant qualified for benefits on the earlier day.

[32] The Commission did not make any submissions on whether the Claimant qualified for EI benefits on the earlier day. I note however, the Commission submitted the Claimant applied for EI benefits on February 18, 2021, and a benefit period was started for her effective February 14, 2021. This tells me that the Claimant qualified for EI benefits on the earlier date. Considering the evidence on file, I find it is most likely that the Claimant was qualified to receive EI benefits on November 22, 2020.

Conclusion

[33] The Claimant has proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[34] The appeal is allowed.

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