



Citation: *EA v Canada Employment Insurance Commission*, 2021 SST 737

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (426894) dated June 29, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: August 17, 2021

Hearing participant:

Decision date: August 19, 2021

File number: GE-21-1230

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the E. A., who is the Claimant in this appeal.

[2] The Claimant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's claim reports be treated as though the reports were made earlier.

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 claim 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 Claimant did not make any claim reports after he applied for and was approved for EI benefits. He wants to make the claim reports after the deadline and have the claims treated as though the claims were made earlier. The claim reports cover the period from October 12, 2020 to April 9, 2021.

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

[6] The Commission³ decided that the Claimant didn't have good cause and refused the Claimant's request. The Commission says that the Claimant doesn't have good cause because he did not act as a reasonable person would have done to find out about his rights and obligations for EI benefits.

[7] The Claimant disagrees and says that he made every reasonable attempt to contact Service Canada in response to his claim but has not been given any assistance.

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

² See section 26 of the *Employment Insurance Regulations* (EI Regulations).

³ The Commission often operates through Service Canada.

He says that there was no reasonable attempt by Service Canada to contact him. The claimant says that the past year has been difficult on him financially.

Matter I have to consider first

The Claimant wasn't at the hearing

[8] The Claimant wasn't at the hearing. A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.⁴ I think that the Claimant got the notice of hearing because he gave his email address to the Tribunal as the way to communicate with him. The Claimant's appeal was acknowledged, he was sent the reconsideration file, the Commission's submissions, and the notice of hearing by email using the email address he provided. None of those emails were returned as undeliverable. The Tribunal staff sent the Claimant an email to remind him of the hearing with instructions on how to connect to the teleconference.

[9] On the day of the hearing, I established a teleconference at the scheduled time. At 30 minutes past the time set for the hearing, the Claimant had not appeared and I disconnected from the teleconference. As of date of writing, the Claimant has not contacted the Social Security Tribunal to explain his absence. So, the hearing took place when it was scheduled, but without the Claimant.

Issue

[10] Did the Claimant have good cause for the delay in claiming EI benefits?

Analysis

[11] The Claimant wants his claim reports for EI benefits to be treated as though the reports were made earlier, from October 12, 2020 to April 9, 2021. This is called antedating (or, backdating) the claim reports.

⁴ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

[12] To get a claim report antedated, the Claimant has to prove that he had good cause for the delay during the entire period of the delay.⁵ 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.

[13] And, 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.

[14] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁷ 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.⁸

[15] The Claimant has to show that he acted this way for the entire period of the delay.⁹ That period is from the day he wants each of his claim reports antedated to until the day he actually made the claim. So, for the Claimant, the period of the delay starts on October 12, 2020, with the first claim report, until April 9, 2021, when he asked that his claim reports be backdated.

[16] When the Claimant first asked to have the claim reports backdated he told the Service Canada agent that he tried to call in all the time but the operators would not pick up. He said that English was not his first language and he did not understand the website. He said that he also did not think he was qualified.

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

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

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

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 Burke*, 2012 FCA 139.

[17] The Claimant was interviewed by a Service Canada agent on June 9, 2021. He said that he received a letter saying that he was not eligible for EI benefits and then he got another letter saying that he was eligible. He said that he looked on line, found it confusing, and tried twice to call Service Canada but did not get through.

[18] The Claimant attached a letter to his request for reconsideration. In the letter he said that he made every reasonable attempt in his power to contact Service Canada in response to his EI claim. He said he called in on a weekly basis from October 12, 2020 to April 9, 2021 spending two to four hours on hold. He said that issues arose with the call being dropped, the representative not being able to understand or assist with his claim, or a lack of effort from the person he connected with to resolve his issue. The Claimant wrote that several attempts were made to escalate his case to a supervisor, or transfer him to another person, yet this did not happen despite being told that he would be contacted again shortly. The Claimant wrote that he made well over 100 calls during this period.

[19] The Claimant confirmed that he did not have voice mail set up on his cellular plan and he could not receive messages from Service Canada. The Claimant wrote that there was no reasonable attempt by Service Canada to resolve his issue or contact him. The Claimant wrote that he did not receive any calls from Service Canada. He wrote that the past year has been hard on him financially. He wrote that he had family members experience serious health complications due to COVID-19 and have fell in and out of depressive episodes.

[20] A Service Canada agent asked the Claimant to send in the records of his attempts to contact it. He first said he would do so and then later the same day said he could not because he used a lot of pre-paid phone and public phones. The Claimant told a Service Canada agent that he did receive and read the letter with the access code for filing claim reports and how to file the claim reports. The Claimant said that he was not good with technology.

[21] The Claimant wrote in his appeal to the Tribunal that he had good cause for the delay because he tried numerous times to contact Service Canada about his claim. He

wrote that he was on hold for hours each time and did not get through. The Claimant wrote that he did not receive any calls from Service Canada. He wrote that it was not fair for the information he gave in his reconsideration request to be intentionally ignored. He wrote that the information in his reconsideration request supported his claim and that it was information he had not mentioned previously.

[22] The Commission says that the Claimant hasn't shown good cause for the delay in filing his claim reports because he did not act as a reasonable person would have done to find out about his rights and obligations. It says that it was not unfair to give more weight to the Claimant's initial statement that he tried twice to contact the Commission instead of his later statement that he called hundreds of times because it is generally held that a Claimant's first statements are a more accurate reflection of the situation rather than later statements that are made to the Claimant's advantage.

[23] The Commission submitted that the Claimant had sufficient skills to use a computer to complete the application for EI benefits and to browse the website. He could have completed reports over the phone. In addition, it notes the Claimant was attending university and it is not reasonable to conclude that a person who could attend schooling was prevented from performing administrative tasks like completing claim reports, in spite of the financial stress he was experiencing. The Commission noted that while the Claimant argued that English is not his first language, his grasp of the language was sufficient to allow him to pursue a university education in English.

[24] I find that the Claimant has not proven that he had good cause for the delay in applying for benefits because he did not make reasonably prompt efforts to determine his rights and obligations under the EI Act. My reasons for this decision follow.

[25] Where there is a contradiction in the statements the Claimant made, in this case the statements he made about his efforts to find out about his claim for EI benefits, I am required to decide which of the Claimant's statements I prefer. In doing so I must provide reasons why I prefer those statements.¹⁰

¹⁰ *Bellefleur v. Canada (Attorney General)*, 2007 FCA 201, explains this principle.

[26] I find that I prefer the Claimant's earlier statements about the efforts he made to find about is EI benefits. I am giving more credibility to his earlier statements because he provided that information to a Service Canada agent more candidly than the subsequent written statements which were provided with the intent of overturning a previous unfavourable decision.¹¹ When he first asked for antedate he said that it was all very confusing, he tried to call all the time and that he did not think he qualified. When he was contacted to discuss his antedate request, the Claimant told a Service Canada agent that he looked at the web-site after he applied but found it confusing. He told the same agent that after going on line he called Service Canada approximately twice for guidance but could not get through. The Claimant told the same agent he contacted Service Canada when he found out in April 2021 he could have been collecting EI the whole time.

[27] It is not until the Claimant's request for antedating the claim reports was denied that the Claimant said he made 100's of calls to Service Canada. He wrote that he called in on a weekly basis and made well over 100 phone calls. There are 26 weeks between October 12, 2020 and April 9, 2021. To call in 100's of times would require that the Claimant call, on average four times a week. He was asked to provide records of the phone calls and said he would email the records in. Later the same day he said that he did not have any records because he used pre-paid phones and public phones.

[28] The Claimant's inability to confirm his actions, despite indicating that he could so, tells me that his initial statements about the efforts he made to contact Service Canada about his EI claim are more reliable. Those efforts, looking on line after he applied, calling twice after he applied, and deciding to contact Service Canada in April 2021 after he found out he should have been getting benefits all along, tells me that the Claimant made limited attempts to find out about his rights and obligations under the EI Act.

[29] The Claimant told a Service Canada agent that he received two letters about his applications for EI. One letter said that he was denied EI. He said that letter related to an earlier claim. The second letter approved him for EI benefits. That letter related to

¹¹ *Canada (Attorney General) v. Gagné*, 2011 FCA 161

the application for EI benefits that he wants the claim reports to be backdated. The Claimant said that he received and read the letter that had the access code and told him how to complete his claim reports. This means that the Claimant was aware that he qualified for EI benefits. I find that it would have been reasonable for the Claimant to make some effort to find out what the approval of his claim for EI benefits meant and what the access code and letter telling him how to complete claim reports meant in terms of his eligibility to claim EI. There is no evidence the Claimant attempted to contact the Commission after he received the second letter approving his claim to see what it meant for his eligibility to claim EI. There is no evidence the Claimant attempted to contact the Commission after he received the letter with the access code telling him how to complete the claim reports. He did not input any claim reports despite being given instructions on how to do so. I find that a reasonable person would have made some attempt after he received these letters to find about his rights and obligations to claim EI. He could have asked friends, family or classmates for assistance with the web site if he found it confusing. He could have asked for help completing the claim reports on line if he found technology difficult. He could have asked for help completing his claim reports over the phone. There is no evidence that he did any of these things. As a result, I find that the Claimant did not act like a reasonable person in his situation would have done to verify his rights and obligations under the EI Act.

[30] I find that the Claimant did not give any evidence of exceptional circumstances that prevented him from acting, as a reasonable person in his circumstances would have done, to find out about his rights and responsibilities. He wrote in his request for reconsideration that he experienced financial difficulties but not explain how his financial circumstances prevented him from finding out about his rights and responsibilities. There is no explanation of how the medical issues experienced by his family members would have prevented him from acting, as a reasonable person in his circumstances would have done, to find out about his rights and responsibilities. As a result, I find that there are no exceptional circumstances that would explain the Claimant's delay in filing his claim reports.

Conclusion

[31] The Claimant hasn't proven that he had good cause for the delay in making his claim reports for benefits throughout the entire period of the delay. This means that claim reports can't be treated as though the reports were made earlier.

[32] The appeal is dismissed.

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