



Citation: *HE v Canada Employment Insurance Commission*, 2021 SST 820

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: H. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (429533) dated July 26, 2021 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: September 10, 2021

Hearing participant: Appellant

Decision date: September 17, 2021

File number: GE-21-1384

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 claiming Employment Insurance (EI) benefits. In other words, the Claimant has given an explanation that the law accepts. This means that the Claimant's claim reports can 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 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 made her claim reports after the deadline. She wants the reports to be treated as though the reports were made earlier, beginning on October 28, 2020

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

[6] The Commission 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 it says that the Claimant delayed contacting it to inquire about her eligibility for benefits.

[7] The Claimant disagrees and says that she was not aware the Commission had opened a claim for her after she received an email that she was no longer eligible for benefits. She had no need to contact the Commission once that email was received. She only found out that she had an active EI claim when she applied for the Canada Recovery Benefit (CRB).

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

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

Issue

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

Analysis

[9] The Claimant wants her claim reports for EI benefits to be treated as though the reports were made earlier, beginning on October 28, 2020. This is called antedating (or, backdating) the claim reports.

[10] To get a claim report antedated, the Claimant has to prove that she 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 she has to show that it is more likely than not that she had good cause for the delay.

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

[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

[13] The Claimant has to show that she acted this way for the entire period of the delay.⁷ That period is from the day she wants her claim reports antedated to until the

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.

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

day she actually made the claim. So, for the Claimant, the period of the delay is from October 28, 2020 to May 7, 2021.

[14] The Claimant says that she had good cause for the delay because she was not aware that the Commission had auto-enrolled for regular EI benefits at the end of the EI Emergency Response Benefit. She had received an email saying that she was no longer eligible for benefits and relied on that email.

[15] The Claimant testified that she stopped working when she was laid off in March 2020. She applied for EI with the help of a family member. She started to receive EI ERB benefits effective March 29, 2020.

[16] On September 15, 2020, the Claimant left Canada to care for her parent who was hospitalized. While she was out of Canada the Claimant filed a claim report for EI ERB before the end of September 2020 indicating that she was out of Canada and not available for work. The Claimant testified that she received an email stating that she was no longer eligible for benefits. The Claimant accepted the content of the email as true. She returned to Canada on October 28, 2020.

[17] The Claimant performed some casual work after she returned to Canada. The Claimant said that she did look on-line at the services that were offered but most of what she saw on-line applied to people who were self-employed. She said that in May 2021 she was talking to a friend about how difficult it was for her with so little work and so little income. She said that she read about the Canada Recovery Benefit (CRB). Her friend was getting the CRB and suggested that the Claimant look into the CRB. The Claimant testified that she called the Canada Revenue Agency and was told that she had an open EI claim. The next day the Claimant called the Commission about her claim and completed her claim reports over the phone only to be told that she could not have the reports antedated.

[18] The Claimant testified that when she contacted the CRA it was the first time that she heard she had an EI claim. She knew there was a maximum and having received close to \$13,000 by the time she was told she was no longer eligible for benefits she

thought the maximum had been paid to her. The Claimant said that she did not have any reason to call the Commission to ask about EI benefits once she was told she was no longer eligible for benefits. She did not receive any notice from Service Canada or the Commission that it started a new claim for regular EI benefits for her effective October 4, 2020.

[19] The Commission acknowledges that the Claimant was not aware that a claim had been generated after the EI ERB period, but it notes that the same principle of good cause would apply if the Claimant had submitted an initial application in May [2021] and requested an antedate for the same period. The Commission said that it considered that the Claimant is inexperienced with the EI system and she may not have understood that she was eligible for benefits throughout the period of the delay. The Commission acknowledged that certain aspects of regular EI differ from the EI ERB.

[20] The Commission says that late reports may be accepted in cases where the Claimant contacts the Commission within a reasonably short time period from the date of the initial application. But in this case there was a significant delay of 25 weeks and in order to establish good cause for the delay the Claimant must show that she made some efforts to resolve the issue that caused the delay. The Commission says that the Claimant did not make any effort to contact it during the 25 weeks to ask about her eligibility for benefits and that nothing prevented her from doing so. It says without evidence that reasonable attempts were made by the Claimant to clarify her rights and responsibilities during the period of the delay, good cause is not shown.

[21] I find that the Claimant has proven that she had good cause for the delay in applying for benefits because she has shown that exceptional circumstances were the cause for the delay. The exceptional circumstances are the email she received saying that she was no longer eligible for benefits and the failure of the Commission to notify her that it had established a new claim for her effective October 4, 2020.

[22] I accept the Claimant's evidence that she filed a claim report for EI ERB towards the end of September 2020. She indicated in the claim report that she was out of Canada and not available for work. She then received an email that she was not

entitled to benefits. The Claimant was not made aware that the Commission had automatically enrolled her for regular EI benefits effective October 4, 2020.

[23] I think that was reasonable for the Claimant to conclude from the email she received that she was no longer eligible for EI benefits. There was no reason for her to make efforts to resolve the delay because she was not aware that a delay was occurring. It was reasonable for her to not to make further enquiries about benefits because she was told that she was no longer eligible for benefits. That she relied on that email is supported by her testimony that she was not aware that she had an open EI Claim and the Commission's acknowledgement that the Claimant was not aware it had generated a claim for regular EI benefits for her after the EI ERB expired.

[24] I find that once the Claimant had the subjective appreciation that she was no longer eligible for benefits she acted like any reasonable person in her circumstances would have acted. She discussed the CRB with a friend and contacted the CRA to see if she would be eligible. When she found out from the CRA that she had an open EI claim, the Claimant contacted the Commission the next day. In my opinion, this means the Claimant acted reasonably promptly to find out about her rights and obligations. As a result, I find that the Claimant has shown that she had good cause for the delay in completing her claim reports for EI benefits.

Conclusion

[25] The Claimant has proven that she had good cause for the delay in making her claim reports for benefits throughout the entire period of the delay. This means that her claim reports can be treated as though the claim reports were made earlier.

[26] The appeal is allowed.

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