



Citation: *QS v Canada Employment Insurance Commission*, 2021 SST 875

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

Decision

Appellant: Q. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (431750) dated August 30, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: October 20, 2021

Hearing participant: Appellant

Decision date: October 28, 2021

File number: GE-21-1728

Decision

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

[2] The Claimant has shown that he 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 March 16, 2021. He is now asking that the application be treated as though it was made earlier, on April 30, 2019. The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] I have to decide whether the Claimant has proven that he had good cause for not applying for benefits earlier.

[5] The Commission says that the Claimant didn't have good cause because he did not act the same as a reasonable person in his situation would have done to verify his rights and obligations under the Employment Insurance Act (EI Act). Specifically, it says there was nothing preventing the Claimant from filing on the earlier date.

[6] The Claimant disagrees and says that his wage loss arose when he had to work reduced hours due to an injury from a car accident. He was dealing with the provincial insurance corporation for compensation and did not think that his wage loss should be addressed by the employment insurance system. He was not advised to apply for EI benefits until his claim for wage loss was rejected by the provincial insurance corporation.

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

Matter I have to consider first

[7] At the start of the hearing the Claimant said that English was not his first language. I offered to postpone the hearing so that an interpreter could be arranged for him. The Claimant declined the offer. The hearing went ahead as scheduled.

Issue

[8] Can the Claimant's application for benefits be treated as though it was made on April 30, 2019? This is called antedating (or, backdating) the application.

Analysis

[9] 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).

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

[11] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.³ In other words, he has to show that he acted as reasonably and carefully just as anyone else would have if they were in a similar situation.

[12] The Claimant has to show that he acted this way for the entire period of the delay.⁴ That period is from the day he wants his application antedated to until the day

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.

he actually applied. So, for the Claimant, the period of the delay is from April 30, 2019 to March 16, 2021.

[13] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁵ 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.⁶

[14] 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.

[15] The Claimant says that he had good cause for the delay because when he was injured in a car accident at the end of April 2019 he filed a claim under the provincial insurance corporation (the corporation) in his province. It was his understanding that the corporation would cover any wage loss.

[16] The Claimant explained he was working 40 hours a week before the car accident. He found that he could not work full days and also he required time away from work for medical appointments. He reached an understanding with his employer to work the hours that he could work. The Claimant testified that he returned to work full time at the end of December 2019.

[17] The Claimant testified that after the accident and throughout the 2020 calendar year his claim with the provincial insurance corporation was being adjudicated. He spoke to and emailed an adjuster. He followed the corporation's guide for claims and was told that he needed to submit an application to the corporation for his wage loss. The Claimant said that he asked the adjuster how to apply for his wage loss. He was told that he needed a form completed by his doctor. He had to release his medical records to the corporation and gave his medical records to the corporation in early

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.

2020. He completed the application and gave his medical records to the corporation in early 2020. The COVID-19 pandemic slowed down the process of getting the wage loss application accepted by the corporation. He believed that because the corporation accepted his application for wage loss that his claim would be approved.

[18] The Claimant said he was told that all he had to do was to apply to Service Canada for benefits, get rejected and then he would be approved for wage loss insurance. The Claimant was not pleased with this approach. He did not think that his claim for wage loss should be handled by Service Canada when it was a claim for wage loss arising from an injury in a car accident. In December 2020 the Claimant's wage loss claim was rejected by the corporation. He went back to the adjuster in January 2021 and February 2021 to discuss the wage loss coverage. It became clear to him that the corporation would not be dealing with his wage loss claim so he decided to claim for EI benefits in March 2021.

[19] The Commission rejected the Claimant's application for EI benefits on June 7, 2021. When the Claimant told the corporation that his claim for EI benefits had been rejected, the corporation responded that his delay in applying for EI benefits was not its responsibility and it again refused to pay his wage loss claim.

[20] The Commission submitted that the Claimant did not have good cause for the delay in applying for EI benefits. It says that there was nothing preventing the Claimant from applying for EI benefits because he was able to visit doctors during the period of the delay. It says that ignorance of the law is no defence, and even if coupled with good faith, it is not enough to establish good cause.

[21] I find that, on a balance of probabilities, the Claimant's ongoing claim for wage loss with the provincial insurance corporation is an exceptional circumstance that can excuse his delay in applying for benefits.⁷

[22] The Claimant resides in a province that has a provincial crown corporation that provides universal auto insurance to its residents. The Claimant was involved in a car

⁷ *Canada (Attorney General) v. Somwaru*, 2010 FCA 336

accident in late April 2019 that resulted in an injury. The injury and the treatment for the injury resulted in his working part-time from the date of the injury to the end of December 2019. Once the Claimant resumed full-time work in January 2020 he started the application process with the corporation to make a wage loss claim. That process resulted in a rejection in late December 2020. As part of the rejection of his wage loss claim he was told to contact Service Canada to apply for EI benefits. He went back to the corporation in January 2021 and, again, in February 2021 to question the decision and that advice, because he did not think that his wage loss should be covered by EI benefits. In March 2021 when it became clear that the corporation would not be covering his wage loss he applied for EI benefits.

[23] I think that it was reasonable for the Claimant to not apply for EI benefits to cover his wage loss given that he had an ongoing claim for his wage loss with the provincial insurance corporation and he did not think that EI benefits should cover his wage loss. It was logical and reasonable for the Claimant to assume that the wage loss he experienced as a result of his involvement in a car accident would be covered by the corporation and not be covered by EI benefits. That the Claimant was able to undergo treatments and go to medical appointments is not determinative of the matter. That the corporation requires a rejection from Service Canada to process a wage loss claim is also not determinative of the matter.

[24] I think that a reasonable person in the same circumstances as the Claimant would wait to make an application for EI benefits until such time as his claim for wage loss with the corporation was rejected. That rejection occurred in February 2021 when it became clear to the Claimant that the corporation would not be covering his wage loss. The Claimant then applied for EI benefits on March 16, 2021.

[25] While the Claimant did not take immediate and prompt steps to inform himself of his rights and obligations under the *Employment Insurance Act*, he took immediate steps to apply for EI benefits when he became aware that the corporation would not be covering his wage loss claim. Accordingly, I find that the Claimant's circumstances were exceptional and, therefore, that he acted as a reasonable person in the same

circumstances, with an active ongoing claim for wage loss with a provincial insurance corporation, would have done.

[26] The Commission has not disputed that the Claimant was qualified for EI benefits on the earlier day. As a result, I find that the Claimant has satisfied both requirements to have his claim for EI benefits antedated to April 30, 2019.

Conclusion

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

[28] The appeal is allowed.

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