



Citation: *MF v Canada Employment Insurance Commission*, 2021 SST 884

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

Decision

Appellant: M. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (436471) dated October 27, 2021
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: December 16, 2021

Hearing participant: Appellant

Decision date: December 17, 2021

File number: GE-21-2175

Decision

[1] The appeal is dismissed.

[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 cannot be treated as though it was 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's last day of work was May 14, 2021, as that is when his contract expired.

[5] He renewed his EI claim on July 26, 2021.

[6] He has asked the Commission to antedate, in other words backdate, his claim to start on May 15, 2021.

[7] The Commission decided that the Claimant didn't have good cause for the delay between when he wants his claim to start and when he filed his renewal claim, so they refused his antedate request.

[8] The Commission says the Claimant did not have good cause as he did not act as a reasonable and prudent person would have to inform himself of his rights and obligations under the law.³

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

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

³ GD04-4

[9] The Claimant says when his contract ran out his priority was finding work, not applying for EI, as he needed steady and sufficient income to cover his wife's medical expenses since she is medically disabled and has serious ongoing health conditions.

Issue

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

Analysis

[11] No, the Claimant has not proven he had good cause for the entire period of the delay in filing his claim for EI benefits.

[12] The Claimant wants his claim for EI benefits to be treated as though it was made earlier, on May 15, 2021. This is called antedating (or, backdating) the claim.

[13] To get a claim antedated, the Claimant has to prove that he had good cause for the delay during the entire period of the delay.⁴ 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.

[14] 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.⁵ 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.

[15] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁶ This means that the Claimant has to show that he tried to learn about his rights and responsibilities as

⁴ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

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.⁷

[16] The Claimant has to show that he acted this way for the entire period of the delay.⁸ That period is from May 15, 2021, the day he wants his claim to start, until July 26, 2021, the day he actually made the claim.

[17] The Claimant testified that after his contract ran out his priority was finding work, not applying for EI benefits.

[18] The Claimant says his wife is medically disabled, immunocompromised, and has ongoing, serious, health conditions.

[19] The Claimant says due to his wife's health issues he has significant medical costs. So, he wanted to find work that was ongoing and with sufficient income, or a sufficient medical plan, to help him cover his wife's medical costs.

[20] The Claimant says he was told by his employer that he may get another contract starting on July 5, 2021, but he did not take that for granted and was out looking for work as soon as his contract was up.

[21] The Claimant says that his employer kept talking about getting him another contract, but issues kept coming up and so it was always delayed.

[22] The Claimant testified he was getting frustrated with all the delays, and with his inability to find work, so, when he was out looking for work one day, near the end of July 2021, he stopped in at a Service Canada Centre to enquire about EI.

[23] The Claimant says he was told he could go online and reactivate his claim, so that is what he did.

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 Burke*, 2012 FCA 139.

[24] The Claimant says he reactivated his claim either the day he was told about doing it or the next day at the latest.

[25] The Claimant testified that it is not fair that he is being penalized for prioritizing finding a job rather than immediately hopping on EI benefits and being a burden on the system.

[26] I accept the Claimant's testimony that his wife has serious medical issues and this results in large medical bills every year.

[27] I can understand the Claimant's desire to find work that will provide sufficient remuneration, or medical coverage, to allow him to cover his wife's medical costs as opposed to immediately taking EI.

[28] I can understand the Claimant's feelings of wanting to find employment rather than burdening the system by immediately jumping onto EI.

[29] However, the Court has said that delaying an application for EI in order to not burden the system, and because of a focus on finding employment, does not offer good cause for that delay.⁹

[30] I find the Claimant did not act as a reasonable and prudent person would have in similar circumstances.

[31] I find a reasonable and prudent person, unemployed, with large, ongoing, medical bills, would not have delayed in looking into benefits, as EI benefits could help cover some of those ongoing, mounting, medical costs.

[32] I find the Claimant did not take reasonably prompt steps to understand his entitlement to benefits and obligations under the law as he lost his job on May 14, 2021, and delayed until the end of July 2021, to make any enquiries into EI benefits.

⁹ *Howard v Canada (Attorney General)*, 2011 FCA 116

[33] I further find the Claimant has not presented any exceptional circumstances that would have excused him from the requirement to take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[34] I find he was able to look for work day after day from May 15, 2021, onward, so he could have contacted EI about benefits earlier than the end of July 2021.

[35] I really do understand the Claimant's feelings about not wanting to jump right on to EI after losing his employment. However, I would like the Claimant to understand that it is not being a burden on the system to collect benefits to which you are legally entitled.

[36] If the Claimant has been paying into EI, and meets the qualification requirements, then he should not feel bad about claiming them when he has lost his job as that is exactly what EI benefits are for, to help assist a person who has lost employment through no fault of their own.

Conclusion

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

[38] The appeal is dismissed.

Gary Conrad
Member, General Division – Employment Insurance Section