



[TRANSLATION]

Citation : *FM v Canada Employment Insurance Commission*, 2022 SST 406

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

Decision

Appellant: F. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (439992) dated November 26, 2021 (issued by Service Canada)

Tribunal member: Manon Sauvé

Type of hearing: Teleconference

Hearing date: January 27, 2022

Hearing participant: Appellant

Decision date: February 1, 2022

File number: GE-21-2518

Decision

[1] The appeal is dismissed. The Claimant doesn't have enough hours of insurable employment in his qualifying period.

[2] Additionally, the Claimant hasn't shown that he had good cause for the delay in applying for benefits.¹ In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's application can't be treated as though it was made earlier.

Overview

[3] The Claimant worked for his employer for more than 30 years. His job was cut in December 2019. He received \$109,844 in severance pay for 23 months' salary as of January 2020.

[4] The Claimant applied for Employment Insurance (EI) benefits on August 17, 2021. He is also asking that the application be treated as though it was made earlier, on January 5, 2020.

[5] The Commission made two decisions on his claim. First, the Commission decided that the Claimant didn't have enough hours of insurable employment in his qualifying period from August 16, 2020, to August 14, 2021. He needed to have worked 420 hours of insurable employment during that period. He hadn't worked, so he hadn't accumulated any hours.

[6] Second, the Commission refused to treat the application as though it had been made on January 5, 2020. According to the Commission, he hadn't shown good cause for the delay between January 5, 2020, and August 17, 2021.

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

[7] The Claimant disagrees with the Commission's decisions. He has been paying EI premiums his whole life. He didn't know that he could apply for EI benefits. Also, he was receiving pay from his employer; he would have committed fraud by applying.

Issues

1. Does the Claimant have enough hours in his qualifying period to qualify for EI benefits?
2. Can the Claimant's application for benefits be treated as though it was made on January 5, 2020? This is called antedating (or, backdating) the application.

Analysis

1. Does the Claimant have enough hours in his qualifying period to qualify for EI benefits?

[8] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.² 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 qualifies for benefits.

[9] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the "qualifying period."³

[10] The number of hours depends on the unemployment rate in your region.⁴

[11] The Commission decided that the Claimant's region was Montréal and the surrounding area and that the regional rate of unemployment at the time was 13.1%.

² See section 48 of the Act.

³ See section 7 of the Act.

⁴ See section 7(2)(b) of the Act and section 17 of the *Employment Insurance Regulations*.

[12] This means that the Claimant would need to have worked at least 420 hours in his qualifying period to qualify for EI benefits.⁵

[13] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁶

[14] The Claimant's qualifying period went from August 16, 2020, to August 14, 2021. The Claimant needs 420 hours of insurable employment in his qualifying period.

[15] I note from his testimony and the evidence on file that he didn't work during that period. This means that he doesn't have any hours of insurable employment.

[16] I find that the Claimant hasn't proven that he has enough hours to qualify for benefits because he needs 420 hours, but has none in his qualifying period.

[17] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[18] In this case, the Claimant doesn't meet the requirements, so he doesn't qualify for benefits. While I sympathize with the Claimant's situation, I can't change the law.⁷

2. Can the Claimant's application for benefits be treated as though it was made on January 5, 2020? This is called antedating (or, backdating) the application.

[19] To get your application for benefits antedated, you have to prove these two things:⁸

- 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.

⁵ Section 7 of the Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

⁶ See section 8 of the Act.

⁷ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

⁸ See section 10(4) of the Act.

- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[21] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁹ 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.

[22] The Claimant has to show that he acted this way for the entire period of the delay.¹⁰ That period is from the day he wants his application antedated to until the day he actually applied. So, for the Claimant, the period of the delay is from January 5, 2020, to August 17, 2021.

[23] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.¹¹ 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.¹²

[24] 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.

[25] The Commission says that the Claimant didn't have good cause for the delay. Ignorance of the *Employment Insurance Act*, even when acting in good faith,¹³ isn't

⁹ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹⁰ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹¹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹² See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹³ *Canada (Attorney General) v Kaler*, 2011 FCA 266.

good cause. The fact is that he needed to contact the Commission as soon as possible to learn about his rights and obligations.

[26] The Claimant says that he had good cause for the delay. He was receiving severance pay during that period. So, he could not receive EI benefits during the 23 months his employer paid him.

[27] The Claimant says that he didn't want to defraud the Commission. He decided to apply in August 2021 because he knows that the processing time for an EI claim can be lengthy.

[28] In my view, that isn't good cause for the delay. A reasonable and prudent person would have taken reasonably prompt steps to contact the Commission to learn about their rights and obligations.¹⁴ He could not have assumed that his claim would be fraudulent.¹⁵

[29] He didn't apply because he was receiving pay from his employer. In a similar case, the Court¹⁶ decided that receiving severance pay doesn't prevent you from applying for EI benefits.

[30] The fact that he didn't know that he might be entitled to insurance benefits isn't good cause for the delay either.¹⁷

[31] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits for the entire period between January 5, 2020, and August 17, 2021.

[32] I am also of the view that he hasn't shown that there were exceptional circumstances that explain why he didn't do what a reasonable and prudent person would have done in his situation.

¹⁴ *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁵ *Canada (Attorney General) v Trinh*, 2010 FCA 335.

¹⁶ *Shebib v Canada (Attorney General)*, 2003 FCA 88.

¹⁷ *Canada (Attorney General) v Beaudin*, 2005 FCA 123.

[33] I don't need to consider whether the Claimant qualified for benefits on the earlier day. If the Claimant doesn't have good cause, his application can't be treated as though it was made earlier.

Conclusion

[34] I find that the Claimant doesn't have [enough] hours of insurable employment to qualify for benefits.

[35] I also find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[36] The appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section