



Citation: *YW v Canada Employment Insurance Commission*, 2022 SST 468

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

Decision

Appellant: Y. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (440561) dated November 30, 2021 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: February 25, 2022

Hearing participant: Appellant

Decision date: March 3, 2022

File number: GE-22-191

Decision

[1] The appeal is dismissed.

[2] The Claimant (who is the Appellant in this appeal) has not shown good cause for her delay in applying for employment insurance (EI) benefits. This means her application cannot be treated as though it was made on an earlier date.

Overview

[3] The Claimant applied for EI benefits on August 2, 2021. The Respondent (Commission) started her claim effective August 1, 2021¹. On August 18, 2021, the Claimant asked to have her claim antedated so it could start as of March 14, 2021 to coincide with her lay-off from employment on March 11, 2021.

[4] The Claimant was asked about the reason for her delay in applying for EI benefits. She said that she didn't know how long she would be off work and thought she wouldn't need EI benefits. She waited a few months, and then she was busy with moving, but now she needed the money. The Commission concluded she did not have good cause for her delay and denied her antedate request.

[5] The Claimant asked the Commission to reconsider. She said that she's eligible for 50 weeks of EI benefits and had no income between March 11, 2021 and August 13, 2021. She said she delayed applying for EI benefits because she was hoping the lay-off would only last 2-3 months and, if that was the case, she didn't want to bother applying for EI for such a short period. Then she got busy with moving and looking for a job. When she realized the lay-off was dragging on and it was already late July, she could no longer wait for financial support and applied for EI benefits. She assumed she could apply when she really needed the money, but that she would still be paid starting from the date she first became eligible for benefits. She expected a lump sum from EI as "back pay" to cover her debts, and didn't realize there was a timeline for applying.

¹ This is the first week she was paid EI benefits.

[6] The Commission maintained that she did not have good cause for her delay and denied her antedate request. The Claimant appealed to the Social Security Tribunal (Tribunal).

Issue

[7] I must decide whether the Claimant's application for EI benefits can be treated as if it had been made on March 14, 2021. This is called "antedating" (which means backdating the application).

Analysis

[8] A claimant must prove two things to have their application for EI benefits antedated:

- a) that they had good cause for the delay during the whole period of the delay; and
- b) that they qualified for benefits on the earlier day².

[9] Since there is no dispute about whether the Claimant in this case had sufficient hours of insurable employment to qualify for EI benefits as of March 14, 2021, I will focus my analysis on whether there was good cause throughout the period of the delay.

[10] To show good cause, the Claimant must prove that she acted as a reasonable and prudent person would have in similar circumstances³. She has to show this for the entire period of the delay⁴. For this claimant, the period of delay is the 20 weeks between March 14, 2021 (the day she wants his claim for EI benefits to start) and August 2, 2021 (the day she actually applied for EI benefits).

[11] The Claimant must **also** show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law⁵. This means that she has to show that she tried to learn about her rights and responsibilities as soon as possible and as

² Subsection 10(4) of the *Employment Insurance Act*.

³ *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁵ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

best she could. If she did not take these steps, then she needs to prove that there were exceptional circumstances that explain why she did not do so⁶.

[12] The Claimant must prove it is more likely than not⁷ that she had good cause for her delay in applying for EI benefits.

[13] In her Notice of Appeal, the Claimant said her delay was because:

- She did not know she had to apply for benefits within a month of becoming eligible.
- She also thought she had to wait to apply because she was given 3 weeks of extra pay.
- Then she was hoping to return to work so she didn't have to claim EI benefits, but that was not the case.
- She needs the "missing" months of EI benefits to cover the expenses she incurred during the months she had no income.

[14] The Claimant testified at the hearing that:

- At the beginning, she waited "a little bit" because she got 3 weeks pay.
- She was also hoping to go back to work "as soon as possible". She had some savings and it was "only a few months", so she didn't even want to "bother" with EI.
- Then she started moving, which was "quite stressful".
- She is a single mother of a son, age 16.
- She had to look after the whole moving process on her own, including looking for a house. Her "whole mind" was on this.
- At the same time, she was "very actively" looking for work⁸ and taking care of her son.
- She bought a house and the closing was on July 2, 2021.

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

⁷ The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

⁸ The Claimant testified that her efforts led to landing the job she is in now, which she started in October 2021.

- In the lead up to the closing, she was busy with all of the paperwork, packing, shopping for furniture and all of the things that go along with moving. It was a stressful time for her.
- Her son was also in school online and she had to be involved with that.
- Eventually, the expenses “accumulated” and she had to accept that she needed help.
- She settled in after the move in July, and then she was able to go back to looking after her own, personal affairs.
- That’s when she applied for EI benefits.
- She didn’t realize there was “a timeline” to apply for EI benefits. She was just too busy and it was too much for her.
- She searched online for “how” to apply for EI, but didn’t “notice” there was a deadline.
- She had a previous claim, so she knew “approximately” how to apply. But didn’t “realize” there was a deadline.
- She thought that she could wait and, if she found a job “earlier than that”, she “wouldn’t even claim” EI.
- But she thought that whenever she “really needs the money”, her benefits would go all the way back to when she lost her job.
- She didn’t look into whether there was a timeline or what the implications were of delaying for months after her separation from employment.
- She asks the Tribunal for “a little bit of humanity” because “many things happened” and she spent so much time looking after “the other stuff” that she just didn’t look after herself.
- She needs this money to support herself and her son.

[15] The Commission says the Claimant hasn’t proven good cause for the entire period of the delay because:

- a) Despite being unemployed since March 2021, she made a conscious decision not to apply for EI benefits until August 2021 because she had 3 weeks of extra pay, and thought she would be recalled and wouldn't need EI benefits. She didn't want to depend on EI benefits until absolutely necessary. But relying on one's own personal resources is not good cause for delay, and certainly not for a delay of 20 weeks.
- b) She said she was busy moving, but submitting an application for EI benefits does not require a lot of time or effort. And there's no evidence she was prevented from applying for EI benefits earlier than she did. A reasonable and prudent person would have been in touch with Service Canada to enquire about the timeframe for applying and what the implications of delaying were. The Claimant did not make any effort to do so.
- c) She said she was not aware of the timeframe for applying for EI benefits, and had not had a claim in several years. But it was incumbent on the Claimant to make enquiries rather than rely on an assumption that she could apply at any time and get paid retroactively. Especially since she has experience with EI benefits⁹.

[16] I agree with the Commission.

[17] I find that the Claimant hasn't proven that she had good cause for her delay in applying for EI benefits because:

- a) She did not intend to apply for EI benefits when she was laid off because she was hoping to return to work and thought she would only be off for "a few months". The courts have repeatedly said this is not good cause for delay¹⁰.

The Claimant was laid off on March 11, 2021. She had no money coming in after that job ended, and no other source of income while she waited for her next

⁹ Her most recent claim was in 2016 (see GD4-2).

¹⁰ The courts have repeatedly held that good cause is not found where a claimant had no initial intention of claiming benefits because they were waiting to start other employment: see *Howard v. Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v. Ouimet*, 2010 FCA 83; and *Shebib v. Canada (Attorney General)*, 2003 FCA 88.

employment to start. She was also incurring expenses associated with buying a new house and moving. Yet she allowed 20 weeks to go by without taking any steps to apply for EI benefits or contact the Commission to enquire as to whether she could be paid retroactively and what the implications of delaying her application might be.

A reasonable and prudent person in such circumstances would have taken steps to speak with a Service Canada agent by telephone to review their options within 2-4 weeks of being laid off. Especially if they were facing the prospect of depleting their savings and/or going into debt to survive between jobs. However, by the Claimant's own admission, even as the weeks went by, she didn't think there was any point in opening a claim for EI benefits if she was only going to be off work for "a few months".

- b) She was relying on her own personal assumptions rather than verifying her understanding. The courts have repeatedly said this is not good cause for delay¹¹.

A reasonable and prudent person would have contacted Service Canada long before August 2, 2021 to make sure they were not prejudicing their entitlement to EI benefits by delaying their application for weeks (which turned into months) after being laid off on March 11, 2021.

- c) She did not take reasonably prompt steps to understand her entitlement to benefits and her obligations under the law. The courts have said this is a requirement for an antedate¹².

It was incumbent on the Claimant to verify her rights with Service Canada as soon as possible and as best she could. Yet she waited 20 weeks to apply for EI benefits

¹¹ The courts have repeatedly held that ignorance of the law is not good cause for a delay, nor is reliance on unverified information or assumptions: see *Canada (Attorney General) v Kaler*, 2011 FCA 266, *Canada (Attorney General) v. Trinh*, 2010 FCA 335, and *Canada (Attorney General) v. Rouleau*, A-4-95.

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

– mostly with no income coming in¹³ – without once contacting Service Canada to verify whether her assumption about being paid retroactively was correct and to enquire about the implications of continuing to delay applying for EI benefits.

A reasonable and prudent person would have contacted Service Canada within 2-4 weeks of being laid off to learn the answers to these questions. Especially as weeks went by and there was no recall to work. By failing to do so, the Claimant was not trying to learn about her rights as best she could. This means she has not proven that she took reasonably prompt steps to understand her rights and obligations to claim EI benefits, which is a requirement for an antedate.

- d) There was nothing preventing her from contacting Service Canada ***throughout the period of her delay.***

I see no evidence that the Claimant was prevented from contacting Service Canada or applying online - by anything other than her own assumptions and a deliberate choice to attend to other personal matters first. As stated above, the courts have said this is not good cause for delay¹⁴.

I appreciate that moving is a stressful process. I also acknowledge that there have been many challenges for parents with kids who are attending school online. But the Claimant could easily have contacted Service Canada to learn about her rights and obligations prior to August 2, 2021¹⁵. She could also have simply gone on-line and filed an application, which is neither difficult nor time consuming. Instead, she made a deliberate choice not to do so. She focused on looking for work, taking care of her 16-year old son, and buying a new house and moving. However, none of these activities are special circumstances that explain why she was not in contact

¹³ She testified that she had been given 3 extra weeks of pay when she was laid off. Otherwise, she was living on her savings.

¹⁴ See footnote 10 above.

¹⁵ She could have called the toll-free telephone line for Service Canada, which is easily found online.

with Service Canada. Claimants are expected to look for work while on claim, and parenting and moving are activities in the normal course of life.

[18] I therefore find that the Claimant has not shown good cause for delaying until August 2, 2021 to apply for EI benefits because she did not act as a reasonable and prudent person in her situation would have to satisfy themselves of their rights and obligations under the EI Act.

[19] For the reasons set out in paragraph 17 above, I find that a reasonable and prudent person in the Claimant's situation would not have waited until August 2, 2021 to apply for EI benefits dating back to March 14, 2021. A reasonable and prudent person would have been in contact with Service Canada or applied online within no more than 2-4 weeks after being laid off to find out what the timeframe was for applying for EI benefits. Had the Claimant done so, she would have had accurate information about the implications of delaying her application. Instead, she carried on based on an unverified assumption, and expected to receive EI benefits retroactively some 20 weeks after her separation from employment. This was not reasonable.

[20] The Claimant submits it is unfair to penalize her for applying late in an especially stressful year and asks that I consider her financial need.

[21] I acknowledge the Claimant's disappointment and frustration at not being able to go back and claim EI benefits from the time she was laid off. But neither the fairness of the outcome, nor her financial circumstances are relevant to what I must consider. She must comply with the timeframes in the EI Act or prove she had good cause for her delay. As set out above, I have found that the Claimant's reasons for delaying throughout the period from March 14, 2021 to August 2, 2021 do not constitute good cause.

[22] This means her claim cannot be antedated to be considered as having been made as of the earlier date she asked for.

Conclusion

[23] The Claimant did not act as a reasonable and prudent person in her situation would have acted to satisfy themselves of their rights and obligations under the EI Act.

[24] As a result, the Claimant has not proven that she had good cause for her delay in applying for EI benefits throughout the entire period of the delay. This means that her claim cannot be antedated to March 14, 2021, as she requested.

[25] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section