



Citation: *RH v Canada Employment Insurance Commission*, 2022 SST 539

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

Decision

Appellant: R. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (444567) dated January 6, 2022
(issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Teleconference

Hearing date: April 6, 2022

Hearing participant: Appellant

Decision date: April 7, 2022

File number: GE-22-416

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that he had good cause for the delay in applying for benefits. 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.¹

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on June 29, 2021. He is now asking that the application be treated as though it was made earlier, on May 10, 2021. 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 like a reasonable person in his circumstances would have, to learn about his rights and obligations under the law.

[6] The Claimant disagrees and says that he should be entitled to benefits because he was looking for work throughout the period of delay and did not know he had to apply for benefits within a certain timeframe.

Issue

[7] Can the Claimant's application for benefits be treated as though it was made on May 10, 2021? This is called antedating (or, backdating) the application.

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

Analysis

[8] 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).

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

[10] 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

[11] 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 he actually applied. So, for the Claimant, the period of the delay is from May 10, 2021, until June 27, 2021.

[12] 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

[13] 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.

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.

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.

[14] The Claimant says that he had good cause for the delay because he was looking for work throughout the entire period of the delay, he expected he would find work quickly, and he did not know he had to file for EI benefits immediately after being laid off from his job.

[15] The Commission says that the Claimant hasn't shown good cause for the delay because he did not act as a reasonable person in his circumstance would have done, to satisfy himself as to his rights and obligations under the law.

[16] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits because he has not proven that he took prompt steps to understand his obligations when applying for the EI program.

[17] The Claimant submitted at the hearing that he acted as a reasonable person because he was looking for work after he was laid off from his job. He submits that he thought he would find work quickly, and that he could apply for EI later if he didn't get a job. He also stated that he didn't know there was a certain timeframe in which he had to apply for benefits.

[18] I find the Claimant's arguments do not support that he had good cause for the entire period of the delay. The Claimant was laid off from his job effective May 7, 2021, but did not apply for EI benefits until June 29, 2021. In the period of the delay, he did not contact the Commission to ask any questions about the EI program or do any research to learn about the rules for applying within a certain period of time. He testified that he was aware of the EI program and was previously on an active claim. He knew EI would provide financial assistance if he was unemployed, but "didn't really do anything" to inform himself about his rights and obligations under the law.

[19] The Claimant stated that he eventually applied for EI because it was taking longer than expected to find a job. He stated that during the period of the delay, he had access to telephone and internet. While he said that he doesn't know where the closest Service Canada location is, in relation to his home, I note that he lives in a large Canadian city so it is reasonable to conclude he lives in close proximity to a Service Canada location.

[20] Given that the Claimant did nothing to inform himself of his rights and obligations under the law, meaning what he had to do to be entitled to EI benefits, I find he cannot be successful in this appeal. While the Claimant was looking for work during the period of the delay and did not know there was a timeline in which he had to apply for EI benefits, it was his responsibility to research the EI program and apply within a specific time, unless exceptional circumstances existed. The Claimant has not presented any exceptional circumstances, instead stating that he was focused on looking for work and didn't know he had to immediately apply for benefits. These reasons are not good cause.

[21] The antedate provisions in the *Employment Insurance Act* are not the product of "mere legislative whim,"⁷ but contain a policy that is vital to its efficient administration. Antedating a claim for benefits may adversely affect the integrity of the system, because it gives a claimant a retroactive and unconditional award of benefits without any possibility of verifying the eligibility criteria during the period of retroactivity.⁸ Antedate is not a right of every claimant, but is an advantage for which he must qualify; and, as the courts have said, it is an advantage that should be applied exceptionally. The obligation to promptly apply for EI benefits is seen as very demanding and strict. This is why the "good cause for delay" exception is cautiously applied.

[22] 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

[23] The Claimant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[24] The appeal is dismissed.

Candace R. Salmon

Member, General Division – Employment Insurance Section

⁷ See *Canada (Attorney General) v. Beaudin*, 2005 FCA 123 at para 5.

⁸ See *Canada (Attorney General) v. Beaudin*, 2005 FCA 123 at para 5.