



Citation: *GH v Canada Employment Insurance Commission*, 2022 SST 495

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

Decision

Appellant: G. H.
Representative: Tara McWhinney

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (422792) dated June 11, 2021
(issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Videoconference

Hearing date: April 5, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: May 10, 2022

File number: GE-21-1146

Decision

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

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

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on January 11, 2021. He is now asking that the application be treated as though it was made earlier, on November 29, 2020. The Canada Employment Insurance Commission (Commission) refused this request.

[4] I have to decide whether the Appellant has proven that he had good cause for not applying for benefits earlier. The Commission has already concluded that the Appellant had enough hours to qualify at the requested date of antedate.²

[5] The Commission says that the Appellant didn't have good cause because he failed to show the intention to file his claim for employment insurance benefits for the entire period of the delay.³

[6] The Appellant disagrees and says that he has significant mental health issues, due to his ADHD (Attention Deficit Hyperactivity Disorder) and depression. He simply forgot and this delayed his request for the antedate. He made a request for reconsideration of the Commission's decision.

[7] In support of his request for reconsideration, the Appellant again stated that he has mental health issues, as well as extreme stress from the pandemic, and this led to

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

² See GD3-35.

³ See GD3-19 and 20

his late application.⁴ He submitted a psychological evaluation from 2006-2007 to support his claim that he suffers from ADHD.⁵

[8] After reconsidering the matter, the Commission maintained its original decision.

Issue

[9] Can the Appellant's application for benefits be treated as though it was made on November 29, 2020? This is called antedating (or, backdating) the application.

Analysis

[10] To get your application for benefits antedated, you have to prove these two things:⁶

- 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).

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

[12] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁷ 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.

[13] The Appellant has to show that he acted this way for the entire period of the delay.⁸ That period is from the day he wants his application antedated to until the day

⁴ See GD3-21

⁵ See GD3-24 to 32

⁶ See section 10(4) of the EI Act.

⁷ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁸ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

he actually applied. So, for the Appellant, the period of the delay is from November 29, 2020 to January 11, 2021.

[14] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁹ This means that the Appellant has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Appellant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.¹⁰

[15] The Appellant 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.

[16] The Appellant says that he had good cause for the delay because he suffers from ADHD. He faces significant mental health challenges and the pandemic has aggravated his feelings of stress and depression. In the end, he stated to the Commission that he just forgot and he does not know how this happened.

[17] In testimony, the Appellant reiterated that he has a hard time dealing with bureaucracy. He has anger issues and just can't go online. He confirmed that after losing his job in November 2020, he was not taking medication for his mental health issues. He does not recall consulting his Service Canada account or looking for a job. He states that he found a part-time job shortly after applying for EI benefits in January 2021.

[18] The Appellant also testified that at the time of the hearing, he would have been working but for the fact that both he and his wife had Covid-19 and had been isolating for about 3 weeks. He says that he thought he was on a claim because he got the Canada Recovery Benefit. He further states that he has a hard time submitting his records; he often can't figure them out.

⁹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁰ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[19] Finally, the Appellant confirms that he struggles dealing with bureaucracy and attending medical appointments. It causes mood swings, stress and frustration. He says that he thought of applying every day, but dealing with EI agents over the phone is a problem; their website is awful. He says he has contributed to EI for many years and it should be easier to get.

[20] The Commission says that the Appellant hasn't shown good cause for the delay because he failed to act as a reasonable person would in the circumstances. The Appellant did not take steps to call Service Canada during the period of the delay, even though he looked at his My Service Canada Account and found that the Commission had not received his ROE (Record of Employment).¹¹

[21] The Commission further states that the Appellant was capable of finding a new job, and did consult his account on the Internet. He could then have contacted the Commission about his ROE. While the Commission acknowledges that the Appellant has mental health issues, it does not explain or excuses the delay in enquiring about his rights and obligations under the EI Act or the information needed to apply.

[22] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because even though I recognize that the Appellant has been diagnosed with ADHD in the past and treated accordingly.

[23] While I also acknowledge that generally, ADHD affects planning, organizing, and the ability to start work, stay on task and maintain focus, in this case the Appellant was able to apply for EI benefits on January 11, 2021. He was also able to call the Commission on April 8 to enquire about his claim and request the antedate. He says that he just forgot to file his claim earlier. He knew enough about EI to recognize that the Commission had not received his ROE.¹²

¹¹ See GD3-16, 18

¹² See GE3-15 to 17

[24] The Appellant was also able to instruct his Representative to file an appeal and set up a hearing. Although at first the Appellant was not expected to testify at the hearing, he did in the end and gave clear and coherent testimony.

[25] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. He took no steps to ask about EI benefits or deal with the fact that he was without income until January 11, 2021. A reasonable person who had lost his source of income would have asked about and applied for EI benefits promptly.

[26] The Appellant suffers from ADHD and is greatly affected by stress and anxiety. However, the medical notes he provided are not sufficient to show that his condition is so severe that he could not contact the Commission to ask about EI benefits. After all, the Appellant found work, albeit part-time, soon after he applied for EI benefits, and would have been working at the time of the hearing had he not contracted Covid-19.

[27] In closing submissions, the Appellant's Representative reinforced the fact that the Appellant can be impatient when dealing with bureaucrats. He also loses focus and interest if things don't proceed fast enough.

[28] In applying the legal test for antedate to the above facts, I conclude that the Appellant did not do what a reasonable and prudent person would have done in the circumstances to find out about their rights and obligations.

[29] In considering all the points above, I find that the Appellant, once he lost his job in November 2020, should have acted like a reasonable and prudent person and tried to find out about other sources of income, including EI benefits. He did not apply until January 2021, and then did not request the antedate until April because he was not in the right frame of mind. These are not the actions of a reasonable person.

[30] Were there exceptional circumstances that would excuse the Appellant from not applying earlier? No, for the following reasons.

[31] The only possible exceptional circumstance would be his mental health issues. In considering his ADHD and the resulting constraints for the Appellant, as indicated

above, the condition does not restrict the Appellant from working, looking up information on the Internet or instructing a Representative. The recent letter from a family physician does not provide strong support for exceptional circumstances to explain or excuse the delay.¹³

[32] Overall, the evidence does not allow me to find that there were exceptional circumstances that would excuse the delay.

[33] I don't need to consider whether the Appellant qualified for benefits on the earlier day, for two reasons. First, the Commission has conceded that the Appellant would have qualified on the earlier date. Second, if the Appellant doesn't have good cause, his application can't be treated as though it was made earlier.

Conclusion

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

[35] The appeal is dismissed.

Sylvie Charron
Member, General Division – Employment Insurance Section

¹³ See GD6