



Citation: *CD v Canada Employment Insurance Commission*, 2022 SST 486

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

Decision

Appellant (Claimant): C. D.

Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (459096) dated February 27, 2022 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: May 2, 2022

Hearing participant: Appellant

Decision date: May 3, 2022

File number: GE-22-1025

Decision

[1] The appeal is allowed.

[2] The Claimant has shown he had good cause for the delay in applying for benefits. This means the Claimant's application can be treated as though it was made earlier on August 8, 2021.¹

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on October 6, 2021. He is now asking that the application be treated as though it was made earlier on August 8, 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 the Claimant didn't have good cause, because he should have known he didn't need a Record of Employment to apply for EI benefits.

[6] The Claimant disagrees and says his direct manager told him he required a hard copy of his Record of Employment when applying for EI benefits. The Claimant says he only learned that his Record of Employment was submitted electronically to Service Canada in late September 2021.

Issue

[7] Can the Claimant's application for benefits be treated as though it was made on August 8, 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 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.

[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 August 8, 2021, to October 6, 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

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.

[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.

[14] The Claimant says he had good cause for the delay, because he was misinformed by his direct manager that he required a hard copy of his Record of Employment to apply for benefits.

[15] The Commission says the Claimant hasn't shown good cause for the delay, because he should have reasonably known he didn't require a Record of Employment to apply for benefits based on his experience applying in 2019.

[16] I find the Claimant has shown good cause for the delay in applying for benefits for the following reasons:

[17] First: The Claimant was misinformed by his direct manager (A. G.) that he required a hard copy of his Record of Employment to apply for benefits. I realize the Commission submitted the Claimant should have reasonably known he didn't need his Record of Employment to apply based on his experience applying in 2019. Nevertheless, I accept the Claimant's testimony that the management with his employer changed in February 2021 and he was told he now required a Record of Employment to apply for EI benefits. I accept the Claimant's testimony on this matter, because his statements were detailed, consistent, and plausible.

[18] Second: There were exceptional circumstances in the Claimant's case. Specifically, the Claimant wasn't told by the employer he was laid off until early September 2021 even though his Record of Employment indicates his last day paid was August 8, 2021. Furthermore, the Claimant was repeatedly told by his manager she would send him his Record of Employment which he required to apply for benefits. I recognize the Commission submitted that if the Claimant needed support or guidance in applying he could have contacted Service Canada to inquire about the requirements. However, the exceptional circumstances in this case cannot be ignored. For example, the Claimant was repeatedly told he would receive his Record of Employment and didn't

learn until late September 2021 that the employer had filed his Record of Employment electronically to Service Canada after September 9, 2021.

[19] Third: I accept as credible the Claimant's testimony that he accepted in good faith his direct manager's advice that he required his Record of Employment to apply for benefits. I accept the Claimant's testimony on this matter, because his statements were consistent and detailed.

Did the Claimant qualify for benefits on the earlier day of August 8, 2021?

[20] I find the Claimant did qualify for regular EI benefits on the earlier day (August 8, 2021) based on his Record of Employment listed in GD3-24.

Additional Submissions from the Commission

[21] I realize the Commission submitted the Claimant's last employer issued his Record of Employment on September 9, 2021. However, the Commission submitted the Claimant only applied for benefits nearly a month later on October 6, 2021. Still, the Claimant testified that he wasn't told by the employer he was laid off until early September 2021. Furthermore, the Claimant testified he was repeatedly told by his manager (A. G.) that he would receive a hard copy of his Record of Employment which he needed to apply for benefits. The Claimant was only advised by his employer in late September 2021 that his Record of Employment had been filed electronically to Service Canada after September 9, 2021. The Claimant applied for benefits shortly after being advised his Record of Employment had been filed electronically to Service Canada.

Conclusion

[22] The Claimant has shown that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[23] The appeal is allowed.

Gerry McCarthy

Member, General Division – Employment Insurance Section