



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 583

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

Decision

Appellant: S. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (442465) dated December 17, 2021 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: March 15, 2022

Hearing participant: Appellant

Decision date: March 25, 2022

File number: GE-22-347

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant (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 were made earlier.¹

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on September 1, 2021. He is now asking that the application be treated as though it was made earlier, on April 18, 2021. This is called antedating (or, backdating) the application.

[4] The Canada Employment Insurance Commission (Commission) has already refused this request.²

[5] I have to decide whether the Claimant has proven that he had good cause for not applying for benefits earlier.

[6] The Claimant says that based on his experience with EI benefits, it was reasonable for him to assume he wasn't eligible.

[7] The Commission says that the Claimant should have confirmed his assumption by checking the Service Canada website, contacting Service Canada or visiting a Service Canada Centre.

Matter I have to consider first

I will accept the documents sent in after the hearing

[8] I allowed the Claimant time after the hearing to file documents to support his testimony. He filed the documents within the allotted time. The Tribunal shared the documents with the Commission. The Commission had time to review the documents

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

² See initial decision on page GD3-19, and reconsideration decision on page GD3-26.

and to either object to, or provide additional arguments. It did neither. I accept the additional documents into evidence because they relate to the Claimant's testimony, and the Commission isn't prejudiced by my accepting them.

Issue

[9] Can the Claimant's application for benefits be treated as though it was made on April 18, 2021?

Analysis

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

- 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).³

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

[12] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ 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 Claimant has to show that he acted this way for the entire period of the delay.⁵ That period is from the day he wants his application antedated to until the day

³ See section 10(4) of the EI Act.

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

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

he actually applied. So, for the Claimant, the period of the delay is from September 1, 2021, to April 18, 2021.⁶

[14] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁷ 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.⁸

[15] 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.

– **What the Claimant says**

[16] The Claimant says that he had good cause for the delay because:

- He believed he wouldn't qualify for EI benefits because he had worked fewer hours in 2020/2021 than he had in 2011/2012. When he applied in 2011/2012, he didn't have enough hours to qualify for benefits. He assumed the same would be true in 2021.
- He was involved in intensive study for a comprehensive examination between May 21, 2021, and June 21, 2021. He hadn't planned to take the examination then. He felt sick near the end of his examination preparations.
- He had other things going on that affected him psychologically. He was working and researching, and dealing with his professor, other departments, family, and his landlord. He needed time to consider these things, and become motivated again after the bullying and harassing treatment he received.

⁶ The Commission says the period of delay is from April 18, 2021, to August 28, 2021, not September 1, 2021. See page GD2-9. This is because the Claimant's benefit period started on August 28, 2021. But the period ends on the day the Claimant applied, September 1, 2021, not the day the benefit period started.

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

- He applied for benefits as soon as he could. It was difficult to find the motivation, but he applied, even though he assumed he wasn't eligible.
- He explained that despite what was going on, had he known about his eligibility for EI benefits, he would have applied earlier.⁹
- He wasn't brought up in Canada, so isn't keen on his rights.¹⁰

[17] The Claimant told the Commission that he didn't reach out to Service Canada to see if he was eligible for EI benefits.¹¹ He testified that he contacted Canada Revenue Agency (CRA) about the Canada Emergency Response Benefit (CERB) and Canada Recovery Benefit (CRB). He provided evidence about CERB applications between March 15, 2020, and August 1, 2020.¹² He says he was in the loop about CERB, CRB, and EI benefits. He provided evidence of screen shots showing he looked at EI application information on September 7, 2021 (after the period in question), and CERB and CRB information in December 2020 (before the period in question).¹³

– **What the Commission says**

[18] The Commission says that the Claimant hasn't shown good cause for the delay. It argues that:

- The Claimant didn't inquire about whether he qualified for benefits. He should have confirmed his assumption about not qualifying for benefits by checking the Service Canada website earlier, contacting Service Canada, or visiting his local Service Canada Centre.
- He shouldn't have assumed he didn't qualify based on an application made almost ten years earlier without confirming whether the qualifying conditions or rules for benefits had changed.

⁹ As per his testimony and statements on page GD9-7.

¹⁰ See page GD9-7.

¹¹ See page GD3-18.

¹² See page GD14-3.

¹³ See page GD14-4.

- There is no evidence that the Claimant was prevented from inquiring or applying earlier than he did.
- During the period of delay, the Claimant prepared for and completed an examination, and contacted (or attempted to contact) various departments, including two ombudsman's offices.
- As the Claimant wasn't prevented from doing these things, he could have made inquiries about qualifying for EI benefits, or applied earlier.
- There is no medical evidence to show that he was medically unable to inquire about or apply for benefits.
- The Claimant's experiences with his past employers aren't relevant to his delay in applying for benefits.

– **What I find**

[19] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits.

[20] First, the Claimant didn't do what a reasonable and prudent person would have done in similar circumstances to find out his rights and obligations.

[21] Since 2020, it has been common knowledge that there have been many changes to benefits available to Canadians. The evidence shows that the Claimant knew about CRB and CERB. He knew about EI benefits, because he had previously applied, and had even received EI benefits in the past.

[22] In these circumstances, a reasonable and prudent person:

- Wouldn't have relied on his long-past experience to determine his eligibility for EI benefits
- Would have contacted Service Canada (by telephone or in person), or would have looked online to see how to apply for EI benefits.

[23] It is not enough for the Claimant to have contacted CRA, or to have relied on information from his employer (or union) as the EI program is administered by Service Canada, not CRA, his employer (or union).

[24] It isn't enough that he thought he wouldn't qualify. The Federal Court of Appeal has reaffirmed that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause.¹⁴

[25] Secondly, I find the Claimant didn't take prompt steps to find out about EI benefits. This is because he didn't make any inquiries with Service Canada until he applied for EI benefits. Reviewing information from his employer (or union) about CRB or CERB doesn't satisfy this test.

[26] The Claimant says that given everything else that was going on, he was unable to consider EI benefits. He says he applied as soon as he could. But, when people apply for EI benefits, they are often in difficult situations, being unemployed is often only a small part of their difficulties. Such circumstances aren't exceptional, and don't remove the obligation to act promptly.

[27] For these reasons, I find the Claimant hasn't proven that he had good cause for the delay in applying for benefits.

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

Conclusion

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

[30] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

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