



[TRANSLATION]

Citation: *MG v Canada Employment Insurance Commission*, 2022 SST 756

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

Decision

Appellant: M. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (442853) dated December 7, 2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Teleconference

Hearing date: February 1, 2022

Hearing participant: Appellant

Decision date: February 11, 2022

File number: GE-22-99

Decision

[1] The appeal is allowed.

[2] The Claimant has shown that she had good cause for the delay in applying for benefits.¹ In other words, the Claimant has given an explanation that the law accepts. This means that the Claimant's application can be treated as though it was made earlier.

[3] Because of the antedate, the Claimant has shown that she has worked enough hours to qualify for Employment Insurance (EI) sickness benefits.²

Overview

[4] The Claimant applied for EI sickness benefits, but the Canada Employment Insurance Commission (Commission) decided that she hadn't worked enough hours to qualify.³

[5] I have to decide whether the Claimant has worked enough hours to qualify for EI sickness benefits.

[6] The Commission says that the Claimant doesn't have enough hours because she needs 420 or more hours, but has none.

[7] The Claimant disagrees and says that she has been unable to go back to work because of the pandemic, since the medical manipulative therapy she needs was postponed.

¹ Section 10(4) of the *Employment Insurance Act* (Act) uses the term "initial claim" to talk about the claimant's first claim for benefits, which determines whether the person qualifies to establish a benefit period.

² In accordance with section 153.17(1)(a) of the Act, the Claimant has an additional 480 hours of insurable employment.

³ Section 7 of the Act and section 93 of the *Employment Insurance Regulations* (Regulations) say that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

[8] The Claimant says that she has been on medical leave since May 2019 and that she received wage loss insurance until September 5, 2021. She was late applying for benefits because of the difficulties she had experienced, but she asked that her claim for benefits be established on that date.

Matter I have to consider first

The Tribunal's jurisdiction

[9] To begin with, although the Claimant says that the question of an antedate to September 8, 2021, has been discussed with the Commission, I note that the Commission's reconsideration decision doesn't mention this issue.

[10] Still, the Commission says that it could not consider antedating to September 8, 2021, since the Claimant didn't qualify on that date.⁴

[11] So, I find that the Commission has made a decision about antedating to September 8, 2021. As a result, I am of the view that I have jurisdiction to make a decision on that issue.

Issue

[12] Can the application for EI benefits be treated as though it was made on September 8, 2021? This is called antedating (or, backdating) the application.

[13] Has the Claimant worked enough hours to qualify for EI sickness benefits?

⁴ See the Commission's supplementary representations to the Tribunal (GD8).

Analysis

Issue 1: Can the application for EI benefits be treated as though it was made on September 8, 2021?

[14] To get your application for benefits antedated, you have to prove these two things:⁵

- 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).

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

[16] To show good cause, the Claimant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.⁶ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[17] The Claimant has to show that she acted this way for the entire period of the delay.⁷ That period is from the day she wants her application antedated to until the day she actually applied. So, for the Claimant, the period of the delay is from September 8, 2021, to October 11, 2021.

[18] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁸ This means that the Claimant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, then

⁵ See section 10(4) of the Act.

⁶ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

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

she has to show that there were exceptional circumstances that explain why she didn't do so.⁹

[19] The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she had good cause for the delay.

[20] The Claimant says that she had good cause for the delay. She says that some time passed before she learned that her wage loss insurance had ended. She was going through a hard time mentally, given her inability to go back to work because of delays caused by the pandemic. Her partner also lost his job. She says that the pandemic hit her particularly hard; as a result, she didn't apply for benefits until she realized she wasn't getting wage loss insurance anymore. Her medical leave was extended because of healthcare delays caused by the pandemic while she is waiting for orthopedic manipulative therapy.

[21] I find that the Claimant has proven that she had good cause for the delay in applying for EI benefits. The delay was short, and the Claimant was experiencing health challenges that were exacerbated by the pandemic.

[22] I find that the application for benefits has to be antedated to September 8, 2021. This means that I have to look at whether the Claimant qualified for EI sickness benefits on that date.

Issue 2: Did the Claimant have enough hours to qualify for EI sickness benefits on September 8, 2021?

How to qualify for benefits

[23] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.¹⁰ The Claimant has to prove this on a balance of probabilities.

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

¹⁰ See section 48 of the Act.

This means that she has to show that it is more likely than not that she qualifies for benefits.

[24] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”¹¹

[25] In general, the number of hours depends on the unemployment rate in your region.¹² But, the law provides another way to qualify for special benefits, including sickness benefits.

[26] However, because of the pandemic, the government decided that, on September 8, 2021, the unemployment rate was 13.1% and that 420 insurable hours of employment were required to qualify for benefits, including sickness benefits.

[27] The Commission takes the view that the Claimant doesn’t qualify to establish a claim for benefits on September 8, 2021.¹³

The Claimant’s qualifying period

[28] As noted above, the hours counted are the ones the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.¹⁴

[29] Your **benefit period** isn’t the same thing as your **qualifying period**. It is a different time frame. Your benefit period is the time when you can receive EI benefits.

[30] The Commission decided that the Claimant’s qualifying period should be extended by 52 weeks beyond the usual 52 weeks because the Claimant was incapable of work because of an injury.¹⁵ So, the Claimant’s qualifying period started earlier and went from September 8, 2019, to September 4, 2021.

¹¹ See section 7 of the Act and section 93 of the Regulations.

¹² See section 7(2)(b) of the Act and section 17 of the Regulations.

¹³ See the Commission’s supplementary representations to the Tribunal (GD8).

¹⁴ See section 8 of the Act.

¹⁵ See section 8(2) of the Act.

– **The Claimant doesn't agree with the Commission**

[31] The Claimant disagrees with the Commission about her qualifying period. The Claimant says that her qualifying period should be longer because she was on medical leave. She also says that the pandemic is what caused additional delays that are keeping her from getting the medical care she needs and delaying her return to work.

[32] Unfortunately, the Act is clear that no extension of the qualifying period may be longer than 104 weeks.¹⁶

[33] I agree with the qualifying period determined by the Commission.

The hours the Claimant worked

[34] The Commission decided that the Claimant had worked 0 hours during her qualifying period.

[35] The Claimant doesn't dispute this. She confirms that she could not work during that period, since she was on medical leave.

[36] However, I am of the view that the Commission failed to consider the changes made to the Act as part of the measures introduced to facilitate access to benefits.

[37] The Act says that, for any claim established between September 27, 2020, and September 25, 2021, if the initial claim is for special benefits, including sickness benefits, a claimant is deemed to have an additional 480 hours of insurable employment in their qualifying period.¹⁷

[38] So, having been allowed an antedate to September 8, 2021, the Claimant is deemed to have an additional 480 hours of insurable employment in her qualifying period.

¹⁶ See section 8(7) of the Act.

¹⁷ See section 153.17(1)(a) of the Act.

[39] This means that the Claimant has 480 insurable hours of employment in her qualifying period.

So, has the Claimant worked enough hours to qualify for benefits?

[40] I find that the Claimant has proven that she has enough hours to qualify for EI sickness benefits because she needs 420 or more hours and has 480 hours.

Conclusion

[41] So, the Claimant has enough hours to qualify for sickness benefits.

[42] This means that the appeal is allowed.

Charline Bourque
Member, General Division – Employment Insurance Section