



[TRANSLATION]

Citation: *FI v Canada Employment Insurance Commission*, 2022 SST 767

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

Decision

Appellant: F. I.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (451623) dated January 26, 2022 (issued by Service Canada)

Tribunal member: Charline Bourque
Type of hearing: Teleconference
Hearing date: June 15, 2022
Hearing participant: Appellant
Decision date: June 16, 2022
File number: GE-22-1057

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that she had good cause for the delay in applying for benefits.¹ In other words, the Claimant hasn't given an explanation that the *Employment Insurance Act* (Act) accepts. This means that the Claimant's application can't be treated as though it was made earlier.

Overview

[3] The Claimant applied for *Employment Insurance* (EI) sickness benefits on September 22, 2021.² She is now asking that the application be treated as though it was made earlier, on November 20, 2020. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Claimant didn't have good cause because she knew that the EI program existed and that she could have used it if there was a shortage of work. She had applied before, on April 12, 2020. Despite the fact that the Claimant didn't know she could be entitled to sickness benefits, that her employer hadn't told her, and that she didn't make inquiries or pay close enough attention to the information available, the Commission finds that ignorance of the Act isn't enough to establish good cause, especially since she could have looked for information. The Claimant was sick from November 20, 2020, to January 20, 2021. Since getting better, she hasn't shown that she was unable to look for information. She waited a total of 19 weeks, including 10 weeks after she got better.

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

² See the Commission's Action Item (GD3-14 and GD3-15).

[6] The Claimant disagrees and says that it wasn't until September 2021 she found out through a friend that she could be entitled to benefits while she was sick. She asked to get these benefits right away when she learned that she could be entitled to them.

Issue

[0] Can the Claimant's application be treated as though it was made on November 20, 2020? This is called antedating (or, backdating) the application.

Analysis

[7] To get an application for benefits antedated, a claimant has to prove these two things:³

- a) They had good cause for the delay during the entire period of the delay. In other words, they have an explanation that the law accepts.
- b) They qualified for benefits on the earlier day (that is, the day they want their application antedated to).

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

[9] To show good cause, the Claimant has to prove that she acted like a reasonable and prudent person would have acted in similar circumstances.⁴ 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.

[10] The Claimant has to show that she acted this way for the entire period of the delay.⁵ That period is from the day she wants her application antedated to until the day

³ See section 10(4) of the Act.

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

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

she actually applied. So, for the Claimant, the period of the delay is from November 20, 2020, to September 22, 2021.

[11] I take into account that the Commission considers that the Claimant has to show this for the period from November 20, 2020, to March 29, 2021. Still, the Claimant confirmed that she didn't apply for sickness benefits until September 22, 2021. She confirmed that she didn't know she could be entitled to benefits before then. This means that the Claimant's period of the delay is from November 20, 2020, to September 22, 2021, as shown in the Commission's report.⁶

[12] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁷ 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 she has to show that there were exceptional circumstances that explain why she didn't do so.⁸

[13] 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.

[14] The Claimant says that she had good cause for the delay because she didn't know she could be entitled to sickness benefits. She says that she had never applied for sickness benefits before. Also, no one from her family had applied for them. So, she didn't know that she could be entitled to benefits until a friend told her in September 2021. She applied for sickness benefits as soon as her friend told her about them.

[15] The Commission says that that the Claimant hasn't shown good cause for the delay because she waited 19 weeks after she stopped working to apply for benefits.

⁶ See the Commission's Action Item (GD3-14 and GD3-15).

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.

During this period, she didn't take the time to look into it. Ignorance of the Act isn't good cause to explain why she didn't take any steps to get information.

[16] At the hearing, I discovered that the Claimant didn't know that sickness benefits are also EI benefits. Still, I find that the Claimant hasn't proven that she had good cause for her delay in applying for benefits because she made no effort before September 2021 to find out whether she could be entitled to EI sickness benefits. Also, the Claimant applied for regular benefits because of the pandemic in March 2020. At that time, she didn't mention her situation or her time off work.

[17] Case law clearly says that it is a claimant's responsibility to look into their entitlement to benefits.⁹ The Claimant didn't make an effort to learn about her entitlement to benefits. Also, not being familiar with the Act isn't a reason, in this case, that justifies her delay in applying for benefits.¹⁰

[18] I am of the view that the Claimant didn't act as a reasonable and prudent person would have acted in the circumstances, since she made no effort to find out about her entitlement—even after her sick leave.

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

[20] I understand the Claimant's disappointment. However, my role is to apply the Act; I can't change it just to please the Claimant, who is dissatisfied. The Act sets out specific criteria, and it is recognized that ignorance of the Act can't justify a delay in applying for benefits. I can't ignore the Act.¹¹

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 Persiiantsev*, 2010 FCA 101.

¹¹ See *Granger v Canada Employment and Immigration Commission*, FCA A-684-85; *Wegener v Canada (Attorney General)*, 2011 FCA 137.

Conclusion

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

[22] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section