



Citation: *NO v Canada Employment Insurance Commission*, 2022 SST 987

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

Decision

Appellant: N. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (458977) dated February 22, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: August 25, 2022

Hearing participant: Appellant

Decision date: August 29, 2022

File number: GE-22-1818

Decision

[1] I am dismissing the appeal. I disagree with the Claimant.

[2] The Claimant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means his renewal claim can't be treated as though it was made earlier on January 31, 2021.

Overview

[3] In general, to receive EI benefits, you first have to submit an application to make a claim to receive benefits. In order to receive payment, you have to make a claim for each week that you didn't work and want to receive benefits.¹ You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online or over the telephone. There are deadlines for making claims.²

[4] If you stop submitting your biweekly claims then your claim goes dormant. To renew or reactivate an existing claim you submit a renewal application (claim) to the Commission. If a claim hasn't been made for four or more consecutive weeks, a renewal claim for benefits is normally made effective within one week of the week for which benefits are claimed.³

[5] The Claimant made his renewal claim after the three-week deadline. He made his renewal claim on September 9, 2021. Initially, the Claimant asked for it to be treated as though it was made earlier, on July 18, 2021. This is called antedating (or, backdating) his claim.⁴

¹ See section 49 of the *Employment Insurance Act* (Act).

² Section 153.8(2) of the Act states that a claimant is not permitted to make a claim for the EI-ERB after December 2, 2020. Section 26 of the *Employment Insurance Regulations* says biweekly claims must be submitted within 3 weeks after the week for which benefits are claimed.

³ See section 26(2) of the Regulations.

⁴ See section 10(5) of the Act.

[6] The Commission approved the Claimant's request and renewed his claim effective July 18, 2021. Three weeks later, the Claimant asked the Commission a second time to antedate his renewal claim to January 31, 2021. For this to happen, the Claimant has to prove that he had good cause for the delay, during the entire period of delay.

[7] The Commission decided that the Claimant didn't have good cause and refused the Claimant's second antedate request. The Commission says that the Claimant doesn't have good cause because he didn't act like a reasonable person in his situation would have done to verify his rights and obligations under the Act.

[8] The Claimant disagrees and appeals to the Social Security Tribunal. He says that he wished the Commission's officers had told him he was eligible for sickness benefits.

Issue

[9] Did the Claimant have good cause for the delay in claiming EI benefits?

Analysis

[10] To get a renewal claim antedated, the Claimant has to prove that he had good cause for the delay during the entire period of the delay.⁵ 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.

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

⁵ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the Act.

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

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

[13] The Claimant has to show that he acted this way for the entire period of the delay.⁹ That period is from the day he wants his claim antedated to the day he actually made the claim. For this case, the entire period of the delay is from January 31, 2021, to October 8, 2021.

Good Cause

[14] The law says that unless there are exceptional circumstances, a claimant is expected to take reasonable prompt steps to understand their rights and obligations under the law.¹⁰

[15] The Claimant confirmed he initially asked to have his renewal claim antedated to July 18, 2021. Then when he realized he wasn't going to receive all 15 weeks of sickness benefits because his claim ended, he asked for a second antedate to January 31, 2021.

[16] The Claimant says he had good cause for the delay because the Commission's officers didn't tell him that he could claim sickness benefits. The Commission says it did tell him about sickness benefits in the November 13, 2020, decision letter.

[17] At the hearing, the Claimant said he didn't understand the part of the letter which spoke about sickness benefits. Then he said he didn't receive the letter and the officer didn't discuss it with him.

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.

⁹ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹⁰ See *Canada v Somwaru*, 2010 FCA 336 at para 11.

[18] The Claimant said he was having some stress issues while completing university classes, working different jobs, and moving. He says he recently lost his mother, he wasn't working as much, and he was struggling financially. He explained as follows.

- In September 2019, he started a degree program in criminal psychology at Memorial University. He completed 3 courses from September 2020 to December 2020, and 2 courses from January 2021 to April 2021. He enrolled in 3 courses starting September 2021 but stopped in October 2021 due to his financial situation.
- In January 2021, he worked at X for 1 month then he worked part-time at X from January 10, 2021, to August 30, 2021.
- He left Newfoundland at the end of November 2021 when he went to the United States for the month of December 2021. He moved to British Columbia in January 2022 and then moved to Ghana in February 2022 where he remains.

[19] The Claimant says he was new to Canada when he arrived in May 2019. The first time he applied for EI benefits was in October 2020. So he didn't know to ask about sickness benefits.

[20] The Commission says that the Claimant hasn't shown good cause for the delay because he didn't take the necessary steps to learn about his rights and responsibilities in a timely manner. There was no evidence of any enquiries from the Claimant concerning his entitlement to sickness or any other type of benefits from January 2021 to September 2021. Nor did he provide medical evidence for the period starting in January 2021. The earliest medical evidence is from April 21, 2021, which the Claimant says was issued for accommodation during his university exams.

[21] An antedate is not a right of every claimant, but is an advantage for which he must qualify. The courts have said it is an advantage that should be applied

exceptionally. The obligation to promptly apply for benefits is seen as very demanding and strict.¹¹ This is why the “good cause for delay” exception is cautiously applied.

[22] Having a good reason for the delay is not the same as showing good cause. I agree with the Commission when it says the Claimant’s circumstances were not so extraordinary that they would have prevented him from contacting the Commission to verify his rights. Being busy with school, working and changing jobs, financial struggles, and moving are not exceptional circumstances, even when considered cumulatively.

[23] The Claimant didn’t make reasonable prompt steps to determine his rights and obligations under the Act. Specifically, he knew how to contact the Commission, having made his initial application in October 2020. But he made no efforts to enquire about entitlement to sickness benefits for the earlier period starting in January 2021, until October 8, 2021. That was when his benefit period ended.

[24] The Claimant has not presented evidence of an exceptional circumstance that prevented him from determining his rights and obligations under the Act. Nor has he proven he acted as a reasonable and prudent person placed in the same circumstances, during the entire period of delay. Therefore, the Claimant hasn’t proven he had good cause for the delay in applying for benefits, throughout the entire period of delay.

Conclusion

[25] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

¹¹ See *MR v Canadian Employment Insurance Commission (CEIC)*, 2019 SST 1292.