



Citation: *SE v Canada Employment Insurance Commission*, 2022 SST 1016

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

Decision

Appellant: S. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (458155) dated February 22, 2022 (issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Teleconference

Hearing date: May 11, 2022

Hearing participant: Appellant

Decision date: May 24, 2022

File number: GE-22-1078

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he had good cause for the delay in making claims for Employment Insurance (EI) benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's claims can't be treated as though they were made earlier.

Overview

[3] In general, to receive EI benefits, 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. There are deadlines for making claims.²

[4] The Claimant made his claims after the deadline. He wants them to be treated as though they were made earlier, starting from September 19, 2021. For this to happen, the Claimant has to prove that he had good cause for the delay.

[5] The Commission decided that the Claimant didn't have good cause and refused his request. It says that the Claimant doesn't have good cause because he made an application for benefits on September 19, 2021, but waited until January 6, 2022, to try to make biweekly reports.

[6] The Claimant disagrees and says he tried to make a claim in September or October 2021, but it didn't seem to go through. So, he called the government to ask about it. The Claimant says he likely spoke with a Canada Revenue Agency (CRA) agent, but thought he was speaking with Service Canada. The agent told him to file his income taxes before claiming EI benefits. He asked the agent to send him the records he needed. As soon as he had received those documents and filed his taxes, he tried to make his biweekly reports on January 6, 2022.

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

² See section 26 of the *Employment Insurance Regulations*.

Issue

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

Analysis

[8] The Claimant wants his claims for EI benefits to be treated as though they were made earlier, starting from September 19, 2021. This is called antedating (or, backdating) the claims.

[9] To get a claim antedated, the Claimant has to prove that he had good cause for the delay during the entire period of the delay.³ 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.

[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.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.

[11] 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

[12] The Claimant has to show that he acted this way for the entire period of the delay.⁷ That period is from the day he wants his claims antedated to until the day he

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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.

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

actually made the claim. So, for the Claimant, the period of the delay is from September 19, 2021, to January 6, 2022.

[13] The Claimant argues that he had good cause for the delay because he tried to make an EI benefit claim over the phone in September or October 2021, but the system refused his claim. He says that he never got an access code from the Commission, which he has always received for past claims. He testified that he waited for months to receive an access code, and has no ability to log onto the MyServiceCanada system.

[14] The Claimant argues he took steps to resolve the issue by calling the government to ask why his claim was not processed, and spoke with a government agent in October 2021. He says the agent told him that he must file his taxes before claiming EI benefits. He testified that he later realized that he must have spoken with CRA but did not then realize that he had called the wrong agency.

[15] After receiving this government advice, the Claimant says it took a couple of months to submit his taxes, as he had to wait for documents to be sent to him. As soon as he had filed his taxes, he called the Commission on January 6, 2022. He asked to make his biweekly reports, starting from the week of September 19, 2021.⁸

[16] The Claimant argues that he made an honest mistake by speaking to the wrong agency, but he acted in good faith by following the advice he received. He says he did not know all of the rules for claiming benefits and that this error shouldn't stop him from receiving benefits from the earlier date.

[17] The Commission argues that a reasonable person would not wait 15 weeks to request and receive benefits they could have been entitled to receive. It says that the Claimant made no contact with the Commission until January 6, 2022, when he enquired about benefits. It also argues that the Claimant's statements about his discussion with a government agent are not credible, as he would not have been told that he couldn't get EI before filing his taxes.

⁸ A record of the Claimant's antedate request on January 6, 2022, is at GD3-23.

[18] So, the Commission argues that the Claimant hasn't shown good cause for the delay. It says that the Claimant delayed filing his reports because of negligence and ignorance of the law, which do not constitute good cause.

[19] I find that the Claimant unfortunately hasn't proved that he had good cause for the delay in claiming benefits. He says that he acted in good faith, and was unaware of all the requirements for making an EI claim. But he also testified that he was familiar with the claims process as he had claimed EI in the past, and that he waited several months to receive an EI access code.

[20] I agree with the Commission's argument that a reasonable and prudent person wouldn't have waited 15 weeks before calling the Commission to file biweekly reports.

[21] I acknowledge the Claimant's argument that he believed he was following a government agent's advice. I find it unlikely that either the Commission or CRA would have advised a claimant that they must file income taxes before making an EI claim. But the *Employment Insurance Act* sets out a strict test and I have to apply the law, even if the government did make errors.⁹

[22] Courts have said that ignorance of the law, even when a claimant acts in good faith, is not good cause for delay in making a claim for EI benefits.¹⁰

[23] I also considered whether the Claimant's circumstances were exceptional during the period of the delay. The Claimant testified that he contracted COVID-19, and was unwell during the period in question. However, he also testified that he was capable of taking steps to file his taxes during this period. So, I find that the Claimant's circumstances were not exceptional.

[24] For the above reasons, I find that the Claimant hasn't proved that he had good cause for the delay in filing biweekly reports.

⁹ *Robinson v. Canada (Attorney General)*, 2013 FCA 255.

¹⁰ *Canada (Attorney General) v. Kaler*, 2011 FCA 266. See also *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.

Conclusion

[25] The Claimant hasn't proved that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims can't be treated as though they were made earlier.

[26] The appeal is dismissed.

Suzanne Graves
Member, General Division – Employment Insurance Section