



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2022 SST 1412

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

Decision

Appellant: M. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (434074) dated October 29,
2021 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Questions and answers
Decision date: July 29, 2022
File number: GE-21-2332

Decision

[1] The appeal is dismissed. The Claimant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

[2] The Claimant also hasn't shown that he had good cause for delaying his application (initial claim).

Overview

[3] On September 4, 2020, the Claimant stopped working because of the COVID-19 pandemic. He applied for EI benefits on August 17, 2021.

[4] On August 18, 2021, the Commission denied him EI benefits because he didn't have enough hours of insurable employment in his qualifying period from September 8, 2019, to September 5, 2020. He had worked 391 hours during that period, but he needed to have worked 420 hours.

[5] On September 8, 2021, the Claimant asked the Commission to reconsider. He said he had worked 640 hours that weren't paid. He had appealed to the Tax Court of Canada.

[6] On September 21, 2021, the Commission asked the Claimant to contact an agent about his reconsideration request.

[7] The Commission sent a questionnaire to the Claimant. He asked the Commission not to contact him by telephone. In addition, the Commission asked to make a request to Revenue Canada about the insurability of the hours worked. The Claimant didn't consent to sharing information with Revenue Canada.

[8] Moreover, he was told that he could get the 300-hour credit if his reconsideration request were accepted.

[9] Lastly, the Claimant asked to be sent questions in writing. He then changed his mind, saying that his neighbours sometimes opened his mail.

Matter I have to consider first

[10] On November 22, 2021, the Claimant filed a notice of appeal. He asked for an in-person hearing. Because of the pandemic, the file was placed in abeyance.

[11] The Claimant doesn't have an email address or phone number where the Tribunal can reach him. He doesn't want to get mail he has to sign for. This makes it difficult to contact him.

[12] Due to the pandemic restrictions and communication constraints, I opted for a question and answer hearing so that the Claimant could be heard. He was sent a series of questions by mail.

[13] I gave the Claimant until April 18, 2022, to answer the questions.

[14] The mail was returned with the indication that it wasn't the Claimant's address. After multiple attempts to hear the Claimant, I will make a decision. In my view, it is the Claimant's responsibility to facilitate communication and to take the necessary steps to inform the Tribunal of any changes.

[15] So, the Claimant can't say that he hasn't received documents from the Tribunal if it isn't possible to email him documents or to deliver them with a signature. He has also mentioned incidences of neighbours stealing his regular mail.

Issue

1. Has the Claimant worked enough hours to qualify for EI benefits?
2. Did he have good cause for the delay in applying for EI benefits?

Analysis

1. Has the Claimant worked enough hours to qualify for EI benefits?

How to qualify for benefits

[16] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.¹ 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 qualifies for benefits.

[17] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”²

[18] The number of hours depends on the unemployment rate in your region.³

The Claimant’s region and regional rate of unemployment

[19] The Commission decided that the Claimant’s region was greater Montréal and that the regional rate of unemployment at the time was 13.1%.

[20] This means that the Claimant would need to have worked at least 420 hours in his qualifying period to qualify for EI benefits.⁴

[21] There is no evidence that makes me doubt the Commission’s decision. So, I accept as fact that the Claimant needs to have worked 420 hours to qualify for benefits.

[22] The Claimant applied for benefits on August 17, 2021. I note that he worked 91 hours during his qualifying period from September 8, 2019, to September 5, 2020.

[23] Because of the COVID-19 pandemic, the government introduced different measures to help Canadians. For example, during that period, unemployed workers

¹ See section 48 of the *Employment Insurance Act* (EI Act).

² See section 7 of the EI Act.

³ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

⁴ Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

received a credit of 300 hours. This means that the Claimant had 391 hours of insurable employment. But that isn't enough to get EI benefits.

The Claimant's qualifying period

[24] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁵

[25] 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.

[26] The Commission decided that [the] Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from September 8, 2019, to 2020 [*sic*]. He applied for benefits on August 17, 2021.

[27] The Claimant requested an antedate on [*sic*] September 6, 2020, or September 27, 2020. He stopped working on September 5, 2020.

[28] The Commission ran the numbers for both possible scenarios. An application antedated to September 6, 2020, would not make it possible to have the minimum 420 hours. Using that date, the Claimant would have 280 insurable hours.⁶

[29] For the period antedated to September 27, 2020, the Commission calculated that the Claimant would have 280 hours in his qualifying period and be entitled to the 300-hour credit. So, he would have 580 hours, which is more than the 420 hours needed to establish a benefit period.

[30] But he applied late, on August 21, 2021. Because of this, I have to determine whether he had good cause for the delay between September 27, 2020, and August 21, 2021.

⁵ See section 8 of the EI Act.

⁶ GD4-7.

2. Did he have good cause for the delay in applying for EI benefits?

[31] To get your application for benefits antedated, you have to prove these two things:⁷

- 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).

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

[33] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁸ 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.

[34] But the Claimant hasn't shown good cause for delaying his application for benefits. He didn't answer the Tribunal's questions.

[35] 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 application antedated to until the day he actually applied.

[36] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.¹⁰ 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

⁷ See section 10(4) of the EI Act.

⁸ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

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

he/she [sic] must show that there were exceptional circumstances that explain why he didn't do so.¹¹

[37] 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/she [sic] had good cause for the delay.

[38] I find that the request for an antedate to September 6 can't be the subject of an antedate request, since it falls during the Government of Canada's emergency measures. Claimants had until December 2, 2020, to apply for the EI Emergency Response Benefit. No claim can be established after that date.¹²

[39] As for his request for an antedate to September 27, 2020, the Claimant hasn't shown that he had good cause for applying late. He hasn't provided an explanation on this point.

[40] In the circumstances, based on the information on file, the Claimant hasn't been able to explain the delay. He hasn't shown efforts to get EI benefits or the EI Emergency Response Benefit.

[41] The Claimant has also mentioned ongoing proceedings with the Canada Revenue Agency before the Tax Court of Canada. There is no such evidence from him on file.

Conclusion

[42] I find that the Claimant doesn't have enough hours to qualify for benefits for the qualifying period from September 8, 2019, to September 5, 2020.

[43] I find that the August 5, 2021, antedate request can't be antedated to September 6, 2021, because the deadline to apply for benefits under the emergency measures was December 2, 2020.

¹¹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹² Section 153.8(2) of the EI Act.

[44] I find that the Claimant hasn't shown that he had good cause for the delay in requesting an antedate to September 27, 2020.

[45] This means that the appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section