



Citation: *TA v Canada Employment Insurance Commission*, 2022 SST 1345

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

Decision

Appellant: T. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (495618) dated June 16, 2022 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: September 27, 2022

Hearing participant: Appellant

Decision date: September 29, 2022

File number: GE-22-2404

Decision

[1] T. A. is the Claimant. The Canada Employment Insurance Commission (Commission) says it won't start paying his Employment Insurance (EI) benefits on an earlier date. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that he hasn't shown that he had good cause for his delay in applying for EI benefits. This means his EI benefits can't start from the earlier date.

Overview

[3] The Claimant applied for EI benefits at the end of January 2022. But he is asking the Commission to treat his application as if he made it on October 3, 2021.

[4] The Commission says the Claimant qualifies for EI benefits on the earlier date. But the Commission says it won't start his benefits on the earlier date because he doesn't have good cause for the delay. The Commission says he didn't take enough steps to learn about his entitlement to EI benefits during his delay.

[5] The Claimant disagrees. He says that he was trying to find a job during the delay. He doesn't think a four-month delay is unreasonable. He says he wasn't very familiar with EI and so he didn't know there was a time limit to apply for benefits.

Issue

[6] I must decide if the Commission should treat the Claimant's application for EI benefits as if he applied on October 3, 2021.¹ In other words, should the Commission antedate his application for EI benefits?

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

Analysis

[7] To get your application for benefits antedated, you have to prove these two things:²

- 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).

[8] The Commission says the Claimant qualifies for benefits on the earlier date. The Claimant agrees. He says he should have enough hours.

[9] Neither the Claimant nor the Commission disagree on whether the Claimant qualifies on the earlier date. So, I accept that he qualifies on the earlier date.

[10] The arguments in this appeal are only about whether the Claimant had good cause for his delay. So, I will focus on this issue in my decision.

[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.³ In other words, he has to show that he acted just as reasonably and carefully as anyone else would have if they were in a similar situation.

[12] The Claimant has to show that he acted this way for the entire period of the delay.⁴ That period is from the day he wants his application antedated to until the day he actually applied. So, for the Claimant, the period of the delay is from October 3, 2021 to January 28, 2022.

² See section 10(4) of the EI Act.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

[13] 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

[14] 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.

[15] The Claimant says he had good cause for his delay. He says that four months is a reasonable delay. He says he thought he would have more work during the delay, but there weren't many shifts available for him. He was looking for work during the delay and he says he doesn't have much experience with the EI program.

[16] The Commission disagrees. The Commission says the Claimant hasn't shown that he acted as a reasonable person in the same situation would have done. The Commission says the Claimant didn't take steps to learn about the EI program during the delay. The Commission says looking for work isn't good cause for a delay.

[17] I agree with the Commission. I find that the Claimant hasn't shown that he had good cause for his delay in applying for EI benefits.

[18] At the hearing, I asked the Claimant about his delay. He said he was actively looking for work throughout the delay. He said his full-time work term ended in early October 2021. He thought his employer would have more work for him, but he only worked three shifts in October. He tried to find other work during the delay.

[19] I asked the Claimant what steps he took during the delay to learn more about the EI program. The Claimant said he didn't take any steps. He didn't contact the

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.

Commission and he didn't look for more information about the EI program online. He said he didn't know that there was a deadline for applying.

[20] I believe the Claimant. I believe that he thought he would have more work, and I believe that he was looking for work during the delay. But I am not looking at whether he was available for work during the delay. Instead, I have to look at whether he had good cause for his delay in applying for EI benefits. Case law says this means I have to look at what kinds of things he did to learn more about his rights and obligations under the law.

[21] The Claimant agrees that he didn't take any steps to learn more about EI during his delay. But case law says he has to show that he acted reasonably quickly to understand his rights and obligations.⁷ He didn't act reasonably quickly, and he hasn't shown that there were any exceptional circumstances that prevented him from contacting the Commission or otherwise trying to learn more about EI.

[22] The Commission says it would have been reasonable for the Claimant to contact the Commission for advice after his full-time work term ended, and I agree. He could have contacted the Commission at the same time he looked for other work.

[23] So, I find that the Claimant hasn't proven that he had good cause for his delay in applying for EI benefits.

Conclusion

[24] I am dismissing the Claimant's appeal. He hasn't shown good cause for his delay in applying for EI benefits. This means the Commission doesn't have to treat his application as if he made it on an earlier day.

Amanda Pezzutto

Member, General Division – Employment Insurance Section

⁷ *Canada (Attorney General) v Somwaru*, 2010 FCA 336