



Citation: *SL v Canada Employment Insurance Commission*, 2022 SST 1675

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

Decision

Appellant: S. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (484958) dated June 8, 2022
(issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Teleconference
Hearing date: September 12, 2022
Hearing participants: Appellant
Appellant's Assistant (Daughter)
Decision date: October 14, 2022
File number: GE-22-2401

Decision

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

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

[3] The Claimant hasn't shown he has enough hours to qualify for EI benefits as of February 20, 2022.

Overview

[4] The Claimant mailed in a paper application for EI benefits. The Commission received that application on February 21, 2022.

[5] Prior to the Commission receiving his paper application, the Claimant asked the Commission to treat his application as though it was made earlier. He asked the Commission to start his claim (benefit period) on July 7, 2019.² This is called antedating (or, backdating) the application. The Commission refused this request.

[6] I have to decide whether the Claimant has proven he had good cause for not applying for EI benefits earlier. If not, then I have to decide if he qualifies for EI benefits at the later date of February 20, 2022.

[7] The Claimant disagrees with the Commission because he says he is entitled to receive EI benefits. He worked and paid taxes for 18 years, he never received sickness EI benefits, he hasn't worked for the past three years, and he is experiencing financial hardship.

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

² See page GD3-23.

[8] The Commission says the Claimant doesn't have good cause for the entire period of delay. He has experience with applying for sickness and regular EI benefits in the past. He also went into Service Canada on December 31, 2019, to enquire about sickness EI benefits but didn't submit his application until February 21, 2022.

[9] The Commission also decided the Claimant hadn't worked enough hours to qualify for EI benefits. This is because he has zero hours of insurable employment in his qualifying period.³ He needs 420 hours to establish a claim (benefit period), effective February 20, 2022.

Matters I have to consider first

Adjournment for written submissions

[10] At the beginning of the September 12, 2022, hearing, the Claimant indicated he hadn't seen or read the reconsideration file and representations submitted by the Commission. He also said his daughter usually assists him as he has trouble communicating since suffering a severe stroke in June 2019.

[11] The Claimant had his daughter join the hearing. She confirmed she would assist her father with reviewing the electronic appeal documents. So I granted a two-hour recess to provide the Claimant more time to review all of the appeal documents.

[12] When the hearing reconvened on September 12, 2022, the Claimant appeared with his daughter. He said he didn't have enough time to fully understand the appeal documents. I explained how I needed to provide him a full opportunity to review and respond to those documents before I could proceed with issuing a decision on his appeal.

[13] After consideration of the Claimant's medical circumstances, I decided to change the hearing to written submissions. I explained to the Claimant and his daughter that I

³ For the remainder of this decision when I refer to hours, it is insurable hours.

was ending the teleconference hearing to allow them more time to read and understand the appeal documents.

[14] I also explained how the Claimant and his daughter were granted time to send an email with their written submissions in response to the appeal documents. I granted them permission to include any statements and documents they wished me to consider for this appeal. I told them they must submit that email and any documents, no later than September 19, 2022.

Late Documents

[15] In the interest of justice, I have accepted all documents and submissions received before I finalized this decision on October 14, 2022.⁴

[16] On September 12, 2022, shortly after the hearing that day, the Tribunal uploaded an email from the Claimant with a copy of his Record of Employment (ROE).⁵

[17] I recognize that on September 20, 2022, the Claimant called asking if the Tribunal received his documents. The Tribunal explained that no documents had been received. The Claimant said he would have his daughter resend them.

[18] A week later, on September 27, 2022, the Tribunal received another voice message from the Claimant stating he had submitted a hand written letter to the Tribunal two weeks earlier. On October 3, 2022, the Tribunal spoke with the Claimant again and clarified that no new documents had been received from him. The Claimant said he submitted a new hand written statement two weeks ago. He confirmed he wasn't referring to his initial submissions he submitted with his appeal form. The Claimant said he would fax his statement to the Tribunal later that day (October 3, 2022).

⁴ The Tribunal has a Practice Direction outlining the procedure for when to send supporting documents. This says that the Tribunal Member may grant a party permission to submit late documents, after the hearing started. See EI General Division: How to appeal (sst-tss.gc.ca)

⁵ See pages GD08-1 to GD08-2.

[19] On October 4, 2022, the Claimant called and left another voice message saying his daughter would be submitting a typed statement next week. He also said he doesn't understand why he can't get sickness benefits because he hasn't worked for three years since having a stroke. As of today's date, October 14, 2022, no additional submissions have been received from the Claimant.

[20] The law says that I must make my decision without delay after the conclusion of the hearing.⁶ This hearing was held on September 12, 2022, with permission to provide written submissions no later than September 19, 2022. The Claimant has failed to make additional submissions, despite having ample time to do so. So I must now proceed with issuing my decision, without further delay.

Issues

[21] Can the Claimant's application antedate to start July 7, 2019?

[22] If not, does the Claimant qualify for EI benefits as of February 20, 2022?

Analysis

Antedate

[23] To get your application for EI 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 the law accepts.
- b) You qualified for EI benefits on the earlier day (that is, the day you want your application antedated to).

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

⁶ See section 33 of the *Social Security Tribunal Regulations*.

⁷ See section 10(4) of the Act.

– **Has the Claimant shown good cause for the delay?**

[25] No. I find the Claimant hasn't shown good cause for the entire period of delay in asking for EI benefits. This means his application can't be treated as though it was made on July 7, 2019. Here is what I considered.

[26] This is truly an unfortunate situation. The Claimant experienced a serious medical condition in July 2019, which continues to prevent him from working. Although his medical evidence shows he continues to suffer from a severe medical condition, I agree with the Commission the facts on file show there were not exceptional circumstances preventing the Claimant from applying for EI benefits during the entire period of delay. Here is what I considered.

[27] To show good cause, the Claimant has to prove he acted as a reasonable and prudent person would have acted in similar circumstances.⁸ In other words, he has to show he acted reasonably and carefully just as anyone else would have in a similar situation.

[28] The Claimant has to show he acted this way for the entire period of the delay.⁹ That period is from the day he wants his application antedated until the day he actually applied. So, for the Claimant, the period of the delay is from July 7, 2019, to February 21, 2022.

[29] The Claimant also has to show he took reasonably prompt steps to understand his entitlement to EI benefits and obligations under the law.¹⁰ This means the Claimant has to show 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 there were exceptional circumstances that explain why he didn't do so.¹¹

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.

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

[30] The Claimant has to prove this on a balance of probabilities. This means he has to show it is more likely than not he had good cause for the delay.

[31] The Claimant says he had good cause for the delay. The Claimant provided evidence he suffered a stroke in July 2019. He remained in hospital for five months, until December 2019. He hasn't been able to work since that date.

[32] The documents on file show me the Claimant's last day paid from his employer was July 8, 2019. Then he started receiving wage loss insurance benefits (WLI) from his employer's group benefits plan, as follows. He received \$540.46 per week (\$2,342.00 per month) as short term and middle term WLI from July 9, 2019, to December 27, 2019.¹² He received long-term WLI from December 28, 2019, to January 2022, of \$2,342.00 per month. His long-term WLI payments reduced to \$942.00 per month as of February 2022. His WLI benefits continue until 2024.¹³ The documents also show the Claimant began receiving a Canada Pension Plan (CPP) disability pension of \$781.26 per month, as of November 2019.

[33] The Commission received the Claimant's application for sickness EI benefits on February 21, 2022. This was shortly after the Claimant learned his WLI payments were reducing to \$942.00 per month.

[34] The Commission says the Claimant hasn't shown good cause for the entire period of delay. He showed good cause for the period he was in hospital until December 2019. But for the remaining period starting December 31, 2019, he has not acted as any reasonable person in the same situation would have done to satisfy himself as to his rights and obligations under the Act.

[35] The Commission provided documents in dispute of the Claimant's statement that he didn't know the Commission pays sickness EI benefits, until January 2022. Specifically, the documents show the Claimant applied for and received sickness EI benefits from February 10, 2009, to May 31, 2009.

¹² See the Record of Employment at page GD3-17.

¹³ See page GD3-27.

[36] Further, the Commission's documents show me the Claimant went into Service Canada to enquire about sickness EI benefits on December 31, 2019. He then delayed two years and two months, until February 21, 2022, before submitting his application. Although he enquired about sickness EI benefits on December 31, 2019, he made no further efforts to request EI benefits until he learned his WLI benefits were reducing in February 2022.

[37] The documents also show, that upon his discharge from hospital, the Claimant was able to do the following.

- He completed the disability (WLI) application and began receiving WLI benefits from X starting December 28, 2019.
- He completed his CPP disability application and began receiving those disability benefits as of November 2019.
- On December 31, 2019, shortly after his discharge from hospital, he went into Service Canada to enquire about sickness EI benefits but didn't submit an application for EI benefits at that time.
- He waited until February 2022 to submit his application for EI sickness benefits. This was shortly after he learned his WLI benefits were reducing to \$942.00 per month.

[38] I recognize the Claimant may have relied on his daughter and others for support in completing the applications, as listed above. But as displayed during the hearing, he continues to have access to that family support.

[39] In this case, the Claimant enquired about EI benefits on December 31, 2019. But he didn't submit an application for sickness EI benefits until 26 months later, when he learned his WLI benefits were being reduced from \$2342.00 to \$942.00 per month.

[40] The law says the Claimant has to prove that he took reasonably quick steps to learn about his rights. The Claimant hasn't shown he did this. It isn't good cause if you

delay for applying for EI benefits because you're receiving full WLI benefits and/or CPP disability benefits.¹⁴

[41] The Claimant hasn't shown that his circumstances were exceptional during the entire period of delay. He was able to go into the Service Canada office on December 31, 2019, to enquire about EI benefits but delayed more than two years before submitting his application. Ignorance of the law about EI benefits isn't good cause if you don't take any steps to learn more about the EI program.¹⁵ This means he hasn't shown good cause for the delay in applying for EI benefits.

[42] Even if I found the Claimant had shown good cause during the entire period of delay, which I have not, I recognize his WLI benefits would be earnings allocated and deducted from the weekly EI benefits.¹⁶ When WLI benefits prevent the payment of EI benefits, the Commission may only extend a benefit period by 52 weeks, for a maximum benefit period of 104 weeks.¹⁷

[43] In this case, the Claimant received his full WLI of \$2342.00 per month (\$540.46 per week) from July 9, 2019, to January 2022. If his claim were antedated to start the week of July 2, 2019, the benefit period would end 104 weeks later on July 3, 2021. This means his weekly WLI benefits of \$540.46, when applied (allocated) to his claim, would prevent payment of EI benefits during the entire benefit period.

– **Does the Claimant qualify for benefits on the earlier day?**

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

¹⁴ *Howard v Canada (Attorney General)*, 2011 FCA 116.

¹⁵ *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

¹⁶ See section 35 of the *Employment Insurance Regulations* (Regulations).

¹⁷ See section 10 (14) of the Act.

Does the Claimant qualify for EI benefits as of February 20, 2022?

[45] No. Not everyone who stops work can receive EI benefits. You have to prove that you qualify for EI benefits.¹⁸ 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 EI benefits.

[46] To qualify for regular or sickness EI benefits, a claimant has to show the following:

- a) They have had an interruption of earnings, and
- b) have the number of hours required to establish a claim for EI benefits.¹⁹

[47] To qualify for regular or sickness EI benefits after September 26, 2021, claimants are required to have at least 420 hours of insured employment, within a certain timeframe called the qualifying period.²⁰ I will explain what the qualifying period is in more detail further down in this decision.

[48] The Claimant didn't submit his application for EI benefits until February 21, 2022. So the Commission considered starting his claim (benefit period) from the Sunday of the week he filed, which is February 20, 2022.²¹

[49] The Claimant suffered an interruption of earnings in the week of July 8, 2019. This fact is not in dispute.

[50] As noted above, the hours counted are the ones the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.²²

¹⁸ See section 48 of the Act.

¹⁹ See section 7(2)(a) and (b) of the Act.

²⁰ Subsection 6(1) of the Act defines what a major attachment Claimant means.

²¹ Section 10 of the Act states that a claim (benefit period) starts on the later of the Sunday of, (a) the week in which the interruption of earnings occurs, and (b) the week in which the application (initial claim) for EI benefits is made.

²² See section 8 of the Act.

[51] Your benefit period isn't the same thing as your qualifying period. It is a different timeframe. Your benefit period is the time when you can start a claim to receive EI benefits. The qualifying period is the period considered when determining the Claimant's hours.

[52] The Commission decided the Claimant's qualifying period was extended because he had periods when he didn't work due to an illness.²³ So his qualifying period is from January 26, 2020, to February 19, 2022. The Commission also determined the Claimant had zero hours of insurable employment during this period. The Claimant doesn't dispute this.

[53] The ROE evidence supports the Claimant hasn't worked since June 27, 2019. So I accept as fact that the Claimant has zero hours in his qualifying period from January 26, 2020, to February 19, 2022.

[54] I find the Claimant hasn't shown he has enough hours to qualify for regular or sickness EI benefits as of February 20, 2022. This is because he needs a total of 420 hours in his qualifying period but has zero hours.

Other arguments made by the Claimant

[55] I acknowledge the Claimant says he has worked and paid taxes for over 18 years and is now experiencing financial hardship. But EI benefits are not like a pension or savings program which you can withdraw at will. Instead, Employment Insurance is an insurance plan and like other insurance plans, you have to meet the entitlement requirements to receive EI benefits. In this case, the Claimant doesn't meet the antedate or hour requirements, so he doesn't qualify for EI benefits.

[56] I am deeply moved by the Claimant's circumstances. I truly sympathize with the fact that he suffered a severe medical event in 2019, which continues to prevent him from working. But my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the EI law. There are

²³ See section 10(10) of the Act.

no exceptions and no room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.²⁴

Conclusion

[57] The Claimant hasn't proven that he had good cause for the delay in applying for EI benefits throughout the entire period of the delay. Nor has he shown he has enough hours to establish a claim for EI benefits effective February 20, 2022.

[58] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

²⁴ See *Canada (Attorney General) v Knee*, 2011 FCA 301.