



Citation: *JC v Canada Employment Insurance Commission*, 2022 SST 1721

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

Decision

Appellant: J. C.
Respondent: Canada Employment Insurance Commission

Decisions under appeal: Canada Employment Insurance Commission reconsideration decision (506560) dated July 14, 2022 and reconsideration decision (496072) dated July 14, 2022 (issued by Service Canada)

Tribunal member: Leanne Bourassa
Type of hearing: Teleconference
Hearing date: October 25, 2022
Hearing participants: Appellant
Decision date: November 10, 2022
File number: GE-22-2618

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

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

[3] The Claimant did not have enough hours of insurable employment in his qualifying period to establish a benefit period starting in April 2022.

Overview

[4] The Claimant lost his job at the end of March 2020. After talking to the Canada Revenue Agency (CRA) he applied for and received Canada Employment Relief Benefits (CERB) through that agency. He stopped receiving benefits from CRA in December 2020.

[5] In April 2022, the Claimant's accountant told him that since he had some income from investments he had received through an inheritance in 2020, he would have to pay back some of the money he had received as CERB. If he had received benefits through EI, instead of CRA, he would not have had to pay this back, as the earnings threshold for the EI program was higher than that for CRA.

[6] So, the Claimant made a request for EI benefits in April 2022 and asked for the claim to be considered to have been made on March 29, 2020. His hope was that the benefits he received from CRA could be considered to have been paid as EI Emergency Relief Benefits (EI ERB) so that the tax liability would not exist.

[7] The Canada Employment Insurance Commission (Commission) made two decisions: first, it rejected his request to have the claim backdated (what the law calls "antedated") to March 29, 2022. Second, it found that the Claimant did not have enough

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

hours of insurable earnings in the 52 weeks before April 22, 2022 to establish a benefit period to receive EI benefits.

[8] I have to decide whether the Claimant has proven that he had good cause for not applying for benefits earlier. If not, did he have enough hours in a qualifying period to establish a benefit period in April 2022?

[9] The Commission says that the Claimant did not have enough hours of insurable employment in his qualifying period to establish a benefit period in April 2022. Also, he didn't have good cause for asking for his claim to begin in March 2020 because there was nothing preventing the Claimant from filing on an earlier date.

[10] The Claimant disagrees and says that he followed the instructions he got from the CRA representative. As soon as he discovered he should have received EI ERB and not CERB through the CRA, he applied for EI and asked for the claim to be antedated. Service Canada instructions said that the transition to EI after CERB would be automatic, but this did not occur in his case.

Matters I have to consider first

This decision deals with two appeals

[11] The Commission issued two reconsideration decisions, but they were based on the same facts. To deal with these files as quickly and fairly as possible, I conducted a hearing that covered both appeals. This decision will also address both appeals.

The limits of the Tribunal's jurisdiction

[12] The Claimant would like to have the CERB that was paid to him by the CRA to be considered as EI ERB paid by Employment Insurance through Service Canada. He wants new T4 slips issued showing that the money he received was from EI and not from the CRA. He believes this would resolve his tax liability because the clawback provisions for the CRA and EI are different.

[13] However, as I explained to the Claimant at the hearing, the Tribunal does not have the authority to give him what he is looking for. My jurisdiction is limited to considering the decisions made by the Commission on reconsideration.² Any issues he has with the conduct or decisions taken by the CRA must be resolved with that body.

Issues

[14] The issues in the two appeals addressed in this decision are the following:

Issue 1: Can the Claimant's application for benefits be treated as though it was made on March 29, 2020? This is called antedating (or, backdating) the application.

Issue 2: If the claim cannot be antedated, did the Claimant have enough hours of insurable employment in his qualifying period to establish a benefit period in April 2022?

Analysis

[15] The Claimant explained that that April 2022 application for benefits was actually made to allow him to have a claim for EI ERB benefits established as of March 29, 2020, so that he can change the type of benefits he received and resolve his tax issues. So, I will start by looking at whether or not his claim can be antedated.

Issue 2: Antedate

[16] The Claimant cannot have his April 22, 2022 application for benefits be considered to have been made as of March 29, 2020, because the Claimant did not show good cause in the delay for applying for EI benefits.

[17] To get your application for benefits antedated, you have to prove these two things:³

- 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.

² This is set out in section 113 of the *Act*.

³ See section 10(4) of the *Act*.

- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[19] 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.

[20] The Claimant has to show that he acted this way for the entire period of the delay.⁵ 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 March 29, 2020 to April 22, 2022.

[21] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁶ 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.⁷

[22] 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.

The Claimant's situation

[23] The Claimant explained that when his job came to an end in March 2020, he tried to contact Service Canada to apply for EI benefits. This was at the time when COVID-19 relief benefits were beginning to be offered and the wait times for talking to someone

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

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

from the Commission on the phone were up to 6 hours. He decided to reach out to the CRA and was told that he could receive relief benefits through CRA, so he made an application and received CERB benefits through the CRA.

[24] The Claimant collected CERB benefits through the CRA until the program came to an end in September 2020. His benefits rolled into the subsequent CRA relief program and he continued collecting benefits until December 2020. After that, he did not make an application for any other benefits because he decided that he would work as a private worker.

[25] It was only in April 2022 when discussing his 2021 income tax filings that the Claimant's accountant made him aware that because of investment income from an inheritance he had started receiving in 2019, he was above the threshold for receiving CERB through the CRA. This meant that he would have to pay back some of the money he had received.

[26] The Claimant's accountant also told him that the income threshold for receiving EI ERB was higher than that for the CRA program, so if he had been in the EI program, then he would not be facing this problem. The solution the accountant suggested was to have the Claimant's T4 slips for 2020 and 2021 modified to show that money he received from CRA CERB was actually EI ERB.

[27] The Claimant visited a Service Canada office to try to sort out his problem. The officer there helped him file an application for EI benefits and ask to have it antedated to the time he stopped working, so this is what he did.

The Claimant has not shown good cause for the delay in applying for EI benefit

[28] Unfortunately, the Tribunal has no authority over the issuance of T4 slips. The Claimant does not deny that the money he actually received was through his CRA account. So any request to modify or re-issue those slips has to be done in another forum.

[29] The Claimant argues that his delay in applying for EI benefits was because he received incorrect information from a CRA agent when he could not get through to Service Canada on the phone. He sent me several cases from the tribunal preceding the SST, showing that a claimant who received misleading advice could be found to have good cause for a delay in applying for Antedate. I do not find that these cases apply to his situation.

[30] First, I do not agree that the Claimant has shown that he was given incorrect information by the CRA. I note that the Claimant says he did not talk to anyone at CRA, or anywhere else, about the effect of the potential income from investments he had inherited the year before. This is understandable if he didn't know that he would be getting this income. But, it also means that no one would have known he needed that information to make an informed choice.

[31] From the Claimant's testimony, I understand that the CRA asked him about why he lost his job, was he able to work and why he was applying for benefits. He says the CRA told him that since he was not really a high income earning applicant, he would be getting the same amount of money from the CRA program as he would from the EI relief program. Based on only the Claimant's Record of Employment, this was not wrong. The CRA did not give him incorrect information, they simply did not give him information that no one, including the Claimant, knew might be relevant to his specific case in the future. This was not misleading.

[32] Second, I find that in March 2020 the Claimant made the decision to apply for benefits through CRA not because he had compared the details of the relief programs available, but because he felt the CRA program was the more convenient option. He testified that he had already tried to contact Service Canada but faced long wait times. He did not know the details of the EI program. His banking information was already on file with CRA and the application could be processed quickly. He was not comfortable dealing with an online application process, so the help from a CRA agent was a relief.

[33] I understand the Claimant had difficulty dealing with online applications and paper forms, so the assistance of an agent on the phone was very welcome. Like many

Canadians, he was facing extraordinary wait times when trying to reach Service Canada and could not necessarily visit an office because of COVID restriction. But these challenges did not mean he was not able to make an application for EI benefits. He chose to apply for benefits through the CRA. He was only dissatisfied with this choice two years later when there were unexpected consequences. There was nothing preventing him from making an application for EI benefits in March 2020 or any time thereafter.

[34] The Claimant has submitted a screen shot of a website explaining that if you received CERB when it ended in early October 2020, a claim for EI regular benefits would have been started for claimants who qualified. Because of this, he says he should have been considered to have applied for EI.

[35] However, this same page also explains that if you received CERB through the CRA and you believed you might be eligible for EI, you could apply for EI benefit after the end of your last CERB eligibility period. The Claimant could have made an application for EI benefits in October 2020 when the CRA CERB program came to an end. He did not do this, but stayed in the CRA CERB program until December 2020 when he stopped collecting benefits altogether. Again, there was nothing preventing him from transferring to EI at that time.

[36] The Claimant disputes that case law from the Federal Court of Appeal submitted by the Commission is relevant⁸. This case says that the legal test for good cause is whether the claimant acted as a reasonable person in the claimant's situation would have done to satisfy himself as to his obligations under the *Employment Insurance Act*. The case presented by the Commission is binding law, so I must consider if the Claimant acted as a reasonable person in his situation would have done to satisfy himself of this obligations.

[37] In this case, I find the Claimant did not do what a reasonable person in his situation would have done to inform himself of his obligations. The Claimant argues that

⁸ This case is *Canada (Attorney General) v. Kaler*, 2011 FCA 266

he accepted the CRA agent's information as valid, he filed his EI claim as soon as he discovered the error and he acted appropriately as a recent immigrant with no prior EI experience.

[38] The reason I find the Claimant did not act as a reasonable person in his situation would have done to inform himself of his obligations under the Act is because although his intention was to apply for EI benefits, he did not get information about that specific program before deciding to register for the CRA relief program. He was told by the CRA that he would get the same amount under both programs. This means he would know that the CRA program was not the EI program. But he did not wait to see what he would have to do to access EI before signing up for the CRA benefits.

[39] I understand that the Claimant found himself facing tax issues in 2022 that he did not expect. It may be true that the Claimant could not have known at the time he became unemployed that the way his father's estate had been distributed could cause him tax problems if he received emergency benefits from the CRA instead of through EI. However, this does not change the fact that he did receive benefits through the CRA and never made an application for EI benefits until April 2022. There was nothing preventing him from doing it earlier, or getting more information before signing up for another benefit program instead, so he did not have good cause for the delay in applying for EI benefits.

[40] I don't need to consider whether the Claimant qualified for 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.

[41] Since I find that the Claimant did not have good cause for the delay in applying for EI benefits, his claim cannot be considered to have been made in March 2020. Since his only active application is for benefits beginning in April 2022, I need to consider if he could have establish a benefit period starting at that date.

Issue 2 : Establishment of a Benefit Period

[42] The Claimant does not have enough hours of insurable employment to establish a benefit period starting in April 2022.

[43] Employment insurance benefits are paid to claimants who qualify for them. In order to receive EI benefits, it is not enough that a claimant has paid into the fund throughout their working life. The law also sets out criteria that the claimant must meet in order to receive benefits.

[44] To qualify for benefits, a claimant must show they had an interruption of earnings and a specific number of hours insurable employment in their qualifying period.⁹ The claimant has the burden of proving that they qualify.¹⁰ In this case, the Claimant had to prove on the balance of probabilities that he qualified, meaning that it is more likely than not that he met the criteria to qualify.

[45] The qualifying period is either the 52-week period counting back from the day before the start of the benefit period, or counting back to the first day of a previous benefit period, whichever is shorter.¹¹

[46] In this case, the Claimant filed an application for benefits on April 22, 2022. His benefit period would start on April 17, 2022. This would mean that his qualifying period would be from April 18, 2021 to April 16, 2022.¹²

[47] A claimant applying for benefits on April 22, 2022 would need to have at least 420 hours of insurable employment in their qualifying period to qualify for benefits.¹³

[48] The Commission says the Claimant had 0 hours of insurable employment in his qualifying period. The only Record of Employment in the file says that the Claimant's last day of work was March 31, 2020. The Claimant confirmed this was the only Record

⁹ Subsection 7(2) of the Act.

¹⁰ *Canada (Attorney General) v. Terrion*, 2013 FCA 97

¹¹ Subsection 8(1) of the Act.

¹² The period ends on April 16, 2022 because if the Claimant were able to establish a benefit period, it would start on Sunday, April 17, 2022, further to section 10(1) of the Act.

¹³ See section 7(2) of the Act.

of Employment available and he had not worked any other hours of insurable employment since that date.

[49] This means that any hours of employment reported on that Record of Employment were worked outside of the qualifying period. Since the Claimant has no other hours of insurable employment since that time and only hours in the qualifying period can be considered, I accept the Commission's submission that he had 0 hours of insurable employment. So, I find he cannot establish a benefit period starting April 17, 2022.

Conclusion

[50] The Claimant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[51] The Claimant does not have enough hours of insurable employment in his qualifying period to establish a benefit period for EI benefits starting in April 2022.

[52] The appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section