



Citation: *HM v Canada Employment Insurance Commission*, 2023 SST 235

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

Decision

Appellant: H. M.
Representative: S. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (0) dated November 7, 2022
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference
Hearing date: February 7, 2023
Hearing participants: Appellant
Appellant's representative

Decision date: February 22, 2023
File number: GE-22-3635

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown she had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Claimant has given an explanation that the law accepts. This means the Claimant's claim reports can be treated as though they were made earlier.

Overview

[3] In general, to receive EI benefits, you 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 had an open claim for EI benefits when she stopped working in May 2021.³ Although she could have received EI benefits, she did not fill out any claim reports at that time.

[5] The Claimant returned to work on August 9, 2021. She then left work and applied for EI sick leave benefits on October 21, 2021. She asked that she be paid EI regular benefits from May 7, 2021 to August 9, 2021.

[6] For this to happen, the Claimant has to prove she had good cause for the delay in completing her claim reports from May 7, 2021 to August 9, 2021.

[7] The Commission decided the Claimant didn't have good cause and refused the Claimant's request. The Commission says this is because the Claimant did not act as a reasonable person in her situation would have done to verify her rights and obligations under the EI Act.

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

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

³ The Claimant applied for EI benefits on October 29, 2020. That claim remained open until October 24, 2021.

[8] The Claimant disagrees with the Commission's decision. She says she and her spouse contacted Service Canada in June 2021 to discuss the Claimant's options for EI benefits because she was planning to get pregnant and wanted to maximize her maternity and parental benefits. It was on the advice of the Service Canada Officer that she did not complete claim reports for EI benefits from May 9 to August 9, 2021.

Matters I considered first

The Claimant's appeal was returned to the General Division

[9] The Claimant first appealed the Commission's decision to not back date her claim reports to the Tribunal's General Division in July 2022. The General Division member dismissed the Claimant's appeal.⁴

[10] The Claimant appealed the General Division's decision to the Tribunal's Appeal Division. The Appeal Division member found the Claimant's appeal should not have been dismissed because the General Division thought it was dealing with an initial claim for EI benefits when it was actually dealing with a renewal claim for EI benefits.⁵

[11] The Appeal Division ordered the Claimant's returned to the General Division for a new hearing to decide whether the Claimant's late claim for EI regular benefits between May 9 and August 9, 2021, or any portion thereof, can be accepted.

[12] This decision is a result of the new hearing.

The hearing was conducted with an interpreter

[13] The Claimant's and the Claimant's Representative's first language is not English or French, so they communicated at the hearing partly in English and partly through the

⁴ See *H.M. v. Canada Employment Insurance Commission*, File Number GE-22-2344 decided October 11, 2022, unpublished at time of writing this decision.

⁵ See *H. M. v. Canada Employment Insurance Commission*, File Number AD-22-765 decided November 4, 2022, unpublished at time of writing this decision. A person's claim for EI benefits is open for 52 weeks. A "renewal claim" happens when a person has applied for and received some weeks of EI benefits, goes back to work for a period of time, stops working and again claims EI benefits within 52 weeks of their initial application for EI benefits.

use of an interpreter. The interpreter affirmed she would accurately, and to the best of her ability, translate the Claimant's and Claimant's Representative's statements.

The period of the delay

[14] I find the period of the delay is from May 9, 2021 to October 21, 2021.

[15] The Commission decided the period of the delay was from May 9, 2021 to November 29, 2021.

[16] The Claimant's Representative, affirmed to give evidence, testified he and the Claimant applied over the phone for EI benefits on October 21, 2021. He said it was during this application process a Service Canada officer told them about applying for the May [2021] benefits. The Claimant's representative said he and the Claimant asked during the October 21, 2021 application process to receive benefits from May 9 to August 9, 2021.

[17] The Claimant's Representative said the record of a conversation between a Service Canada officer and the Claimant on November 29, 2021 was a case of checking up to see what had happened with the backdating of the claim reports.

[18] I recognize there is no record of a request for antedate (backdating) of the claim reports being made on October 21, 2021. However, the lack of a record in the appeal file does not mean the conversation did not take place.

[19] I accept the Claimant's Representative's testimony that he and the Claimant asked to have the May 9 to August 9, 2021 claim reports backdated during the October 2021 application process. He gave his testimony under affirmation, and I was able to ask him questions about it. He said they first became aware the claim reports could be backdated during the October 2021 application process and asked for the claim reports to be backdated during that conversation. As a result, I find the period of the delay is from May 9, 2021 to October 21, 2021.

Issue

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

Analysis

[21] The Claimant wants her claim reports for EI benefits to be treated as though the reports were made from May 9, 2021 to August 9, 2021. This is called antedating (or, backdating) the claim reports.

[22] To get a claim antedated, the Claimant has to prove she had good cause for the delay during the entire period of the delay.⁶ The Claimant has to prove this on a balance of probabilities. This means she has to show it is more likely than not she had good cause for the delay.

[23] And, to show good cause, the Claimant has to prove she acted as a reasonable and prudent person would have acted in similar circumstances.⁷ In other words, she has to show she acted as reasonably and carefully just as anyone else would have if they were in a similar situation.

[24] The Claimant also has to show she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁸ This means the Claimant has to show she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, then she must show there were exceptional circumstances that explain why she didn't do so.⁹

[25] The Claimant has to show she acted this way for the entire period of the delay.¹⁰ That period is from the day she wants her claim reports antedated to until the day she

⁶ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁰ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

actually made the claim. So, for the Claimant, as found above the period of the delay is from May 9, 2021 to October 21, 2021.

[26] The Claimant's Representative, affirmed to give evidence, is the Claimant's spouse. He said that she had been working and was laid off in October 2020. She applied for EI on October 29, 2020 and received some EI benefits. The Claimant then returned to work on December 28, 2020.

[27] The Claimant's Representative testified that in 2021 he and the Claimant were planning to start a family. She was looking for work that would not be as physically hard as the work she had been doing. She stopped working on May 8, 2021. The Claimant's Representative said he and the Claimant thought she would be able to get work quickly. After a few weeks they realized a new job was not easy to get.

[28] The Claimant's Representative said when he and the Claimant thought she would not be getting a new job quickly they called Service Canada. They wanted to find out about applying for EI benefits.

[29] He said they told the Service Canada officer they were planning a pregnancy the Claimant was looking for lighter work. The Claimant's Representative said the officer told them if they were planning to get pregnant then "it will affect your later EI benefits."

[30] The Claimant's Representative said they contacted Service Canada on June 2, 2021. He sent the Tribunal a record of the calls made from his cell phone in June 2021. He testified that a call made to 1-800-206-7218 number on June 2, 2021 was the call he and the Claimant made to Service Canada to ask about applying for EI benefits.¹¹ It was during this phone call the Officer told them about the effect of a claim on the later EI benefits.

[31] The Claimant's Representative testified the Claimant returned to work on August 9, 2021. She continued working until October 15, 2021. The Claimant applied for EI

¹¹ This is the telephone number to find out more about Employment Insurance benefits.

sickness benefits on October 21, 2021. The application was completed over the phone with the help of a Service Canada Officer.

[32] The Claimant's Representative testified that when they were on the phone with the Service Canada officer in October 2021 the officer spoke to them about backdating the claim for the May to August 2021 period. He said he and the Claimant asked about having the benefits for the May to August 2021 backdated during the October 2021 application process. He called again at the end of November to see what was happening with the May to August 2021 claim.

[33] The Commission says the Claimant does not have good cause for the delay in making her claim reports. It says that she asked on November 29, 2021 to renew the benefit period she began on October 25, 2020 effective May 9, 2021 since she was not working from May 9 to August 10, 2021. The Commission says the Claimant qualified for benefits on May 9, 2021 but she did not act like a reasonable person in her situation would have done to verify her rights and obligations under the EI Act. Specifically, it says the Claimant did not make any effort to find out about the possibility of filing for benefits as soon as she left her job in May 2021.

[34] The Claimant's Representative submits the Claimant had good cause for the delay in making her claim reports. He said the Claimant stopped working in May 2021 so she could get lighter work. They thought she would get a new job quickly. When it became clear the Claimant would not get a new job quickly, they called Service Canada on June 2, 2022 about getting EI benefits. It was during the June 2, 2022 conversation they were told if the Claimant applied for EI benefits at that time it might affect her later EI benefits. So, they decided to wait to apply for EI benefits. The Claimant got a new job on August 9, 2021 and had no need for EI benefits until October 15, 2021 when she next stopped working when she had a miscarriage on this date.

[35] I think the Claimant took reasonably prompt steps to find out about her rights and obligations under the EI Act and she has shown good cause for the entire period of the delay.

[36] The Claimant's Representative explained that after it became clear to him and the Claimant, she would not be getting a job quickly in May 2021, they called Service Canada to ask about getting EI benefits. I find as fact that a conversation with Service Canada took place on June 2, 2021. I base this finding on the Claimant's Representative's testimony and the cell phone record provided by the Claimant's Representative showing a call was completed to the Service Canada Employment Insurance phone number.

[37] There are 24 days between the Claimant's last day of work on May 8, 2021 and June 2, 2021. The evidence tells me the Claimant and the Claimant's Representative contacted Service Canada 25 days after she stopped working. In my opinion, this means the Claimant took reasonably prompt steps to find out what her rights and obligations were under the EI Act.

[38] During the June 2, 2021 conversation the Claimant was told by a Service Canada officer that applying for EI benefits in June 2021 would have an effect on later EI benefits.

[39] I find the Claimant has shown good cause for the delay in requesting her claim reports be backdated as if they were made from May 9 to August 9, 2021. The Claimant was not pregnant in June 2021 but was planning to get pregnant. She was told that filing claim reports could have an effect on her later EI benefits. I find that the Claimant acted the same as a reasonable person in a similar situation would likely have done by delaying filing her claim reports (by not filing any claim reports) because she was trying to get the maximum number of weeks of maternity and parental benefits at a later date.

[40] In addition, the Claimant returned to work on August 10, 2021. She stopped working on October 15, 2021. I find that the Claimant acted the same as a reasonable person in a similar situation would have done during this period because she would have no need to ask to have the May 9 to August 9, 2021 claim reports backdated while she was working.

[41] The Claimant acted as a reasonable and careful person would have in similar circumstances throughout the entire period of the delay, from May 9, 2021 to October 21, 2021. The Claimant contacted Service Canada within a month of becoming unemployed to learn about her rights and responsibilities. She was told that completing her claim reports could impact her upcoming maternity benefits. As she was expecting to claim maternity benefits in the near future, it is reasonable that she decided not to complete her claim reports at that time.¹²

[42] She could not have predicted that she would lose her pregnancy. When this happened, she contacted Service Canada again and was told that she could ask to have her EI claim reports from May to August 2021 backdated. She immediately asked for these reports to be backdated. In my opinion, this is what a reasonable and careful person would have done in her circumstances. As a result, I find the Claimant has shown she had good cause for delaying her claim reports for the entire period of the delay.

Conclusion

[43] The Claimant has proven that she had good cause for the delay in making her claim reports for benefits throughout the entire period of the delay. This means that her claim reports can be treated as though they were made earlier.

[44] The appeal is allowed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

¹² Good cause includes circumstances in which it is reasonable for a claimant to consciously delay making a claim, as set out in *Attorney General of Canada v Ehman*, A-360-95.