



Citation: *MV v Canada Employment Insurance Commission*, 2022 SST 1708

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

Decision

Appellant (Claimant): M. V.
Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (490302) dated June 16, 2022 (issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Teleconference
Hearing date: October 25, 2022
Hearing participant: Appellant
Decision date: November 4, 2022
File number: GE-22-2407

Decision

[1] The appeal is allowed.

[2] The Claimant has shown that he 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 can be treated as though it was made earlier.

Overview

[3] In general, to receive EI benefits, you have to 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 made his claim after the deadline. He wants it to be treated as though it was made earlier, on December 24, 2017.

[5] For this to happen, the Claimant has to prove that he had good cause for the delay.

[6] The Commission decided the Claimant didn't have good cause and refused the Claimant's request. The Commission says the Claimant didn't have good cause because a reasonable and prudent person (in a similar situation) would have contacted them about why benefits were not paid.

[7] The Claimant disagrees and says his son was in depression and suicidal. He further says he was pre-occupied with his son's depression and suffered from depression himself because of the circumstances.

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

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

Issue

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

Analysis

[9] The Claimant wants his claim for EI benefits to be treated as though it was made earlier, on December 24, 2017. This is called antedating (or, backdating) the claim.

[10] To get a claim antedated, the Claimant has to prove that he had good cause for the delay during the entire period of the delay.³ 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.

[11] And, 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.

[12] 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

[13] The Claimant has to show that he acted this way for the entire period of the delay. That period is from the day he wants his claim antedated to until the day he filed a renewal application on December 30, 2021. So, for the Claimant, the period of the delay is from December 24, 2017, until the day he filed a renewal claim.

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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

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.

[14] The Claimant says he had good cause for the delay because his son was suffering from depression and was suicidal. He further says his son was hospitalized many times.

[15] The Commission says the Claimant didn't shown good cause for the delay, because a reasonable and prudent person (in a similar situation) would have contacted the Commission to inquire about why benefits were not paid.

[16] I find the Claimant has proven that he had good cause for the delay in applying for benefits, because there were exceptional circumstances in this case. Specifically, the Claimant testified that his son was suffering from a major depression and was suicidal. Furthermore, the Claimant testified that his son was hospitalized many times and he was preoccupied with his son's mental health. I realize the Commission submitted that a reasonable and prudent person would have contacted them to inquire about his benefits. However, I accept that the Claimant's circumstances were exceptional. Furthermore, I accept the Claimant's testimony that he was preoccupied with his son's mental health because his oral statements were forthright and detailed.

Additional Submissions from the Commission

[17] The Commission also submitted that the facts on file didn't prove the Claimant was prevented from completing his reports or inquiring with them in a timely manner. Nevertheless, I cannot ignore the Claimant's exceptional circumstances in this case. For example, I accept the Claimant's testimony that his son's medical condition and suicidal tendencies pre-occupied him. Furthermore, the Claimant explained that his son's medical situation affected his own health and he was treated for depression himself and lost considerable weight.

[18] Finally, I realize the Commission argued that the Claimant's care for his son didn't impede him as he was still able to work full-time for the entire delay. However, the Claimant worked for an auto-parts supplier and his work for this employer was intermittent. For example, the Claimant was called back to work for just five-days in early 2018 and then laid off again. In any event, the Claimant's circumstances were

exceptional in this case. As mentioned, the Claimant's son was suicidal and hospitalized for treatment many times. I recognize the period of delay in this case is lengthy. Still, I cannot ignore the exceptional circumstances that were presented in this appeal.

Conclusion

[19] The Claimant has proven that he had good cause for the delay in making his claim for benefits throughout the entire period of the delay. This means that his claim can be treated as though it were made earlier.

[20] The appeal is allowed.

Gerry McCarthy

Member, General Division – Employment Insurance Section