



Citation: *NG v Canada Employment Insurance Commission*, 2023 SST 785

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

Decision

Appellant: N. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (434710) dated September 28, 2021 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: February 17, 2023

Hearing participant: Appellant

Decision date: February 23, 2023

File number: GE-22-3208

Decision

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

[2] The Claimant hasn't shown that she 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 on June 21, 2020.¹

Overview

[3] The Claimant applied for Employment Insurance (EI) Emergency Response Benefits (ERB) in March 2020. On June 29, 2020, through a telephone call, the Claimant completed claims for the weeks from March 29, 2020, to June 20, 2020. She didn't make any more claims for benefits.

[4] Then, on June 21, 2021, she applied for EI regular benefits.

[5] The Canada Employment Insurance Commission (Commission) backdated her claim to April 11, 2021.

[6] The Claimant wants her application treated as though it was made even earlier, on June 21, 2020.

[7] The Commission refused her request.

[8] I have to decide whether the Claimant has proven that she had good cause for not applying for benefits earlier.

[9] The Commission says that the Claimant didn't have good cause because nothing prevented her from applying earlier. The Commission also points out that if her claim were backdated to June 2020, the law would prevent her from claiming EI ERB benefits.

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

[10] The Claimant disagrees. She says that she went to Service Canada and was told to look at the website. When she looked at the website, she thought it was too late to apply. She didn't know that she could have continued to get benefits.

Issue

[11] Can the Claimant's application for benefits be treated as though it was made on June 21, 2020? This is called antedating (or, backdating) the application.

Analysis

[12] 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).

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

– Good Cause

[14] To show good cause, the Claimant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.³ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[15] The Claimant has to show that she acted this way for the entire period of the delay.⁴ That period is from the day she wants her application antedated to until the day

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.

she actually applied. So, for the Claimant, the period of the delay is from June 21, 2020, to June 21, 2021.⁵

[16] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁶ This means that the Claimant has to show that 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 that there were exceptional circumstances that explain why she didn't do so.⁷

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

– **What the Claimant says**

[18] The Claimant says that she had good cause for the delay for these reasons:

- a) She didn't know that she was entitled to more benefits.
- b) She asked Service Canada about her benefits. She couldn't recall when she went to Service Canada, but it may have been in July 2020. The Service Canada officer told her to find out about her claim online. She's not sure when she looked at the Service Canada website, but when she did, she learned that EI ERB had stopped.
- c) She thought she was disentitled from receiving benefits because she was looking for work.

⁵ The Commission says the period of delay is from June 21, 2020, to April 10, 2021. But this isn't right under the law. The delay period ends when the person applies for benefits, not when the Commission starts the benefit period. So, for the Claimant, the period ends on June 21, 2021, not April 11, 2021.

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.

- d) If the Commission backdated her application to April 2021, she should be able to backdate it to June 2020.

– **What the Commission says**

[19] The Commission says that the Claimant hasn't shown good cause for the delay for these reasons:

- a) It wasn't reasonable for the Claimant to assume that she wasn't entitled to benefits. It says she should have inquired in a timely manner to find out her entitlement to benefits.
- b) Waiting 12 months before asking about benefits shows a lack of natural concern for preserving entitlement to benefits, and creates a significant prejudice against the Commission's ability to hold a claimant accountable for their availability on an ongoing basis.

– **The Claimant didn't have good cause for the delay**

[20] I find that the Claimant hasn't proven that she had good cause for the delay in applying for benefits. This is why.

[21] A reasonable and prudent person would have promptly followed the directions from the Service Canada officer. The Claimant says EI ERB benefits had ended when she looked at the Service Canada website. As EI ERB benefits ended on October 3, 2020, this means that she delayed from July 2020, until at least October 2020, to follow the instructions given to her by the Service Canada officer. This falls short of what a reasonable and prudent person would have done.

[22] The Claimant started to take reasonably prompt steps to find out about her rights and obligations by going to Service Canada. But her efforts fall short of what is required by law because she wasn't prompt in following through on the officer's instructions. She reported that she had an access code, so she could have also looked at her My Service Canada account to see about her entitlement. There is no evidence that she did this.

[23] I see no exceptional circumstances to explain why the Claimant couldn't have followed through on finding out about the benefits available on Service Canada's website or on her My Service Canada Account. Not knowing that she could have been entitled to more benefits is not an exceptional circumstance.

[24] The Commission's decision to backdate the application to April 11, 2021, doesn't mean that the Claimant had good cause for the entire period of delay – which is the issue before me.

– **Qualifying on the earlier day**

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

[26] But it is worth noting, that even if the Claimant's application had been backdated to June 21, 2020, she still wouldn't receive benefits between June 21, 2020, to October 3, 2020. This is because all claims for EI ERB benefits had to be made on or before December 2, 2020.⁸ And she couldn't have received EI regular benefits because by law those benefits weren't available then.

Conclusion

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

[28] So there is no change to the Claimant's benefit period. It starts on April 11, 2021.

[29] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

⁸ This is what section 153.8(2) of the Act says.