



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 970

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

Decision

Appellant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (562271) dated January 12, 2023 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Teleconference

Hearing date: May 3, 2023

Hearing participant: Appellant

Decision date: May 8, 2023

File number: GE-23-259

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. Good cause is a reason the *Employment Insurance Act* (Act) accepts for the delay. This means that the Claimant's claim can't 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 applying for EI or by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. There are deadlines for making claims.²

[4] The Claimant made his claim after the deadline. He applied for EI benefits on June 21, 2022. He says that this is a renewal claim for benefits because he wants to get EI benefits from September 9, 2017. The Claimant applied for EI nearly five years (four years and nine months) late. So, he wants his claim to be treated as though it was made earlier, on September 9, 2017.

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

[6] The Commission decided that the Claimant didn't have good cause and refused the Claimant's request. The Commission says that the Claimant doesn't have good cause because he waited four years and nine months to apply. The Commission says that the Claimant didn't explain his situation even though he was unfamiliar with the process. In addition, the Commission says that ignorance of the Act isn't good cause for a delay.

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

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

[7] The Claimant disagrees and says that he got the wrong information from the Service Canada office he went to. He says that he was told he needed to have worked 52 weeks before he could apply for EI. It wasn't until he was trained to start working for Service Canada that he learned he could have applied for EI. So, he asked for an antedate.

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 September 9, 2017. This is called antedating 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

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

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.⁷ That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Claimant, the period of the delay is from September 9, 2017, to June 21, 2022.

[14] The Claimant says that he had good cause for the delay because Service Canada misinformed him when he showed up to make his claim. The Claimant says that he was unfamiliar with the EI system and didn't know that he could have been entitled to benefits. When Service Canada told him he needed to have worked 52 weeks, he didn't make a claim. The Claimant says that it wasn't until he had training with Service Canada when he started his job that he learned he could have been entitled to benefits and decided to make a claim. He also says that he was unfamiliar with the Act.

[15] I find that the Claimant waited nearly five years before asking for an antedate to get benefits from September 9, 2017. The Claimant's reason for the delay is that he got the wrong information from Service Canada and was ignorant of the Act.

[16] On this point, the Commission is of the view that it is unlikely that the Claimant got the wrong information, since entitlement to benefits depends on the number of hours worked based on the economic region where the Claimant lives.

[17] Even so, I find that the Claimant applied for benefits after a separation from his former employer. The Claimant confirms that he didn't work in this job for 52 weeks. The Claimant says that he didn't pay attention and didn't ask further questions when he went

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 Burke*, 2012 FCA 139.

to Service Canada. He was referred to social assistance but didn't want to pursue it. So, he didn't make a claim for benefits at that time.

[18] The Claimant says that he was unfamiliar with EI. But I am of the view that a reasonable and prudent person would have gotten more information about the program if they were unfamiliar with it.

[19] In addition, the case law is consistent that ignorance of the Act doesn't justify a delay in applying for benefits. The same applies to getting the wrong information from the Commission.⁸

[20] A claimant is expected to act as a reasonable and prudent person would have acted in similar circumstances. The Claimant didn't take any additional steps for nearly five years after he went to Service Canada. He didn't try to get more information even though he hadn't worked 52 weeks with his former employer and had received benefits.

[21] I find that the Claimant hasn't shown that he had good cause for applying for benefits late. The Claimant waited nearly five years to get more information about his situation. It wasn't until he started working at Service Canada that he learned he could have applied for benefits in 2017 after he stopped working.

[22] My role is to apply the Act, and I can't change it just to please the Claimant who feels he has been wronged. The Act sets out specific criteria that a claimant has to meet to be entitled to benefits.⁹ The Claimant hasn't shown that he acted as a reasonable and prudent person would have acted in similar circumstances. The Claimant waited nearly five years to get more information about his situation—when he was taking training with Service Canada. He didn't ask for more information based on the wrong

⁸ See *Granger v Commission (C.E.I.C) FCA #A-684-85*, where the Court indicated that the Commission and its representatives don't have the power to change the law. As a result, the interpretations they may make of the law don't have the force of law themselves. It is also clear that any undertaking by the Commission or its representatives—whether acting in good or bad faith—to act otherwise than prescribed by law would be absolutely void and contrary to public policy. The judge is bound by the law. It cannot, even for considerations of fairness, refuse to apply it.

⁹ See *Wegener v Canada (Attorney General)*, 2011 FC 137.

information he says he received, despite the fact that he had received benefits without having worked 52 weeks.

Conclusion

[23] The Claimant hasn't shown 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't be treated as though it were made earlier.

[24] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section