



[TRANSLATION]

Citation: *IC v Canada Employment Insurance Commission*, 2023 SST 1018

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

Decision

Appellant: I. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (548893) dated November 16, 2022 (issued by Service Canada)

Tribunal member: Guillaume Brien

Type of hearing: Teleconference

Hearing date: April 27, 2023

Hearing participant: Appellant

Decision date: May 2, 2023

File number: GE-23-440

Decision

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

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

Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on July 8, 2022. She is now asking that the application be treated as though it was made earlier, on April 17, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Claimant didn't have good cause because she gave two conflicting versions of why she was late. She also didn't listen to the advice of her union, which told her on at least two occasions to apply for EI quickly.

[6] The Claimant disagrees. First, she says that she was waiting to go back to her teaching job. Then, she says that she had registered for training and didn't want to get EI benefits and loans and bursaries at the same time. She was worried that she would have to pay back money to the government. She says that she went to Service Canada about four times and never managed to get in. She says that she doesn't have a computer at home and isn't able to apply online.

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

Issue

[7] Can the Claimant's application for benefits be treated as though it was made on April 17, 2022? This is called antedating (or, backdating) the application.

Analysis

[8] 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).

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

[10] 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.

[11] The Claimant has to show that she acted this way for the entire period of the delay.⁴ This period is from the day she wants her application antedated to until the day she actually applied. So, for the Claimant, the period of the delay is from April 17, 2022, to July 2, 2022 (the application was filed on July 8, 2022, but was effective July 3, 2022). This represents a delay of approximately 76 days.

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.

[12] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁵ 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.⁶

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

Reason 1: The Claimant wanted to go back to her old job

[14] The Claimant says that she wanted to go back to her old job as a teacher even though she was let go on April 13, 2022. She went to her union to talk to them about it. Meanwhile, the union advised her to apply for EI. She didn't do so because she hoped to go back to her teaching job.

[15] First, I find that the union never guaranteed the Claimant that she would go back to her job. This was only a possibility.

[16] Second, although the union advised the Claimant to apply for EI, the Claimant never applied because she was waiting for a possible callback.

[17] So, I find that the Claimant's desire to go back to her old job isn't good cause for the delay. The Claimant never received any guarantee that she could one day go back to her teaching job, from which she had recently been let go.

Reason 2: The Claimant wanted to take training

[18] The Claimant says that she was late in filing her application because she wanted to take training to be a personal support worker. She says that she was entitled to loans

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.

and bursaries and that she didn't want to get EI benefits to avoid having to repay the government.

[19] At the hearing, the Claimant told me that the training was supposed to start on August 21, 2022. She can't remember when she registered. She says that it was after she got back from a trip to the United States (from about April 17, 2022, to April 20, 2022).

[20] The Claimant never started the training. She got sick on August 22, 2022. She went to the hospital the next day and had surgery.

[21] I find that the Claimant's personal support worker training wasn't a referred training but a personal choice by the Claimant. The Claimant made a personal choice not to apply for EI because she planned to make a career change.

[22] The fact that her personal plans didn't materialize isn't good cause for the delay in filing her application. Instead, the Claimant chose not to apply because she planned to study. It wasn't until later, when her financial situation worsened, that she decided to file the application on July 8, 2022.

[23] So, I find that the Claimant's desire to go back to school isn't good cause for the delay in filing the application.

Reason 3: The Claimant tried to go to Service Canada but was never able to get in

[24] In her notice of appeal, the Claimant wrote that she tried to go to Service Canada about four times but was never able to get in. It was cold, it was raining, and she wasn't able to file the application.⁷

[25] At the hearing, I asked the Claimant to clarify when she tried to go to Service Canada. After several attempts to get a clear answer, the Claimant said that she tried to go there on the Wednesday, Thursday, and Friday after she got back from her trip to the

⁷ See GD2-5.

United States. So, these are three attempts made on April 27, 28, and 29, 2022. The Claimant told me the line was too long. It was cold and she could not stay. She made no other attempts after that.

[26] After hearing the Claimant, I found that the fact that she waited in line three times at the Service Canada office but was unable to enter wasn't good cause for the delay in filing the application.

[27] First, the Claimant says that it was raining and cold and that the line was long. I find that the dates the Claimant gave—April 27, 28, and 29, 2022—are in the spring. The Claimant could have dressed properly and waited in line like everyone else. She could have arrived early to make sure she could get in. She was getting back from a trip to the United States, which shows that she was fit to travel and wait in lines.

[28] Second, attempting to go to Service Canada only three times over a 76-day period isn't reasonable and doesn't show continued efforts to apply for benefits on time. This certainly doesn't show good cause for **the entire** period of the delay.

Reason 4: The Claimant doesn't have a computer and isn't computer literate

[29] The Claimant wrote in her notice of appeal that she doesn't have a computer. She only has a cell phone. She has to go to the library to use the internet. This meant that she could not apply online.⁸

[30] The Claimant told me at the hearing that library staff could not help her file her EI application online.

[31] Then, the Claimant told me about her daughter who helps her out with some personal tasks.

⁸ See GD2-5.

[32] So, I asked the Claimant why her daughter didn't help her file her EI application online. She told me that she and her daughter didn't know the process and weren't able to do it.

[33] I asked the Claimant whether she knew how long it took to apply online. She said that she didn't know. She told me that her daughter was too busy working. She is a chemist. She works office hours.

[34] After hearing the Claimant, I found that the fact that the Claimant doesn't have a computer isn't good cause for the delay in filing the application. This is because she could have applied on her cell phone. She could also have asked her daughter, who is a chemist, for help. The fact that she works office hours doesn't explain why she could not help the Claimant complete an application in the evening or on a weekend.

Conclusion on the Claimant's reasons

[35] After a thorough review of the record and after hearing the Claimant, I find that the Claimant's reasons aren't sufficient to explain the delay during the entire period of the delay.

[36] In addition, the Claimant was repeatedly told by her union to apply for EI quickly, but she never did.

[37] The Claimant also hasn't shown any exceptional circumstances that could explain the delay. She said several times that she was employable during this period. It wasn't until August 22, 2022, that the Claimant first saw a doctor by going directly to the emergency room. This means that her illness can't explain why she was late in applying for EI.

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

Conclusion

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

[40] The appeal is dismissed.

Guillaume Brien

Member, General Division – Employment Insurance Section