



Citation: *RG v Canada Employment Insurance Commission*, 2023 SST 908

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

Decision

Appellant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (510107) dated August 29, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: March 28, 2023

Hearing participant: Appellant

Decision date: April 13, 2023

File number: GE-22-3443

Decision

[1] R. G. is the Appellant. I am allowing the appeal in part.

[2] I agree with the Commission's concession on the issue of availability. This means the Appellant is not disentitled from receiving Employment Insurance (EI) benefits for this reason.

[3] The Appellant hasn't shown that he had good cause for the entire period of delay in claiming EI benefits. In other words, the Appellant hasn't given an explanation the law accepts. This means his reports (claims) can't be treated as though they were made earlier.

Overview

[4] 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 Commission every two weeks. Usually, you make your claims online. There are deadlines for making claims.²

[5] The Appellant made his claims after the deadline. He wants them to be treated as though they were made earlier, starting on April 11, 2021. For this to happen, the Appellant has to prove that he had good cause for the entire period of delay.

[6] The Commission decided the Appellant didn't have good cause and refused the Appellant's request. The Commission also determined the Appellant hadn't shown he was available for work.

[7] The Appellant disagrees with the Commission. He appeals to the general division of the Social Security Tribunal. He says the Commission told him they would antedate his claims. He also says he was available to work because he was looking for full-time work while working part-time.

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

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

Issues

[8] Do I agree with the Commission's decision to concede on the issue of availability?

[9] Did the Appellant show he had good cause for the delay in claiming EI benefits?

Analysis

Availability

[10] I agree with the Commission's concession on the issue of availability.

[11] After reviewing the Appellant's appeal and reconsideration documents, the Commission decided to concede on the issue of availability. It says there is no evidence on file to demonstrate the Appellant hasn't been available for work since April 11, 2021.

[12] I agree that there is nothing in the appeal documents that could make me find the Appellant wasn't available for work since April 11, 2021. This means the Appellant isn't disentitled from receiving EI benefits for this reason.

Antedate

[13] The Appellant wants his claims for EI benefits to be treated as though they were made earlier, starting on April 11, 2021. This is called antedating (or, backdating) the claims.

[14] To get a claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.³ The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not, he had good cause for the delay.

[15] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ In other words, he has

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.

to show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[16] The Appellant 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 Appellant has to show he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Appellant didn't take these steps, then he must show there were exceptional circumstances that explain why he didn't do so.⁶

[17] The Appellant has to show he acted this way for the entire period of the delay.⁷ The period is from the day he wants his claims antedated until the day he actually made the claims.

[18] In this case, I find the period of the delay is from April 11, 2021, to November 30, 2021. The Appellant's benefit period started on April 11, 2021. The Commission says November 30, 2021, is the first date it has any record of the Appellant contacting them to ask why he hadn't received payment for benefits.

[19] The Commission allowed the claims to be antedated as of November 21, 2022. This is the week prior to when the Appellant spoke with the Commission to ask for the antedate.

– **Good Cause**

[20] The law says that unless there are exceptional circumstances, a claimant is expected to take reasonable prompt steps to understand their rights and obligations under the law.⁸

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.

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

⁸ See *Canada v Somwaru*, 2010 FCA 336 at para 11.

[21] The Commission says the appellant failed to show good cause for the entire period of delay. Ignorance of the law and good faith don't excuse a failure to comply with a legislative requirement to show he acted like a reasonable person would have.

[22] The Commission also says that if the Appellant was simply unsure of how to complete his report cards, it would have been reasonably expected of him to make enquiries to the Commission or at Service Canada, rather than giving up due to longer wait times. A reasonable person, concerned with their claim, would take the necessary time and steps to speak to the Commission office.

[23] The Appellant says he had good cause for the delay in submitting his claims for the reasons set out below.

- He filed his application within days of his employer submitting his Record of Employment (ROE).
- He was working part-time and receiving pension money, so he had money to live on. He thought the EI benefits would come eventually.
- He had heard stories that it was impossible to get through on the phone lines. He tried a couple of times but gave up after being on hold for a long time.
- He received his access code, but the internet reporting service wouldn't work for him. He tried at home and again at his office but each time the system kicked him out.

[24] At the hearing the Appellant said he never received an access code or information on how to use it. But later testified that he had a piece of paper with his access code information and instructions. He read those instructions into evidence which outlined how he was to complete his biweekly reports (claims).

[25] When asked why he waited so long to contact the Commission, the Appellant said he did try to contact them but was put on hold. When asked why he didn't go to the Service Canada office, he said he wasn't keen on going out to a Service Canada office.

This was because he had been hospitalized in November 2021. He also said he assumed the Service Canada office in Victoria had closed.

[26] Upon review of the appeal documents, the Appellant argued that the Commission's officers were "lying." He asserts that he never had problems operating the computer, understanding the information, or inputting his information. He says he works as a computer tech, maintaining a website, so he doesn't have any problems with computers.

[27] The Appellant disputes the Commission's statements that he didn't try to contact Service Canada sooner, or that he has medical limitations. He says he did try on several occasions but wasn't able to get through until sometime in November. This is when he was told the Commission would antedate his claims. As stated above, the Commission agreed to process his claims starting on November 21, 2021.

[28] The Appellant argued repeatedly that the Commission's officer told him they would antedate his claims. Even if that was said, the Federal Courts have consistently held that incorrect information which may be given by the Commission on the interpretation of the EI Act, or representations which they may make to a claimant regarding their particular situation, can't be upheld if they are contrary to the EI Act, even if the information turns out to be against a claimant's interests.⁹

[29] The law says that ignorance of the law doesn't constitute good cause unless an individual can show that what they did was reasonable under their circumstances. The test is one of reasonability, informed by the claimant's subjective appreciation of the circumstances, assessed on an objective standard.¹⁰

[30] An antedate is not a right of every claimant but is an advantage for which he must qualify. The courts have said it is an advantage that should be applied

⁹ See *Granger v. Canada (Attorney General)*, A-684-85.

¹⁰ See *Rodger v. Canada (Attorney General)*, 2013 FCA 222, 449 NR 295.

exceptionally. The obligation to promptly apply for benefits is seen as very demanding and strict.¹¹ This is why the “good cause for delay” exception is cautiously applied.

[31] Having a good reason for the delay is not the same as showing good cause. I agree with the Commission when it says the Appellant’s circumstances weren’t so extraordinary that they would have prevented him from contacting the Commission to verify his rights and obligations. Working, living off pension money or savings, or sitting back waiting for someone to contact you, are not exceptional circumstances, even when considered cumulatively.

[32] The Appellant didn’t make reasonable prompt steps to determine his rights and obligations under the EI Act. Specifically, he knew how to contact the Commission and to look for information online, such as where the Service Canada office was located in his region. Instead, he delayed over seven months before taking the actions required to contact the Commission and enquire why he hadn’t received benefits on his April 11, 2021, claim.

[33] The Appellant has not presented evidence of an exceptional circumstance that prevented him from determining his rights and obligations under the EI Act. Nor has he proven he acted as a reasonable and prudent person placed in the same circumstances, during the entire period of delay. Therefore, the Appellant hasn’t proven he had good cause for the delay in applying for benefits, throughout the entire period of delay.

¹¹ See *MR v Canadian Employment Insurance Commission (CEIC)*, 2019 SST 1292.

Conclusion

[34] The appeal is allowed in part.

[35] I agree with the Commission's concession on the issue of availability.

[36] The Appellant hasn't shown that he had good cause for the entire period of delay in claiming Employment Insurance (EI) benefits. This means his claims can't be antedated to April 11, 2021.

Linda Bell

Member, General Division – Employment Insurance Section