Citation: *JC v Canada Employment Insurance Commission*, 2023 SST 1219

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. C.
Respondent:	Canada Employment Insurance Commission
Representative:	Joshua Toews

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated March 24, 2023 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Teleconference
Hearing date:	July 27, 2023
Hearing participants:	Appellant Respondent's Representative
Decision date:	August 17, 2023
File number:	GE-23-979

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he had good cause for the delay in applying for benefits, regardless of which date is looked at to start his claim (September 27 or October 3, 2020). In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's application can't be treated as though it was made earlier.[1]

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on April 22, 2022, and asked that his initial claim be antedate, in other words treated as though it was made earlier, on March 29, 2020.[2]

[4] The Commission denied the Appellant's request to start his claim at an earlier date.

[5] The Appellant asked the Commission to reconsider their decision to deny his request to start his claim on March 29, 2020. The Commission issued a reconsideration decision upholding their initial decision to deny the Appellant's antedate request.

[6] The Appellant appealed the Commission's reconsideration decision to the General Division of the Social Security Tribunal (Tribunal).

[7] The General Division dismissed the Appellant's appeal.

[8] The Appellant appealed the General Division decision to the Appeal Division of the Tribunal.

[9] The Appeal Division found the General Division made an error of law and referred the issue back to the General Division to decide on whether the Appellant's

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[1] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.
[2] GD03-19

initial claim for EI benefits could start on September 27, 2020, or alternatively, October 3, 2020.

Matters I have to consider first

Post-hearing document

[10] The Appellant submitted a document after the hearing.[3] He did not ask at the hearing whether he could send in additional documents.

[11] According to the *Social Security Tribunal Rules of Procedure* (Rules), I must not consider any evidence that a party files after a filing deadline set by the Tribunal or the Rules unless I give the party permission to use that evidence.

[12] Prior to the July 27, 2023, hearing, on May 30, 2023, a letter was sent to both parties informing them of a final deadline of June 30, 2023, to make submissions. Since the Appellant's documents were received after that deadline, I must not consider them unless I give him permission to use that evidence.

[13] In considering all the relevant factors, I am denying the Appellant permission to use the evidence he sent in after the hearing and I will not be considering that evidence in making my decision.

[14] The evidence could have been obtained earlier, as not only did the Appellant have an entire month to make submissions and provide evidence, he also had nearly a month prior to the hearing to inquire about additional evidence if he had wanted to submit any.

[15] Also, it is not new evidence, it is just further reiteration that his ADHD impeded his ability to understand the programs and file for EI any earlier than he did. He has already made multiple arguments and submissions on those issues and about his ADHD and how it impacts him.

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[3] RGD16

The actions of the previous General Division member

[16] At the hearing, and in his documents, the Appellant has repeatedly raised the issue that in his belief the member who rendered the first decision from the General Division was biased against him.

[17] This is something I will not be addressing in my decision as it is completely irrelevant to the issue at hand because my decision is a new decision on the issue. The actions of a previous member have no bearing on my decision.

[18] What I am considering is whether the Appellant meets the requirements to have his initial claim antedated to either September 27 or October 3, 2020. This requires him to show good cause for the period of the delay, so for the time between when he wants his benefits to start and when he actually filed his initial claim. The actions of a General Division member in a hearing and in a decision that came out many months after he filed his initial claim, can have no bearing on explaining his delay in filing his initial claim for benefits.

Submitted cases

[19] The Appellant submitted a raft of cases to support his position that he has good cause. I will deal with the majority of them in the body of the decision, but there are two I will dispose of immediately.

[20] The case *JG v Minister of Employment and Social Development*[4] is not relevant to the matter at hand for two reasons. One, it is a leave to appeal decision. It is not a final decision on the merits of the issue. Granting leave only means there are grounds for an appeal, it does not mean the grounds will result in a win for the claimant. Second,

[4] RGD06-13 Volume 1

it is a decision related to Canada Pension Plan survivor benefits, which is a different benefit under a different law and has no bearing on the Appellant's appeal.

[21] The case *QB v Canada Employment Insurance Commission*[5] does not assist the Appellant either. He argues that in *QB*, the General Division made errors of law and the claimant reports were found to be on time. He says that the Appeal Division found errors of law in his original General Division decision so I should find his initial claim was made on time.[6]

[22] I find that *QB* is a settlement conference, meaning both parties are in agreement as to the outcome, which is not the case with the Appellant's appeal. Further, just because mistakes of law were made in *QB,* and in the Appellant's original General Division decision, in no way supports that the Appellant has proven good cause in his case; each case is fact specific.

Issue

[23] Can the Appellant's application for benefits be treated as though it was made on an earlier date? This is called antedating (or, backdating) the application.

Analysis

[24] When the Appellant lost his job in March 2020, he initially applied for Canada Emergency Response Benefits (CERB) through the CRA. Once this benefit ended on September 27, 2020, he then applied for the Canada Recovery Benefits (CRB).[7]

[25] When having his taxes done in 2022 his accountant informed him that due to the way an inheritance from his father's estate was handled, his income was over the clawback threshold for benefits administered through the CRA, so he would have to repay the benefits he received.

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[5] RGD06-10 Volume 1
[6] RGD11-2
[7] RGD06 Volume 2 of 2 page 26 which shows the dates of the Appellant's benefit payments and the types of benefits.

[26] The Appellant says his accountant told him that what he needs to do is talk to the Commission and see about getting his benefits from the CRA switched over to EI benefits, as the income clawback threshold on the EI program is much higher. If the Appellant had received EI benefits instead of benefits through the CRA, he would not have to repay any benefits.

[27] The Appellant then filed an application for EI benefits in April 2022 and has asked for it to be antedated.

[28] In order for the Appellant to have his application for benefits antedated, he has to prove two things:[8]

a) He had good cause for the delay during the entire period of the delay. In other words, he has an explanation that the law accepts.

b) He qualified for benefits on the earlier date (that is, either September 27, 2020, or October 3, 2020).

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

Good cause

[30] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[9] 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.

[31] The Appellant has to show that he acted this way for the entire period of the delay.[10] That period is from the dates the Appeal Division has said I should consider for

[8] See section 10(4) of the EI Act.
[9] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[10] See *Canada (Attorney General) v Burke*, 2012 FCA 139.

the antedate of his initial claim (September 27 or October 3, 2020) until the day he actually applied (April 22, 2022).[11]

[32] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[12] This means that the Appellant has to show that 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 that there were exceptional circumstances that explain why he didn't do so.[13]

[33] 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 that he had good cause for the delay.

[34] The Appellant raised multiple reasons for why he had good cause:

He was not actually late

[35] The Appellant has argued that, in reality, while he initially enrolled into CERB (administered by the CRA) and then into the CRB when the CERB ended (the CRA also administered the CRB), it is essentially the same program as EI Benefits.

[36] The Appellant argues that at the time he lost his job, emergency COVID benefits were distributed through two different agencies (that being EI and the CRA) but essentially both programs were the same, and it was not until later that the two agencies started delivering different benefits through separate programs.

[37] So, according to the Appellant, when he was directed by the CRA agent to file for CERB through the CRA, that person was acting as an agent of EI, as at that time both programs were merged. He says this means as soon as he filed his application for CERB the clock for good cause stopped ticking.[14]

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[11] GD03-15
[12] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[13] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[14] RGD15-1

[38] I disagree with the Appellant's submissions, and I note that he also disagrees with his submissions.

[39] First, the Appellant is referring a period of time not in consideration in this decision. I am not looking at the time when he applied for CERB with the CRA. What I am looking at is the time after CERB ended and he applied to the CRB.

[40] Further, the entire reason the Appellant filed for EI benefits in the first place is because of the difference that he says exists between the EI program and the benefits he was receiving through the CRA. He says that there is a much lower income clawback threshold in the CRA program, so he is being asked to repay those benefits because he made too much income. He says that if he had been enrolled in EI benefits, with their much higher income clawback threshold, he would not be asked to repay any money.[15]

[41] So, as the Appellant's own submissions show, regardless of the timeframes of the programs being referenced, his argument fails on its face, as clearly the two programs (EI and CRB) are different. This means that the clock for good cause did not stop running when he filed his application for CERB.

The Appellant's ADHD and unfamiliarity with the programs

[42] The Appellant says that he has a long-standing ADHD disability and is suffering from cognitive decline. He also says that he does not do well with computers and, being new to Canada, was unfamiliar with the benefits scheme in this country as this was his first time applying for benefits.

[43] The Appellant says that his ADHD makes it hard for him to question authorities, but the bigger issue for him is the anxiety his condition causes him.

[44] The Appellant says that when he had lost his job and could not get through to someone at EI, he called the CRA. The CRA agent told him that since he earned so

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[15] GD02-8

little and both programs (either through EI or the CRA) paid the same amount of benefits, he might as well just apply through the CRA.

[45] The Appellant says he was relieved to finally get enrolled into a benefits program. He also says he felt no need to question the CRA agent on whether this was the right program for him.

[46] The Appellant says that once the CERB through the CRA ended he is not sure how he got into the CRB program. He says he is pretty sure he applied over the phone and says someone must have helped him, but he cannot remember.

[47] When his CERB ended he says he stuck with benefits through the CRA, thus enrolling to CRB, as he did not think of looking for benefits through a different program. He says that since was already on a path (benefits through the CRA) he did not see any need to change that path unless someone told him otherwise.

[48] The Appellant also says that there was so much confusion with program names that even the General Division of the Tribunal could not get any of the program names right in their initial decision. He says that if government agencies and the Tribunal cannot even make sense of the benefit programs how is someone suffering from ADHD and cognitive decline supposed to do so.

[49] The Commission says the Appellant has not shown how his ADHD was a barrier to him applying for EI. They say he was able to contact the CRA back in March 2020 to ask about benefits, so at anytime in the delay, he could have contacted the Commission or the CRA to ask about the tax implications of his benefits.

[50] I accept that the Appellant took steps to apply for the CRB program as the legislation for CRB speaks about completing an application for benefits,[16] which supports the Appellant's testimony that he applied for the CRB program, possibly over the phone.

[16] Canada Recovery Benefits Act (justice.gc.ca)

[51] I accept that the Appellant has ADHD and cognitive decline. I accept that these conditions cause the Appellant anxiety. I can also accept that he is not great with computers and that he was not an expert on the benefit programs offered by the Government of Canada.

[52] However, I do not find his assertion credible that his ADHD makes it hard for him to question authority, as he testified that during the course of his job he would intervene with police should some of the newcomers to Canada he worked with get in trouble with the law. He says he would try and intervene and act as a peacemaker.

[53] I find his involvement in helping clients in trouble with the police fatally damages his assertion his ADHD impacts his ability to question an authority figure as a police officer is a strong authority figure, yet the Appellant testified he willingly and readily intervened between the police and his clients.

[54] So, while I have accepted that the Appellant has ADHD and cognitive decline, which causes him anxiety, and that he is not great with computers and not an expert on the benefit programs offered by the Government of Canada, I find those reasons, considered together, do not give him good cause for his delay.

[55] While the Appellant was not an expert on Government of Canada benefits program, he was still aware there were two agencies administering benefits, the CRA and EI.

[56] The fact he said that when his CERB ended he stuck with benefits through the CRA, thus enrolling into CRB, as he did not think of looking for benefits through a different program, shows he was aware that there were other programs out there; he just chose not to look into them.

[57] I understand the Appellant's anxiety issues about wanting to be in a program. I also note his argument that because of his anxiety once he was on a path, unless directed otherwise he would stay on it. However, I find that neither of these issues would have prevented him from applying for EI as opposed to applying for CRB, or at a minimum, contacting EI to discuss the program, had he wanted to.

[58] I find that at the time CERB ended he was no longer on a path/in a program. Benefits were over and he would have to take proactive steps to enroll in another program. He would not be on a path until he started another program. He was also aware that EI existed and that it was another potential program he could apply for.

[59] Further, when he first lost his job, despite his anxiety, he still attempted to contact both agencies (EI and the CRA) to investigate their programs. I find this shows that his anxiety would not have prevented him from doing so again, instead of just enrolling straight into the CRB.

[60] Also, while I do not find his assertions he has trouble with questioning authority credible, even if I were to accept it, that would be of no help to the Appellant as there was no authority to question. He says that he took the steps to apply for the CRB through the CRA. I see nothing to support that he was told he had to or must apply for the CRB by some authoritative figure. He could have just as easily called to speak to EI about starting a claim once his CERB ended, but instead, he says he once again applied for benefits through the CRA.

[61] It was also not necessary for him to be an expert with computers or an expert on government programs. He could have simply used the phone to call EI if he had so desired. I find that, despite his cognitive decline, the Appellant has shown this is within the Appellant’s abilities, as he says he used the phone constantly to make his CERB reports and he testified he specializes in communication and used the phone in his previous occupation.

[62] He also testified that his job required him to help newcomers in Canada find jobs. He says he would network with business to place people in the jobs that best suited their skills. He also says that his job was all about solving problems. He would deal with issues between employers and workers if they arose, and even says he would intervene with police when people got in trouble with the law. He says that he acted as a peacemaker and advocate for the people he placed.

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[64] I find his testimony regarding his job further supports the Appellant was capable of contacting EI to discuss their program compared to CRB, since being a communication specialist in a job that required contacting people and companies, he was well experienced in speaking to people for information.

[65] I also note the Appellant's testimony that once his accountant told him to contact the Commission and try and get his CRA benefits switched over to EI so he would not have to repay any benefits, he immediately filed an EI application. I find this is more support that the Appellant, despite his ADHD and cognitive decline, would have been able to either apply for EI, or at a minimum contact EI if he had wanted to do so, rather than just applying for the CRB.

He had no idea he should be in a different program

[66] The Appellant says that his father passed away at the end of 2019, just at the start of the COVID pandemic.

[67] He says that his sister handled the estate and hired an accountant in the United States, where his father lived, to handle dealing with the estate. He says his sister kept him up to date on how things were progressing.

[68] The Appellant testified that unfortunately, his father's estate was handled very poorly. As a result of the way his inheritance from his father's estate was handled, much more income was imputed to him than should have been. The Appellant says that it was not until April 2022 that he learned this would be a problem for him.

[69] The Appellant says that in April 2022 his account told him there was a large difference in the income clawback thresholds between the CRA benefits program he had been in and EI benefits. Because of the way his father's estate was handled, which imputed much more income than would normally be expected, and the lower income clawback threshold of the benefits program through the CRA, he would be forced to repay benefits he received from the CRA.

[70] He says his accountant told him to contact the Commission and try and get his benefits switched over to EI, so he could take advantage of the much higher allowable income on the EI program and not have to repay any benefits.

[71] The Appellant says once he was told his he immediately filed his EI claim.

[72] The Appellant says that until he was told by his accountant in April 2022 about his need to be in a different program, he had no idea he should have been in EI, so he could not have known he should have applied for EI any earlier than April 2022.

[73] The Commission says that the Appellant failed to take prompt steps to understand his rights and obligations under the law as he took no steps to contact EI until after his accountant told him he should have applied for EI.

[74] I can accept the Appellant was ignorant of any implications his father's estate may have on his requirement to repay benefits until his accountant told him about the difference in the income clawback threshold. However, ignorance does not provide good cause, since it came about because the Appellant made no effort to understand what impact, if any, his inheritance could have on his benefits.

[75] I find, in September 2020, when the Appellant applied for the CRB, he was aware that his father had passed away and that he would be receiving an inheritance as he says he received inheritance money in January 2020.[17] Also, he says his sister was keeping him up to date on how the estate was being handled.

[76] So, at that time, the Appellant could have spoken to EI to see if there was any difference in that program compared to CRB and how his inheritance might have impacted his benefits.

[77] I would note the Appellant also testified that back in 2020, when he first applied for CERB, he says the CRA agent told him that since he did not earn very much it would

[17] GD03-20

not be a significant issue for him which program he was in, in reference to his question about the programs through EI and the CRA.

[78] I find those comments from the CRA agent shows that the Appellant was alerted to the fact that the amount of his income could be relevant in relation to his benefits, and which agency he chose to receive benefits from. Despite being alerted to this fact, and being in receipt of an inheritance, when the CERB ended he chose not to contact EI to investigate their program and compare how his inheritance might impact his benefits.

[79] I understand his argument that his inheritance should have been handled in a different way that would not have caused so much income to be imputed to him, but he still should have taken steps to determine if applying to EI would have been the better option, instead he chose not to investigate and just continue with a CRB application.

[80] His claim he was ignorant of the different income clawback thresholds between the CRA benefits program and the EI benefit program and how that impact him does not provide good cause, because the ignorance was self induced as he failed to bother to investigate the EI program.

Being misled by the CRA

[81] The Appellant argues that he was misled by the CRA agents he spoke with as none of them explained to him the difference in the income clawback thresholds between EI benefits and benefits through the CRA.

[82] The Appellant also cited numerous cases that support being misled is good cause for a delay in applying for benefits.[18]

[83] I find the Appellant was not misled by anyone.

[84] By his own testimony the Appellant testified that he never spoke to the CRA about his inheritance, tax issues, income clawback thresholds, or if anything differed

[18] GD05-4 to 10 and GD05-25 to 45 and RGD06-16 to 19 Volume 1

between EI benefits and CRA benefits regarding those issues. He also says that he never spoke to EI about any of these issues.

[85] I find that the Appellant cannot be misled by someone about something, if he never spoke to anyone about the thing he is claiming to have been misled about.

[86] I further find that since the Appellant was never misled by anyone, the cases he has cited regarding being misled do not assist him.

So, does the Appellant have good cause?

[87] I find, that in considering all the circumstances raised by the Appellant together, as a whole, he has not proven that he has good cause.

[88] I find the Appellant did not act as a reasonable and prudent person would have in similar circumstances and failed to take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[89] I find, a reasonable and prudent person, in the Appellant's circumstances of being aware there are benefits through both EI and the CRA, being aware he has an inheritance coming in, having been alerted by his conversation with a CRA agent that income appears to matter in choosing a benefit program, would not have simply applied for CRB without making any efforts to investigate EI benefits.

[90] I find a reasonable and prudent person would have contacted EI promptly before enrolling into the CRB program to determine if there was any difference between the benefits programs and which would be more suited to him.

[91] I further find the Appellant has not presented any exceptional circumstances that would excuse his requirement to take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[92] His ADHD and the anxiety it causes, cognitive decline, his lack of computer skills, and lack of knowledge of government programs in detail, are not exceptional circumstances.

[93] I have found the Appellant's ADHD and its associated anxiety and cognitive decline would not prevented him from contacting EI to have enquired about their program as compared to the CRB, as he has testified he is a communications specialist and spoke to businesses and people to gather information as his daily job. He also managed to apply for EI promptly in April 2022 when his accountant suggested he do so, which further supports he could have, at a minimum, contacted EI about how their program compared to the CRB.

[94] Further, I have found he had no need for detailed information on government benefits as he was aware there were two programs one through EI and one through the CRA. That is enough for him to be aware there is another program he could potentially apply for or contact, yet he chose not to do so.

[95] In summary, the Appellant did not act as a reasonable and prudent person would have and did not take reasonable prompt steps to understand his right and obligations under the law. Further, there are no exceptional circumstances to excuse him from his failure to take reasonably prompt steps. This means his claim cannot start at **either** earlier date, because regardless of which date is looked at, he has not shown just cause for the entire period of the delay.

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

Conclusion

[97] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[98] The appeal is dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section