



[TRANSLATION]

Citation: *TL v Canada Employment Insurance Commission*, 2023 SST 650

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

Decision

Appellant: T. L.
Representative: Annie Faucher

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (562617) dated
February 9, 2023 (issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: In person
Hearing date: May 25, 2023
Hearing participant: Appellant
Appellant's representative

Decision date: May 29, 2023
File number: GE-23-689

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he had good cause for the delay in submitting his claimant reports from February 20, 2022, to April 2, 2022. In other words, he has given an explanation that the *Employment Insurance Act* (Act) accepts.

Overview

[3] The Appellant made a renewal claim for sickness benefits on March 4, 2022. On April 12, 2022, he tried to submit his claimant report by phone for the period from February 20, 2022, to February 26, 2022, but he was unsuccessful because he had to submit it by March 19, 2022.

[4] On April 13, 2022, the Appellant asked the Commission to consider his claimant report as having been submitted on February 20, 2022.

[5] For this to happen, the Appellant has to prove that he had good cause for the delay in submitting his claimant reports for the period from February 20, 2022, to April 2, 2022.

[6] The Commission decided that the Appellant hadn't shown good cause for the delay in submitting his claimant reports and refused his request.

[7] The Appellant disagrees. He says that he isn't familiar with the system and that he thought he would receive a letter giving him an access code. When he didn't receive this information, he contacted the Commission by phone.

[8] I have to decide whether the Appellant had a reasonable explanation for the delay in submitting his claimant reports.

Issue

[9] Did the Appellant have a reasonable explanation for the delay in submitting his claimant reports between February 20, 2022, and April 2, 2022?

Analysis

[10] The Appellant wants his claim for Employment Insurance (EI) benefits to be treated as though he had submitted his claimant reports starting February 20, 2022.

[11] For a claimant report to be considered as having been submitted earlier than when it was actually submitted, the Appellant has to prove that he had good cause for the delay.¹ 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.

[12] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.² 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.

[13] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the Act.³ This means that he 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.⁴

¹ See *Paquette v Attorney General of Canada*, 2006 FCA 309 and section 10(5) of the *Employment Insurance Act* (Act).

² See *Attorney General of Canada v Burke*, 2012 FCA 139.

³ See *Attorney General of Canada v Somwaru*, 2010 FCA 336 and *Attorney General of Canada v Kaler*, 2011 FCA 266.

⁴ See *Attorney General of Canada v Somwaru*, 2010 FCA 336 and *Attorney General of Canada v Kaler*, 2011 FCA 266.

[14] A claimant has three weeks to make a claim for benefits for a given week.⁵ They also have to submit a claimant report for every week they want benefits.⁶

[15] On April 12, 2022, the Appellant tried to submit a claimant report by phone for the period from February 20, 2022, to February 26, 2022. The EI system didn't accept his claim because he was late and the deadline had passed.

[16] The next day, the Appellant contacted the Commission by phone. He said that he wasn't familiar with the system and that, after making his claim, he was waiting for the Commission to tell him what the next steps were, but he never received a new access code.

[17] At the hearing, he explained that, when he told a Commission employee that he wasn't familiar with the system, he meant that he wasn't comfortable with this procedure. The Appellant does manual work and hasn't finished high school. But he admits that this isn't his first claim for benefits and that, precisely for this reason, he expected to receive an access code, since that is what happened each time before.

[18] On this point, the Appellant's representative argues that, on the application form, it says that, if a claim for benefits was made in the last 52 weeks, the claim will be reactivated.⁷ Immediately after that follows a section called [translation] "What's the next step?" This section explains that a benefit statement with an access code will be mailed to the claimant. It also says that, if a claimant has already made a claim for benefits in the last month, a new access code won't be mailed. In this case, the claimant will be able to use the access code they had before. But she says this wasn't the Appellant's case.

[19] So, she argues that the Appellant was waiting for his access code, that he acted diligently, and that the delay in contacting the Commission wasn't unreasonable. On the contrary, he tried to find solutions with the means he had. She argues that, even for a

⁵ Section 26(1) of the *Employment Insurance Regulations*.

⁶ Section 49 of the Act.

⁷ GD3-12.

regular claimant, the Commission's explanations on the application form point to small print in the case of a particular claim and that it isn't reasonable to expect someone who doesn't have a lot of education to understand all the explanations.

[20] The Appellant also explained that he waited until April 13, 2022, to contact the Commission because, during that period, the media reported long wait times and problems accessing Service Canada offices because of a high demand for passports. So, the Appellant thought he wasn't getting his access code because the Service Canada office was overwhelmed. He explains that, when he contacted the Commission on April 13, 2022, the employee didn't understand why he hadn't received a new access code. She assured him that he would receive one shortly, but that isn't what happened. The Appellant had to call again, and he also went to the Service Canada office because his claim wasn't being processed.

[21] The Commission says that, even though the Appellant says he wasn't familiar with the system, he has applied for benefits every year since 2013. For this reason, it says that the Appellant knew he could use the same access code as in previous years to complete his claimant reports.

[22] The Commission also argues that he had the option of inquiring before March 19, 2022, by going to the Service Canada office or by calling. For this reason, it says that ignorance of the Act doesn't amount to just cause for his delay. It says that a reasonable person in the same situation would have acted earlier.

[23] But, in this case, I agree with the Appellant about the exceptional circumstances he presented. It is true that, during that period, the wait times at Service Canada offices were long and the media informed the public of this given the high demand for passports. So, it was reasonable for the Appellant to think that it would take longer to process his claim.

[24] Also, the Appellant had applied for benefits in the past and said that, each time, he received a letter by mail indicating his access code for submitting his claimant reports. It seems reasonable to me that a person in similar circumstances would have

assumed they would receive an access code by mail and that the delay was longer this time given the exceptional circumstances of long lines at Service Canada offices. Because of these circumstances, it was reasonable to expect that the processing time for his claim would be a little longer than usual.

[25] This means that the Appellant was four weeks late when he contacted the Commission. Even though the Commission says that the Appellant made no effort to find out his rights and get information, the Appellant was waiting to receive his benefits and he didn't give up his efforts. I accept his explanation that the application form says that an access code will be sent to him.

[26] In *Pirotte*, the Federal Court of Appeal indicated the following:

In such a case, we would be dealing not so much with ignorance of the law as with mistake induced by representations on behalf of the Commission. Such a case might be regarded as good cause for delay because it would be a cause imputable to the Commission rather than to the claimant.⁸

[27] So, the Commission indicated on the application form that it would send an access code to the Appellant. When he called, a Commission employee confirmed that he should have received an access code, and she could not explain why he hadn't received one yet.

[28] I also accept the Appellant's explanation that he thought the processing time for his claim was longer because Service Canada offices were difficult to access during that period. The high volume of traffic at Service Canada offices during that period is an exceptional situation.

[29] The Appellant didn't wait several months; he waited four weeks. And I find that the Appellant has shown that he had a reasonable explanation for submitting his claimant reports late. Because of the exceptional circumstances at Service Canada

⁸ *Pirotte v Unemployment Insurance Commission*, A-108-76. See also a recent decision from the Tribunal's Appeal Division on this issue: *SE v Canada Employment Insurance Commission*, 2022 SST 1015.

during that time, the Appellant waited a reasonable period of four weeks before contacting the Commission.

[30] The Appellant had to submit his claimant report by March 19, 2022. But he didn't receive an access code by mail, as the Commission had told him he would on the application form. He didn't receive any indication that his claim had been accepted.

[31] The Appellant acted as a reasonable person would have acted in similar circumstances.

[32] The Appellant's explanations are reasonable, and I find that he had good cause for the delay in submitting his claimant reports between February 20, 2022, and April 2, 2022.

Conclusion

[33] The Appellant has proven that he had good cause for the delay in submitting his claimant reports throughout the entire period of the delay. This means that his claim can be treated as though it was made earlier.

[34] The appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section