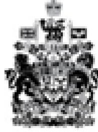

Citation: *WJ v Canada Employment Insurance Commission*, 2023 SST 1124

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: W. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (562115) dated January 30, 2023 (issued by Service Canada)

Tribunal member: Elizabeth Usprich

Type of hearing: Teleconference
Hearing date: June 8, 2023
Hearing participant: Appellant

Decision date: June 19, 2023
File number: GE-23-378

Decision

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

[2] The Appellant hasn't shown that she had good cause for the delay in applying for benefits. 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 June 17, 2022. She is now asking that the application be treated as though it was made earlier, on January 2, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause because, although she would qualify at an earlier date, she didn't show that she acted as a reasonable person in the same situation would have done to satisfy their rights and obligations under the Act.[2] The Commission says that although the Appellant was last paid by her employer on January 2, 2022, she didn't think she could apply for EI benefits. The Commission points out that the Appellant could have contacted Service Canada to find out about her eligibility but didn't.

[6] The Appellant disagrees and says she was waiting for the outcome of an investigation at work. She says she was speaking on a regular basis with her employer's human resources (HR) department and her union. She says because she

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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] See GD4-2.

was an active employee in her employer's computer (SAP) system she thought she couldn't apply for EI benefits.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on January 2, 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:[3]

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 Appellant had good cause. So, I will start with that.

[10] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.[4] 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 Appellant has to show that she acted this way for the entire period of the delay.[5] That period is from the day she wants her application antedated to until the day she actually applied. So, for the Appellant, the period of the delay is from January 2, 2022 to June 17, 2022.

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

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.[6] This means that the Appellant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Appellant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.[7]

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

Appellant's Position

[14] The Appellant says that she had good cause for the delay because there was an active investigation at her workplace. She says her last day of work was on October 24, 2021. She says she was on a paid leave of absence while there was an investigation at work.

[15] The Appellant says she was getting her full pay until January 2, 2022. After that time, she got three small payments that arise from obligations under the collective agreement (for example a one-time vacation credit and a one-time cost of living payment). Aside from these three small payments, received in early 2022, she had no source of income from January 2, 2022 onwards.

Investigation

[16] The Appellant says she was promised that an investigation would happen. She says that as of May 13, 2022, there was still an ongoing investigation.[8] The Appellant believed that once her workplace investigation was complete, she would be able to return to work. The Appellant says there was an investigation into her Supervisor

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[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 Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[8] See GD5-4.

harassing her. However, there also seems to be another investigation about a workplace incident involving the Appellant.

[17] On June 9, 2022, the Appellant alleged that the investigator assigned to her case was not neutral.[9]

[18] She says the issue with the investigator was that she wanted her union present and he refused. She says she then didn't want that investigator to continue on the case.

[19] She says the investigation with that investigator ended on June 9, 2022. She believes it was that day because she thinks that was the day that the employer removed her from their computer SAP system.

[20] Despite being removed from the employer's computer SAP system and despite nothing happening with the investigation since June 2022 the Appellant still believes that things are ongoing.

Termination from Supervisor

[21] The Appellant's supervisor sent the Appellant a termination letter dated April 26, 2022.[10] The letter says it was sent by email and Xpresspost (through Canada Post). Although her supervisor sent her a termination email, the Appellant says that termination has to come through her HR department. This means that she didn't believe the supervisor's termination.

[22] As well, the Appellant says she didn't read the termination email when she received it. She says due to harassment she had been experiencing from the same supervisor she wasn't regularly reading emails from that supervisor. The Appellant agreed that she became aware of the supervisor's April 26, 2022 email in May 2022 when she forwarded it to an investigator on her case.

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[9] See GD5-3 to GD5-4.
[10] See GD3-25.

[23] The Appellant also says she called the employer's HR department frequently and they told her that since she was still "in the system" that she wasn't terminated.

[24] The Appellant still believes that she is an employee with her employer.

Record of Employment

[25] The Appellant says she couldn't print a Record of Employment (ROE) because she was still being shown as active in her employer's computer (SAP) system. She says she thought she couldn't apply for EI without an ROE.

[26] The Appellant says that she was removed from her employer's computer (SAP) around June 14, 2022.[11] She says when she was removed from the SAP system, she then says knew she was terminated. The Appellant says her union is a good union and she has good insurance through her employer. She says her employer is not allowed to terminate anyone while there is an active investigation going on.

Union

[27] The Appellant says that her collective agreement prohibits her from going to EI. The Appellant didn't provide a copy of her collective agreement. She says she asked her union about what she should do. She says the union told her that the collective agreement is the main agreement. She says the union also told her that until there is an arbitration decision that she isn't terminated.

[28] The Appellant says that on January 2, 2022, the union told her that she would be covered. She says she was promised that they were going to pay. She says on a previous occasion, in January and/or February 2020, she was off and also received similar reassurance from her union, that she would get paid for the time she wasn't working. In that case, she did get payment eventually. She believed the same thing would happen this time and she just had to be patient.

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[11] The Appellant also testified that the date was June 9, 2022 that she was removed as she says she took a screenshot of her education with her employer. She says she believed that was the day she was removed from their computer system. I do not see that the difference between June 9, 2022 or June 14, 2022 is important in the current case.

Extenuating Circumstances

[29] The Appellant says from January 2, 2022 to June 19, 2022 there was nothing special that was going on for her. She says she was waiting.

[30] The Appellant feels she followed the law. She says she followed her collective agreement. She says she thought she just had to patiently wait.

Commission's position

[31] The Commission says that the Appellant didn't have good cause because, although the Appellant would qualify at an earlier date, she didn't show that she acted as a reasonable person in the same situation would have done to satisfy themselves of their rights and obligations under the Act.[12] The Commission says although the Appellant's was last paid by her employer on January 2, 2022, she didn't think she could apply for EI benefits because she was an "active" employee in her employer's computer (SAP) system. The Commission points out that the Appellant could have contacted Service Canada to find out about her eligibility but didn't.

[32] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she was relying on her own, unverified, assumptions.

[33] The Appellant believed she was still employed, and didn't have an ROE, and therefore couldn't apply for EI benefits. Yet, she didn't take any steps to contact Service Canada. Had she done so, she would have learned about her rights, and also her obligations, under the Act.

[34] Instead, the Appellant relied on information she was given by her union and her HR department. Yet, the law is clear that unverified information from outside sources does not give a claimant good cause.[13]

[35] The Appellant didn't have good cause since January 2, 2022. At that point, she was no longer receiving a regular income. At that time, she could have contacted

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[12] See GD4-2.
[13] See *Canada (Attorney General)* v *Trinh*, 2010 FCA 335.

Service Canada to find out her rights and obligations under the Act. This would have been prompt steps that a reasonable and prudent person would have taken.

[36] The Appellant says she believed that she was still technically an employee, because she was active in her employer's computer system (SAP). Yet, she never called Service Canada to ask about her rights and obligations when she was no longer going to work and/or being paid.

[37] Even if the Appellant didn't contact Service Canada in January 2022, there is not good cause for not contacting Service Canada in April/May 2022. It was then that her supervisor is alleged to have terminated her through an email/letter[14] that the Appellant acknowledged reading in May 2022. The letter from her supervisor is clear that her employment was being terminated.

[38] The Appellant says she didn't look at her supervisor's email, or read a copy of the letter sent, until approximately May 2022. So, this means, if the Appellant didn't know she was purportedly terminated on April 26, 2022, she certainly knew when she opened the email and forwarded it to the investigator in early May 2022. This means, that, in May 2022, the Appellant could have and should have contacted Service Canada to find out her rights and obligations under the Act.

[39] The Appellant says she relied on her union telling her that she would get paid. The Appellant says her collective agreement doesn't allow her to go to EI to collect benefits. It is unknown what the collective agreement says as the Appellant didn't provide a copy of it. Even if I accept that the collective agreement notes themselves as a first payor, the fact is the Appellant wasn't receiving any money from any sources. This means that the Appellant could have, at minimum, made a call (or visited) Service Canada to find out her rights and obligations under the law. The Appellant hasn't provided a reason as to why she couldn't inquire about her rights and obligations other than she was waiting for her union as they had the "main" agreement. This means that it would have been reasonable and prudent for the Appellant to contact Service Canada

[14] See GD3-25.

to understand her rights and obligations even if the union told her the collective agreement was paramount.

[40] The Appellant also says that the employer's HR department kept telling her she was an active employee. The Appellant says she believed this meant that she couldn't get an ROE and couldn't apply for EI benefits. Yet, the Appellant didn't make any inquiries to find out if that was true. Had she done so, she would have discovered that she didn't need her ROE to apply.[15]

[41] I understand that the Appellant says she was listening to her union and HR. Yet, she testified that she wasn't doing anything special from January 2022 to June 2022. This means that there were no exceptional circumstances. This means that there was nothing preventing the Appellant from making a call to Service Canada. Had the Appellant contacted them, she could have found out promptly what her rights and obligations were under the Act.

[42] I find that the Appellant didn't act as a reasonable and prudent person would have in the same situation. I find that there were no exceptional circumstances that were occurring at the time that would have prevented the Appellant from contacting Service Canada.

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

[15] See the Government of Canada website https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit.html where it says that you can apply for EI benefits even if you don't have your ROE.

Conclusion

[44] The Appellant hasn’t proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[45] The appeal is dismissed.

Elizabeth Usprich

Member, General Division – Employment Insurance Section