



Citation: *JP v Canada Employment Insurance Commission*, 2023 SST 245

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

Decision

Appellant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (571560) dated February 24, 2023
(issued by Service Canada)

Tribunal member: Paula Turtle

Type of hearing: Videoconference

Hearing date: July 5, 2023

Hearing participant: Appellant

Decision date: July 12, 2023

File number: GE-23-876

Decision

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

[2] The Appellant hasn't shown that he 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

[3] I made another decision where I found that the Appellant quit his job. But he had just cause to leave his job when he did. That decision is in File number GE-23-875. This decision only deals with the delay issue.

Overview

[4] The Appellant applied for Employment Insurance (EI) benefits on December 5, 2022. He is now asking that the application be treated as though it was made earlier, on May 8, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[6] The Commission says that the Appellant didn't have good cause because he delayed making a claim. He delayed because he thought he would find work. And he did not contact Service Canada to ask about his rights and responsibilities.

[7] The Appellant disagrees. He says that he is fairly new to Canada and does not understand the EI system. He was hopeful he would find work and would not need to apply for EI.

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

[8] I have to decide if the Appellant has shown good cause for the delay in filing his claim. The Appellant has to show good cause for the entire period of the delay.

Issue

[9] Can the Appellant's application for benefits be treated as though it was made on May 8, 2022? This is called antedating (or, backdating) the application.

Analysis

[10] 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).

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

[12] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.³ 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 has to show that he acted this way for the entire period of the delay.⁴ That period is from the day he wants his application antedated to until the day he actually applied. So, for the Appellant, the period of the delay is from May 8, 2022, to December 5, 2022.

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.

[14] 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 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.⁶

[15] 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.

[16] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. He quit his job on May 6, 2022. Then, he left the country on May 9, 2022 for about two months.

[17] He did not act as a reasonable and prudent person would have acted in similar circumstances. He did not take reasonably prompt steps to understand his obligations. And he has not shown any exceptional circumstances to explain why he did not do these things.

[18] The Appellant came to Canada in December 2017. This is more than four years before he quit his job.

[19] He came as an international student. He completed two post graduate courses. And then, he worked full-time for two employers.

[20] The Appellant's impressive record of education and experience shows me that he has successfully navigated the rules and regulations of the post-secondary education system. And he has worked for at least two employers.

[21] The law says that it is not an excuse to say you didn't know about the EI system and how it works.⁷ A reasonable and prudent person would contact Service Canada to

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 Somwaru*, 2010 FCA 336

find out their rights and obligations. They can do this in person, online or by phone. The Appellant could have easily done these things.

[22] It is commendable that the Appellant looked for work. But it is not good cause for delay. While he was looking for work, the Appellant could have taken the (short) time necessary to find out his rights and obligations. The courts and the Tribunal have said many times that looking for work is not good cause to delay applying for benefits.⁸

[23] The Appellant has not shown any exceptional circumstances that explain his delay.

[24] 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

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

[26] The appeal is dismissed.

Paula Turtle
Member, General Division – Employment Insurance Section

⁸ See *Howard v Canada (Attorney-General)*, 2011 FCA 116