



Citation: *MH v Canada Employment Insurance Commission*, 2023 SST 1278

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

Decision

Appellant: M. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (555025) dated November 30, 2022 (issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Teleconference

Hearing date: May 18, 2023

Hearing participant: Appellant

Decision date: July 4, 2023

File number: GE-22-4290

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

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on June 19, 2021. He is now asking that the application be treated as though it was made earlier, on March 14, 2021. This is called "antedating" a claim. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause because he did not make any effort to find out what his rights to benefits were before applying for benefits on June 19, 2021. The Appellant then asked for antedating on May 5, 2022, nearly one year after his initial claim. The Commission concluded that the Appellant had not shown *good cause* in filing his claim throughout the entire period of the delay.

[6] The Appellant disagrees and says that as he had never applied for EI benefits before, he did not know the procedures and rules. He had received a severance package and he had some employment prospects, so he did not apply right away. He went back to work in September 2021 and then got busy. He did call Service Canada at least three times and was never called back.

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

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on March 14, 2021? This is called antedating (or, backdating) the application.

Analysis

[8] 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).

[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 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.

[11] 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 March 14, 2021, to June 19, 2021, when he applied for benefits. He then actually applied for the antedate on May 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.

[12] 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

[13] 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.

[14] The Appellant says that he had good cause for the delay because he had never applied for EI benefits before and did not know he had to apply within 30 days. He also testified that he received a severance payment and was hoping to find a new job relatively quickly.

[15] The Appellant explained that when he got his first payment in June, he thought that other payments would go back to March. He testified that he called in September and was told that there were several applications ahead of his and it could take several months to hear from the Commission. He testified that the Commission never called him back. He called at least three times and never got a call back. Then he got busy; life took over and he did not call every day.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because he only called the Commission in September 2021, if what the Appellant says is to be believed. The Commission says that the only contact they have from the Appellant is in May 2022. There is no record of any other calls.

[17] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits.

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.

[18] Although the Appellant testified earnestly about his attempts to reach the Commission after he applied for benefits in June 2021, the time it took to do so is over the 30-day limit from the time he lost his employment. In other words, the Appellant was late in applying. The Commission nevertheless processed the claim and made it effective soon after.

[19] Then, it took many months for the Appellant to request an antedate. As the Commission has outlined in its submissions, any person who wishes to get EI benefits must apply as soon as possible after losing their job or be able to demonstrate that there were exceptional circumstances that prevented them to do so.

[20] The Appellant did not prove that he made reasonable efforts to find out what his entitlements are under the Act. He did not enquire about timelines or procedures until many months later. He has not demonstrated that he acted as a reasonable person would in similar circumstances.

[21] While I understand that the Appellant received a severance package and thought it might affect his EI entitlements, there is no record of him trying to get information on whether this would be correct.

[22] While I also understand that the Appellant “got busy” after he got a new job, and “life took over”, these are not exceptional circumstances that justify not attempting to find out about his rights and obligations under the Act.

[23] In this case, the Appellant found work relatively quickly. While I sympathize with the fact that he did not get benefits for a few months after losing his job, he did get some benefits while looking for new employment.

[24] The Commission says that the Appellant would have qualified on the earlier date. I don't need to consider that. 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.

Sylvie Charron

Member, General Division – Employment Insurance Section