



Citation: *DN v Canada Employment Insurance Commission*, 2023 SST 134

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (551512) dated November 9, 2022 (issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: In person

Hearing date: May 17, 2023

Hearing participant: Appellant

Decision date: May 23, 2023

File number: GE-22-3834

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 claiming Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's claim can't be treated as though it was made earlier.

Overview

[3] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.¹ You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.²

[4] The Appellant made her claim after the deadline. She wants it to be treated as though it was made earlier, on April 1, 2022.

[5] For this to happen, the Appellant has to prove that she had good cause for the delay.

[6] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request to treat the claim as though it was made on February 20, 2022. It says that she didn't take any action to verify the information provided to her by the employer or the media. It says that a reasonable person would have investigated their eligibility for benefits, including contacting the Commission.

[7] The Appellant disagrees and says she was busy with family obligations, from the end of February until April 1, 2022. She says she was told by her employer, union, and the media that she wasn't eligible for EI regular benefits. She says that she acted like a reasonable person – she prioritized her obligations as best as she could.

¹ See section 49 of the *Employment Insurance Act* (EI Act).

² See section 26 of the *Employment Insurance Regulations*.

Issue

[8] Did the Appellant have good cause for the delay in claiming EI benefits?

Analysis

[9] The Appellant wants her claim for EI benefits to be treated as though it was made earlier, on April 1, 2022. This is called antedating the claim.

[10] To get a claim antedated, the Appellant has to prove that she had good cause for the delay during the entire period of the delay.³ 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.

[11] And, 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.

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁵ 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.⁶

[13] The Appellant has to show that she acted this way for the entire period of the delay.⁷ That period is from the day she wants her claim antedated to until the day she

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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 Burke*, 2012 FCA 139.

actually made the claim. So, for the Appellant, the period of the delay is from February 20, 2022, or April 1, 2022 onward.

[14] The Appellant says that she had good cause for the delay because she was told by her employer and the media that she wouldn't be eligible for EI regular benefits. She says that she was busy with funeral arrangements and estate matters from the end of February until April 1, 2022. She says that she acted like a reasonable person – she prioritized her obligations as best as she could.

[15] The Commission says that the Appellant hasn't shown good cause for the delay because she didn't take any action to verify the information provided to her by the employer or the media. It says that a reasonable person would have investigated their eligibility for benefits, including contacting the Commission.

[16] The Appellant received 15 weeks of sickness benefits, until February 19, 2022.

[17] The Appellant says that, after her sickness benefits, she didn't return to work. As of February 20, 2022, she says that her employer put her on a leave of absence without pay, as she didn't follow the employer's COVID-19 vaccine policy.

[18] The Appellant says that her uncle passed away. She says that she was busy with funeral arrangements and estate matters until April 1, 2022. She says that she was happy to be on a leave of absence during this time because of her family obligations.

[19] At the end of March 2022, the Appellant says that she spoke with her previous employer about returning to her job. She says that she didn't return to her job. She says that both her employer and her union told her that she wouldn't be eligible for EI regular benefits.

[20] The Appellant says that the media was reporting that workers who lost their job for refusing to follow an employer's vaccine policy wouldn't be eligible for EI regular benefits.

[21] The Appellant says that she started looking for a job as of April 1, 2022. She says that this is why she wants her claim to be treated as though it were made on April 1, 2022, and not at an earlier date.

[22] The Appellant says that she received EI sickness benefits before, on two other occasions. She says that her employer applied for EI sickness benefits on her behalf each time.

[23] The Appellant says that she has never received EI regular benefits before. She says that she thought her employer would assist her in applying for any EI benefits she could be eligible for.

[24] The Appellant says that she applied for Old Age Security (OAS) at a Service Canada office on August 23, 2022. She says that the agent told her that she could apply for EI regular benefits.

[25] The Appellant says that she applied for antedated benefits the next day, on August 24, 2022. In her application, she asked for benefits to start as of February 20, 2022. She says that she spoke with an agent about her claim on August 25, 2022.

[26] The Appellant says that she didn't try to contact the Commission at any time before August 23, 2022.

[27] The Appellant says that she retired from her previous employer in October 2022. She says that she worked one day at a polling station in June 2022. She says that she found a part-time job as of March 1, 2023.

[28] The Appellant says that this was a difficult time, in an unstable environment, where there was a lot of misinformation. She says that the EI rules are outside the scope of her understanding. She says that she felt "discarded" for refusing the vaccine and didn't have anyone to talk to about it.

[29] The Commission says that it renewed the Appellant's claim for benefits effective August 14, 2022. And the Appellant says that she received EI regular benefits until the end of October 2022.

[30] The Court says that the rationale for applying for benefits in a timely manner is to ensure the Commission is not impeded in its ability to monitor the administration of the appellant's benefits. Issues such as availability for work, and the effect of any earnings, which the appellant may have, cannot be dealt with as they occur.⁸

[31] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits, throughout the entire period of delay. The Appellant didn't have the initial intention to apply for EI regular benefits. I rely on her testimony when she said that she was happy to be on a leave of absence and was attending to family obligations, until April 1, 2022.

[32] I find that the Appellant didn't take reasonably prompt steps to find out her rights and obligations, and there were no exceptional circumstances. She testified that the EI rules were outside the scope of her understanding. She relied upon statements of her employer and union, at the end of March 2022. She also relied on media reports to determine her eligibility for benefits. She didn't try to contact the Commission at any time before August 23, 2022, and only learned of her rights through an agent when applying for OAS benefits. I think that a reasonable and prudent person would have taken steps to learn about her rights and responsibilities from April 1, 2022 onward, including contacting the Commission. Instead, the Appellant relied on third-party statements, during a period of time where she acknowledged there was a lot of misinformation.

⁸ See *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Chalk*, 2010 FCA 243.

Conclusion

[33] The Appellant hasn't proven that she had good cause for the delay in making her claim for benefits throughout the entire period of the delay. This means that her claim can't be treated as though it were made earlier.

[34] The appeal is dismissed.

Kristen Thompson
Member, General Division – Employment Insurance Section