



Citation: *NH v Canada Employment Insurance Commission*, 2023 SST 377

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: N. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (530482) dated August 3, 2022 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: In person

Hearing date: February 22, 2023

Hearing participants: Appellant

Decision date: April 2, 2023

File number: GE-22-3144

Decision

[1] I'm **allowing** the Claimant's appeal. This decision explains why.

[2] The Claimant's **exceptional circumstances** explain her delay in claiming Employment Insurance (EI) benefits for the period between **January 9, 2022, and January 29, 2022**. So, her claims can be treated as though she made them earlier.

Overview

[3] This appeal is about the Claimant's **three weeks of unemployment from January 9, 2022, until January 29, 2022**.¹ After she was laid off from her job, she applied for EI benefits. She returned to work on January 31, 2022, until June 6, 2022. There are no other EI claims before me, either before or after her January 2022 claim.

[4] To receive EI regular benefits, you must make a claim for each week that you didn't work and want to receive benefits.² You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. You can do this by phone or online. **There are deadlines** for making your biweekly claims.³

[5] On March 15, 2022, the Claimant tried making her claims for the weeks January 9, 2022, and January 16, 2022. But the online system didn't accept them since they were late. She wants these claims, and her next one, to be treated as though she made them earlier.

[6] For this to happen, the Claimant must prove that she had **good cause for her delay** throughout its duration. She says she had good cause since she didn't know how EI works. She tried calling the Commission but couldn't get through. She says she had personal, financial and health problems and had nowhere to turn for help due to COVID.

[7] The Commission says the Claimant didn't have good cause. It refused to backdate her claims. It says a reasonable and careful person wouldn't have waited to call until June 16, 2022, making multiple and repeat applications instead.

¹ The Commission disentitled her up to May 27, 2022, but she only wanted benefits for the above three weeks.

² See section 49 of the *Employment Insurance Act* (EI Act).

³ See section 26 of the *Employment Insurance Regulations*.

The issue I must decide

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

Post-hearing documents

[9] After the hearing, the Claimant submitted a doctor's letter about her mental health problems. I accepted this document as relevant to her appeal and shared it with the Commission, which didn't find this information relevant to her delay.

Analysis

[10] The Claimant wants her claims for EI benefits to be treated as she made them earlier, by the dates they were due. This is called **antedating (or, backdating)** a claim.

[11] To get her claims backdated, the Claimant must prove that she had **good cause** for her delay throughout its duration.⁴ She must prove this on a balance of probabilities. So, she has to show it's more likely than not that she had good cause for her delay.

[12] To show good cause, the Claimant must prove that she **acted as a reasonable and prudent person would have done** in similar circumstances.⁵ In other words, she has to show that she acted just as reasonably and carefully as anyone else would have done.

[13] The Claimant must also show that she took reasonably prompt steps to understand what she had to do to get her benefits.⁶ This means she must show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, she must show there were **exceptional circumstances** that explain why.⁷

[14] The Claimant must show that she acted this way for the entire period of her delay.⁸ This starts the day she wants her claims backdated to and ends the day she made them.

⁴ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁶ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁷ See *Somwaru*, above; and *Kaler*, above.

⁸ See *Burke*, above.

Were her claims late? How late?

[15] Sometimes, it's hard to determine when a claim was made because claimants get locked out of the reporting system after a period of inactivity. So, they can't submit their reports and make their biweekly claims. Once their first report is late, they'll be locked out for subsequent claims too. They need to call the Commission to correct this.

[16] The evidence shows the Claimant was **first locked out of the online reporting system on March 15, 2022**. She tried again on March 16, 2022. Later that day, she again applied for benefits to cover her lay-off in January 2022. The Commission says this was a renewal claim. On June 15, 2022, it looks like she tried making an online claim for weeks in March 2022. On June 16, 2022, she requested **an antedate to her January 2022 claim**.

[17] The Commission says **her delay ended when she called on June 16, 2022**.

[18] But I interpret the day on which the Claimant first tried to make a claim as the day on which her delay ended. So, I find **her delay ended on March 15, 2022**.

[19] The Commission says her claim in January 2022 was an **initial claim**. So, she had to make her claim reports **within three weeks after the end date** of the period she was reporting. This means for the two-week period starting on January 9, 2022, and **ending** on January 22, 2022, the **reporting deadline was February 12, 2022**. For the week from January 23, 2022, to January 29, 2022, the deadline was **February 19, 2022**.

[20] So, the Claimant's first report was **31 days** late. Her second claim was **24 days** late. These are not long delays. But the law says it's not the length of the delay that counts but the reason for it.

What was the Claimant's reason for her delay? Did it show good cause?

[21] **The Claimant says she had good cause**. She says she didn't understand how EI works. She was confused since she hadn't yet got a response to her claim for November 2020 to July 2021. She says she'd always done phone reporting before. She tried calling the Commission when her online reports failed but couldn't get through. She says she was battling personal and health problems and had nowhere to turn for help due to COVID-19.

[22] **The Commission says the Claimant didn't have good cause** since a reasonable person in her situation would have acted earlier to find out how to claim her benefits. It dismissed the Claimant's mental health issues as irrelevant to her delay in making her claims. It says she would have had enough good days to be able to call for assistance.

[23] I agree with the Commission that the Claimant didn't take proper steps to find out how to file on time and didn't follow up promptly when her online attempts failed. So, she didn't act as a reasonable and careful person would have done in her situation.

[24] **But I find that her circumstances were exceptional.** Her doctor's letter proves this. I find that I can't dismiss her documented mental health issues as irrelevant to her delay since they appear to explain, at least in part, the haphazard way that she acted.

[25] So, the Claimant's exceptional circumstances excuse her from acting as a reasonable and careful person would have done.

[26] This means that the Claimant meets the good cause test for her delay in making her claims throughout the weeks of her delay.

[27] The Claimant hoped this appeal would cover all pending applications she's made or wanted to make, but she'll need to contact the Commission to follow up on any other claims. My decision only applies to the three weeks of her claim from **January 9, 2022, to January 29, 2022**

Conclusion

[28] The Claimant's **benefit claims for the period from January 9, 2022, to January 29, 2022, can be treated as though she made them earlier.** So, they can be backdated to the dates she should have made them.

[29] This explains why I'm **allowing** the Claimant's appeal.

Lilian Klein
Member, General Division – Employment Insurance Section