



[TRANSLATION]

Citation: *ND v Canada Employment Insurance Commission*, 2023 SST 1879

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (584898) dated May 3, 2023
(issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Teleconference

Hearing date: August 9, 2023

Hearing participant: Appellant

Decision date: August 10, 2023

File number: GE-23-1503

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he had good cause for the delay in submitting his claimant reports between September 1, 2022, and January 10, 2023. In other words, he has given an explanation that the *Employment Insurance Act* (Act) accepts.

Overview

[3] The Appellant applied for benefits on August 11, 2022. On January 10, 2023, he tried to submit his claimant report over the phone for the period starting July 24, 2022, but that attempt failed because he had until September 1, 2022, to do so.

[4] On January 10, 2023, the Appellant asked the Canada Employment Insurance Commission (Commission) to consider his claimant report as having been submitted on July 24, 2022.

[5] For this to happen, the Appellant has to show that he had good cause for the delay in submitting his claimant reports for the period from September 1, 2022, to January 10, 2023.

[6] On May 3, 2023, the Commission decided that the Appellant hadn't shown good cause for the delay in submitting his claimant reports by the deadline and refused his request.

[7] The Appellant disagrees. He says that he was waiting to receive a letter telling him that his claim for benefits had been processed before making his claimant report and that he waited four months to get benefits. He argues that a previous claim for benefits took a long time to process, that he called Service Canada several times, and that a Commission employee asked him to be patient. He argues that this is what he did this time.

[8] I have to decide whether the Appellant had a reasonable explanation for the delay in submitting his claimant report by the deadline.

Issue

[9] Did the Appellant have a reasonable explanation for the delay in submitting his claimant reports between September 1, 2022, and January 10, 2023?

Analysis

[10] The Appellant wants his claim for Employment Insurance (EI) benefits to be treated as though he had made his claimant reports as of July 24, 2022.

[11] For a claimant report to be considered as having been submitted earlier than when it was actually submitted, the Appellant has to prove that he had good cause for the delay.¹ 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.

[12] In addition, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.² 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 also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the Act.³ This means that he 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 has to show that there were exceptional circumstances that explain why he didn't do so.⁴

¹ See *Paquette v Attorney General of Canada*, 2006 FCA 309; and section 10(5) of the *Employment Insurance Act* (Act).

² See *Attorney General of Canada v Burke*, 2012 FCA 139.

³ See *Attorney General of Canada v Somwaru*, 2010 FCA 336; and *Attorney General of Canada v Kaler*, 2011 FCA 266.

⁴ See *Attorney General of Canada v Somwaru*, 2010 FCA 336; and *Attorney General of Canada v Kaler*, 2011 FCA 266.

[14] A claimant has three weeks to make a claim for benefits for a given week.⁵ They also have to submit a claimant report for every week they want benefits.⁶

[15] The Appellant says that he temporarily stopped working because of delays in the delivery of materials and that these delays were because of the COVID-19 pandemic. He temporarily stopped working during July, November, and December 2022.

[16] On January 10, 2023, the Appellant tried to submit a claimant report for the period starting July 24, 2022. The EI system didn't accept his claim because he was late and the deadline had passed.

[17] The Appellant called the Commission. He said that he was waiting for a letter to be able to make his claimant reports and that he was waiting for his file to be processed. Based on his previous experience, he thought this was a normal time frame for processing a file.

[18] At the hearing, he said that, with a previous claim for benefits, there was a processing time of about four or five months. He said that, since the delay was long, he had tried to contact the Commission several times, but an employee allegedly told him to be patient while his file was being processed. For this reason, he said that he was patient and waited for a letter like the last time.

[19] The Appellant therefore argues that he never received the letter telling him his access code or that he had to make his claimant reports. He checked whether his file was available online four months later. Since his file was blocked, he contacted the Commission to check the status of his file.

[20] On this point, he doesn't understand why the Commission is criticizing him for having made an error by not contacting it when an employee had previously told him to be patient while his claim was being processed. The Appellant says that he was patient

⁵ See section 50(4) of the Act and section 26(1) of the *Employment Insurance Regulations*.

⁶ See section 49 of the Act.

and that it is unfair for the Commission to blame him for this. He feels that whatever he does isn't considered to be the right thing.

[21] The Commission says that the Appellant made previous claims for benefits. For this reason, it says that the Appellant knew that he could use the same access code to complete his claimant reports.

[22] In addition, the Commission says that he had the option of inquiring before January 10, 2023, which he didn't do. For this reason, it argues that ignorance of the Act doesn't amount to good cause for the delay. It says that a reasonable person in the same situation would have acted earlier.

[23] I understand the Commission's explanations, but in this case, I agree with the Appellant about his exceptional circumstances. The Appellant applied for benefits during the COVID-19 pandemic, and it is true that, during that period, processing times could be longer. So, I accept his explanations when he says that he contacted a Commission employee several times to find out when the payment of benefits would start and that he was told to be patient. About four months after he made his claim for benefits, the Appellant had received a letter telling him that his claim was accepted and that he could make his claimant reports.

[24] In this situation, it was then reasonable for the Appellant to think that he would receive a letter telling him that his claim was accepted before starting to make his claimant reports. Also, given that his previous claim for benefits had been processed within four months, he didn't worry about the delay this time. As he explains, he waited patiently.

[25] It is likely that the processing time for his previous claim was longer due to the exceptional circumstances related to the COVID-19 pandemic. However, as he explained, in addition to the longer period, he was waiting to receive a letter telling him that his claim was accepted and that he had to submit his claimant reports.

[26] The Commission is correct when it says that, if he had read the information on his claim for benefits, he would have understood that he had to use the previous code given to him.

[27] However, given the circumstances of this case, I am of the view that it is more likely than not that a person in the same situation would have expected their claim to be processed in much the same time frame and in much the same way as their previous claim. However, that isn't what happened. The Appellant never received a letter, and he didn't call the Commission until January 10, 2023, since he was told to be patient the last time.

[28] Because of these circumstances, the Appellant has reason to believe that he is being unfairly accused of not acting properly. The Appellant did what a Commission employee had told him to do and contacted the Commission once the presumed deadline had been met.

[29] So, I accept the Appellant's explanations. Because of the circumstances of his previous file, it was reasonable for the Appellant to think that he would receive a letter and that it would take about four months to process his claim.

[30] The Appellant had to submit his claimant report by September 1, 2022. However, he didn't receive any indication that his claim was accepted, and this is what he was waiting for to submit his first claimant report.

[31] I find that the Appellant acted as a reasonable person would have acted in similar circumstances.

[32] Since he is claiming benefits for targeted periods, the Appellant will have to submit his claimant reports for the period from July 24, 2022, to January 10, 2023.

[33] The Appellant's explanations are reasonable, and I find that he had good cause for the delay in submitting his claimant reports between September 1, 2022, and January 10, 2023.

Conclusion

[34] The Appellant has shown that he had good cause for the delay in submitting his claimant reports throughout the entire period of the delay. This means that his claim can be treated as though it was made earlier.

[35] The appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section