



Citation: *MN v Canada Employment Insurance Commission*, 2023 SST 1386

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

Decision

Appellant: M. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (548092) dated October 3, 2022
(issued by Service Canada)

Tribunal member: Barbara Hicks

Type of hearing: Teleconference

Hearing date: August 1, 2023

Hearing participants: Appellant
Appellant's Support Person

Decision date: August 20, 2023

File number: GE-22-3928

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown that she had good cause for the delay in applying for benefits. In other words, the Appellant has given an explanation that the law accepts. This means that the Appellant's application can be treated as though it was made earlier.¹

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on May 4, 2022. She is now asking that the application be treated as though it was made earlier, on February 7, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause because she didn't prove that she had good cause to apply late for benefits. She didn't act as a reasonable and prudent person in her circumstances would have.

[6] The Appellant disagrees and says that there were several reasons why she applied late for benefits, including emotional upset at having lost her job, confusion about whether she would qualify for benefits, lack of familiarity with timelines and procedures and logistical challenges reaching her employer or anyone at Service Canada.

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

Preliminary Matters

Multiple Appeals

[7] This appeal is related to another appeal involving the same parties, numbered GD-22-3927, which was heard on the same date. A separate decision will be issued for the other appeal.

Support Person

[8] The Social Security Tribunal Rules of Procedure permit a party to have a Support Person assist them during a hearing.² The Appellant requested that her friend, A. M., be allowed to assist her during the hearing by organizing her documents, taking notes and giving emotional support. I granted the request.

Case Conference

[9] A case conference was held on April 26, 2023 to discuss a number of matters, to clarify the issues under appeal and review the legal tests that will apply. The Appellant indicated that she had additional documents she would like to file, and I gave her until May 17, 2023 to do so. The Appellant also changed her mind about the form of hearing that she would like to have. She indicated that she wanted to have a hearing by teleconference instead of in-person.

Issue

[10] Can the Appellant's application for benefits be treated as though it was made on February 7, 2022? This is called antedating (or, backdating) the application.

Analysis

[11] To get your application for benefits antedated, you must prove these two things:³

² See Rule 15(1).

³ See section 10(4) of the EI Act.

- 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).

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

[13] To show good cause, the Appellant must prove that she acted as a reasonable and prudent person would have acted in similar circumstances.⁴ In other words, she must show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[14] The Appellant must show that she acted this way for the entire period of the delay.⁵ That period is from the day she wants her application antedated to until the day she applied. So, for the Appellant, the period of the delay is from February 7, 2022 to May 4, 2022.

[15] The Appellant also must show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁶ 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.⁷

[16] The Appellant must prove this on a balance of probabilities. This means that she must show that it is more likely than not that she had good cause for the delay.

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

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

[17] The Appellant says that she had good cause for the delay for the following reasons, which were part of her written materials and about which she testified at the hearing:

- When she first lost her job, she was very stressed and upset. She couldn't sleep. She says she felt like she was "thrown out like a piece of trash" and that losing her job "broke her to pieces." She couldn't function and she couldn't think straight. She loved her job and was devastated to lose it. She says she received many awards from her employer over the years and that she had been given the "People's Choice Award" by her co-workers because they loved her so much. She saw her doctor about how she was feeling at this time and the doctor said she needed to relax and take some time off. The doctor didn't prescribe anything or diagnose her with any condition, but she describes that she was not functioning as usual and could not attend to making an application for EI benefits at that time. She says she was just trying to survive, talking to friends and her spiritual leader for support. She really hoped to return to work.
- She never received any separation papers from her employer, which she thought she needed before making an application for EI benefits. She repeatedly called the HR department but, since everyone was working remotely at that time, no one was there to answer the phone. No one returned her phone messages. She also visited the HR department in person several times to obtain the separation papers. She was very frustrated to later find out that she didn't need to get these papers herself since her employer had already filed them electronically with Service Canada in February.
- She admits she is not good with technology. She was not able to apply for EI benefits online. She visited her local Service Canada office several times to try to talk to someone. The Service Canada office was swamped. She had to wait outside of the office for hours in a long line up. Only a few people were allowed inside at a time. She doesn't remember the specific dates but says it was cold outside. She says it was very frustrating to wait for hours in the hopes of talking

to someone who could help her. Most days, she never made it inside the building.

- Her union representatives gave her conflicting information. At times, they told her to wait, that there was no rush. At other times they said that she wasn't eligible for EI benefits so she shouldn't apply. She was aware that some of her co-workers applied for EI benefits and were denied, so this seemed to support what the union had told her. Finally, the union representatives assured her that she and the others would be getting their jobs back. That never happened, and in hindsight, she says that her union just said things to make her feel better. She said that the union never provided any real guidance.
- She is a senior citizen and a widower. She came to Canada from Bosnia and English is not her first language. She does not deal well with government forms or doing things online. She often has to rely on friends for support with these tasks.
- The news reports were confusing. There didn't seem to be any reliable reporting that she could trust. The politicians seemed to be saying different things.
- The only other time that the Appellant received EI benefits was many years ago following a car accident. She was not familiar with the current policies and procedures for making a claim. She didn't realize that there was a specific deadline to apply for EI benefits. She never intended to miss the deadline.
- Once she was feeling better, she decided to apply for benefits. She went to the Service Canada office again and waited in line for hours. When she finally got inside, she found out that her employer had submitted her Record of Employment electronically already and she didn't have to keep trying to get it herself. That is when she made the application for benefits.

[18] The Commission says that the Appellant hasn't shown good cause for the delay because she did not act as a reasonable and prudent person would have in similar circumstances.

[19] As mentioned, if the Appellant didn't act as a reasonable and prudent person would have in similar circumstances, then she must show that there were exceptional circumstances that explain why she didn't do so.

[20] I find that the Appellant has proven that she had good cause for the delay in applying for benefits. She encountered exceptional circumstances between February and May that explain why she applied late. The exceptional circumstances were:

- the emotional strain she was under after losing her long-time job that she loved
- her inability to speak with anyone at her employer's HR department to obtain her separation papers
- her inability to meet with a Service Canada representative in person, despite several attempts to do so
- the confusing and inconsistent information she was getting from her union representatives and the lack of clear information in the media about this issue

[21] It is clear to me that the Appellant tried her very best but encountered exceptional circumstances along the way that prevented her from applying sooner.

[22] Initially, she was dealing with the emotional fall-out from losing her job.

[23] After that, she encountered other barriers that caused her delay, including challenges in obtaining her separation paperwork and delays in getting into a Service Canada office due to long line ups.

[24] If the Appellant had been more comfortable with technology, perhaps she would have been able to apply online in a timely manner. The Appellant's story about not

feeling comfortable doing things on-line is supported by the evidence that she always did things in-person at the local Service Canada office. All of the Appellant's materials that were filed in this appeal were hand-delivered to the Service Canada office.

[25] The Appellant testified in an authentic manner, at times getting emotional. I found her to be credible.

[26] In this case, the delay was relatively short, being about three months.

[27] Lastly, it appears the Appellant qualified for benefits on the earlier day. The ROE indicates 1,827 total insurable hours.⁸ The Commission confirmed that the Appellant qualified for benefits with a commencement date of February 20, 2022.⁹ I accept this as fact.

Conclusion

[28] The appeal is allowed. The Appellant has proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay. This means her application can be treated as though it was made earlier.

Barbara Hicks

Member, General Division – Employment Insurance Section

⁸ See GD3-19 in File GE-22-3927.

⁹ See GD-14,