



Citation: *AF v Canada Employment Insurance Commission*, 2023 SST 1732

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

Decision

Appellant: A. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (579389) dated April 18, 2023
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: August 1, 2023

Hearing participant: Appellant

Decision date: August 9, 2023

File number: GE-23-1270

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

[3] The Appellant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[4] The Appellant applied for Employment Insurance (EI) benefits on January 11, 2023. He is now asking that the application be treated as though it was made earlier, on November 13, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[6] The Commission says the Appellant didn't have good cause because he didn't act like a reasonable person in his situation would have. It says a reasonable person would have verified his rights and obligations under the *Employment Insurance Act* (Act).

[7] The Appellant disagrees and says he was devastated after losing his job and his mental well-being prevented him from any rational action. He says it wasn't until January 2023 that he started to do research on government assistance.

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

[8] Because of its decision to refuse the Appellant's request to treat his application as though it was made earlier, the Commission decided that he hadn't worked enough hours to qualify for EI benefits.²

[9] I have to decide whether the Appellant has worked enough hours to qualify for EI benefits.

[10] The Commission says the Appellant doesn't have enough hours because he needs 700 hours but has only 648.

[11] The Appellant disagrees and says that he had more than enough hours to qualify for benefits when he lost his job.

Issues

[12] Can the Appellant's application for benefits be treated as though it was made on November 13, 2022? This is called antedating (or, backdating) the application.

[13] Has the Appellant worked enough hours to qualify for EI benefits?

Analysis

Antedate

– **Has the Appellant shown good cause during the entire period of the delay?**

[14] To get your application for benefits antedated, you have to prove these two things:³

- 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.

² Section 7 of the Employment Insurance Act (Act) says that the hours worked have to be "hours of insurable employment". In this decision, when I use "hours", I am referring to "hours of insurable employment".

³ See section 10(4) of the EI Act.

- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[16] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ 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.

[17] The Appellant has to show that he acted this way for the entire period of the delay.⁵ 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 November 13, 2022, to January 11, 2023.

[18] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁶ 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.⁷

[19] 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.

[20] The Appellant says he had good cause for the delay because he was in an extremely fragile mental state after he lost his job, and he could not comprehend that there was assistance he might be able to access.

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.

[21] The Commission says the Appellant hasn't shown good cause for the delay because he had an obligation to verify his rights and obligations under the Act.

[22] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. I find that he didn't take reasonably prompt steps to understand his rights and obligations about applying for EI benefits. And I don't find that his mental state is an exceptional circumstance that excuses him from doing so.

[23] The Appellant lost his job on November 16, 2022. But he didn't apply for EI benefits until January 11, 2023. The Commission denied his application for benefits because he didn't have enough insurable hours to qualify. So, the Appellant the asked the Commission to backdate his application to November 13, 2022.

[24] The Appellant told the Commission that he was wrongfully dismissed from his job. The notes from the Commission's reconsideration file say the Appellant said he was more focused on pursuing legal action than applying for benefits.

[25] In his notice of appeal, the Appellant said his entire focus for November and December 2022 was on a lawsuit against the employer who he says had wrongfully dismissed him. This is consistent with what the Commission's file says. The Appellant also said pursuing the lawsuit was draining, emotionally and financially.

[26] The Appellant testified that he was devastated and angry when he was wrongfully dismissed from his job. He said he started researching lawyers, and this put him into a massive depression.

[27] I asked the Appellant about his depression, including how it manifested, and what he was and wasn't able to do. He testified that he was very angry when he was dismissed form his job. He added that he was hyper-focused on data gathering. The Appellant said that once he realized how much finding and hiring a lawyer would cost, he shut down for about a month.

[28] The Appellant testified that he spoke to an online therapist about his depression starting in January 2023. He said the therapist created an exit plan for him and showed him that there was a path out of the depression.

[29] I found the Appellant's testimony to be candid and honest. I don't doubt that he was angry when he lost his job and that looking into pursuing a lawsuit against his former employer led to a period of depression. But I find that at the same time the Appellant was looking into getting a lawyer, he had the opportunity to look into what his entitlements were and what he had to do to get EI benefits.

[30] The Appellant testified about getting the Canada Emergency Response Benefit (CERB). He said when the CERB ended, he didn't research EI benefits, he was just told to apply. He stated he was generally aware of the EI program. But he added that he had never been fired before, so he didn't give EI benefits a second thought. The Appellant testified that he didn't know the rules.

[31] The Commission submitted that a claimant who lost their job and needed financial assistance would have taken steps to ask what they had to do to make a claim for benefits. I asked the Appellant about this. He said his focus was on trying to get his job back and he was putting all his efforts into that.

[32] I understand the Appellant's desire to get his job back. But I agree with the Commission. I find that doing research to get a lawyer to help him get his job back supports that he could have made some effort to find out about EI benefits. I find this is especially so because the Appellant had been told about applying for EI benefits when his CERB ended.

[33] Concerning his depression, I don't find from the Appellant's evidence that this was something that had an immediate debilitating effect on him. This is because the Appellant said he was focused on pursuing a lawsuit against his employer in November and December 2022.

[34] I acknowledge that the Appellant's depression progressed to the point where he was going to bed early and sleeping late, according to his testimony. But it doesn't

appear to have prevented the Appellant from doing the research he did. So, I don't find his depression is an exceptional circumstance that excuses the Appellant doing similar research to find out what he needed to do to get EI benefits.

[35] Based on the above, I don't find that the Appellant has shown good cause for the entire period of the delay in applying for EI benefits.

[36] I don't need to consider whether the Appellant qualified for benefits on the earlier day. If the Appellant doesn't have good cause, his application can't be treated as though it was made earlier.

Insurable hours

– How to qualify for benefits

[37] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.⁸ 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 qualifies for benefits.

[38] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."⁹ The number of hours depends on the unemployment rate in the region where you live.¹⁰

– The Appellant's qualifying period

[39] As noted above, the hours counted are the ones that the Appellant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.

[40] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

⁸ See section 48 of the Act.

⁹ See section 7 of the Act.

¹⁰ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

[41] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from January 9, 2022, to January 7, 2023.

[42] The Appellant agrees that his qualifying period is the usual 52 weeks. But he disagrees with the Commission on the dates. He says his qualifying period should be different based on his request to antedate his application for benefits.

[43] Since I have found that the Appellant's application for benefits can't be backdated to November 13, 2022, I find that his qualifying period is the 52-week period from January 9, 2022, to January 7, 2023.

– **The hours the Appellant worked**

[44] The Commission decided that the Appellant had worked 648 hours during his qualifying period. The Appellant disputed this, saying that he would have enough hours if his application for benefits were treated as though it was made on November 13, 2022.

[45] The Appellant's employer issued an ROE that shows he worked 787 insurable hours up to November 15, 2022. But some of these hours fall outside the Appellant's qualifying period. This is because the hours reported on the ROE are from the last 27 bi-weekly pay periods the Appellant worked for the employer.

[46] I have no evidence to dispute the Commission's evidence that the Appellant worked 648 hours in his qualifying period. So, I accept this as fact.

– **So, has the Appellant worked enough hours to qualify for EI benefits?**

[47] I find that the Appellant hasn't proven that he has enough hours to qualify for benefits because he needs 700 hours but has worked 648 hours. Again, this is because I have found that his application for benefits can't be treated as though it was made on November 13, 2022.

Conclusion

[48] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[49] The Appellant doesn't have enough hours to qualify for benefits.

[50] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section