Citation: *TT v Canada Employment Insurance Commission*, 2023 SST 1477

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	T. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (570464) dated February 15, 2023 (issued by Service Canada)

Tribunal member:	Greg Skelly
Type of hearing:	Videoconference
Hearing date:	July 24, 2023
Hearing participants:	Appellant
Decision date:	July 31, 2023
File number:	GE-23-640

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant. However, the Employment Insurance Commission (Commission) has conceded that his benefits should have started a week earlier, and I agree with the Commission.

[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]

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on October 6, 2022. He is now asking that the application be treated as though it was made earlier, on June 19, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request. The Commission says that the Appellant doesn't have good cause because after previous sickness benefits were exhausted, the Appellant should have inquired with Service Canada to see what benefits were available to him.[2]

[6] The Commission also says that the Appellant had three previous EI claims for regular benefits and was aware of the process to apply.[3] And that the Appellant did not act as a "reasonable person" in this situation by verifying his rights and obligations under the EI Act.

---

[1] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.
[2] See GD4-3.
[3] See GD4-2.

[7] The Appellant disagrees and says that he was unaware that he could switch from sick leave benefits to regular benefits and that the Service Canada website does not explain that. He also said that his employer did not change his Record of Employment (ROE) from sick leave to laid off.[4]

Issue

[8] Can the Appellant's application for benefits be treated as though it was made on June 19, 2022? This is called antedating (or, backdating) the application.

Analysis

[9] To get your application for benefits antedated, you have to prove these two things:[5]

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).

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

[11] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[6] 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.

---

[4] See GD2-5.
[5] See section 10(4) of the EI Act.
[6] See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[12] The Appellant has to show that he acted this way for the entire period of the delay.[7] 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 June 19, 2022 to October 6, 2022.

[13] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[8] 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 hee must show that there were exceptional circumstances that explain why he didn't do so.[9]

[14] 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.

[15] The Appellant says that he had good cause for the delay because he was unaware that he could switch from sick leave benefits to regular benefits and the Service Canada website makes no mention of this. Plus, his employer did not change his Record of Employment from sick leave to lay off.[10]

[16] The Appellant was on EI sick leave benefits that were exhausted on March 5, 2022.[11] In testimony the Appellant said that he was still sick and did not recover until the end of May 2022 and his doctor did not give him written clearance to return to work until June 19, 2022.

[17] Once he was medically cleared the Appellant tried to go back to his job on June 19, 2022, but found out that his position was no longer available and that he had been laid off.[12]

---

[7] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[8] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[9] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[10] See GD2-5.
[11] See GD3-15.
[12] See GD3-15 and GD3-17.

[18] At the hearing the Appellant told me that he tried multiple times to have his employment status confirmed with his employer and that it was not until sometime in August 2022, where they told him that his duties had been absorbed by other staff and he was not needed to return to work.

[19] The Appellant told the Commission that he knew that he could only be on one type of claim at a time, and he assumed that it meant the entire length of the claim. And he told the Commission that he didn't talk to anyone at Service Canada about this until a friend alerted him to the possibility of switching benefits.[13]

[20] In testimony however, the Appellant confirmed that his sickness benefit claim for 15 weeks had been exhausted on March 15, 2022, and that he knew that he would need to start a new claim for regular benefits.

[21] The Appellant says that his Record of Employment was not changed to layoff, and at the hearing he said he didn't contact his employer or Service Canada about this until he applied for EI regular benefits in October 2022.[14]

[22] The Appellant says that the Service Canada website provides no information on switching benefits so he assumed that he could not.[15]

[23] The Appellant says that he did not check with Service Canada to see if he could switch from sick leave benefits to regular benefits.[16]

[24] At the hearing, the Appellant said that at the time that he was laid off on June 19, 2022, he was receiving no sickness benefits as they had been exhausted.

[25] In testimony, the Appellant said that there were no exceptional circumstances going on in his life during the period of delay.

---

[13] See GD3-31.
[14] See GD3-31.
[15] See GD2-5 and GD3-21.
[16] See GD3-21

[26] The Commission says that the Appellant hasn't shown good cause for the delay because he didn't act as a reasonable and prudent person would in similar circumstances. They say that he should not have assumed that he was only payable sickness benefits and there was nothing preventing the Appellant from filing for regular benefits on the earlier date.[17]

[27] The Commission says that a reasonable person in a similar situation would satisfy their rights and obligations under the *Employment Insurance Act* and that the Appellant did not act in a reasonable way.[18]

[28] The Commission also says that the Appellant had three previous claims for regular benefits and was aware that regular benefits could be paid.[19]

[29] The Commission says that the Appellant can't treat general information on their website to apply to the Appellant's specific circumstance and that he should have contacted Service Canada to see what benefits may be available to him.[20]

[30] The Commission also says that the Appellant could have checked other websites for information about switching benefits and then verified with a Service Canada representative.[21] And that ignorance of the law is no defense.[22]

[31] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because a reasonable and prudent person would have contacted Service Canada to confirm what benefits may be available to him.

[32] The Federal Court of Appeal has established that a reasonable person is expected to take reasonably prompt steps to determine their entitlements to benefits, and ignorance of the law and good faith have been held not to amount to good cause.[23]

---

[17] See GD4-3.
[18] See GD4-2.
[19] See GD4-2.
[20] See GD4-2
[21] See GD3-21.
[22] See GD4-3.
[23] See *Kamgar* v *Canada (Attorney General)*, 2013 FCA 157.

[33] I find that the Appellant did not take reasonably prompt steps to inquire about his rights and obligations under the law as he made no efforts to contact the Commission for the period between June 19, 2022, and October 6, 2022.

[34] I find it is not sufficient to merely check the Service Canada website as that information cannot be expected to address every situation for every circumstance. The courts have told us that a reasonable person's duty to inform themselves about their rights is not satisfied by only going on the Service Canada website.[24]

[35] I find that a reasonable and prudent person who had previous experience with EI would not make assumptions about eligibility for benefits but would inquire with Service Canada directly to determine if there were any benefits that were available to him.

[36] I find the fact that the Appellant's employer did not issue a new Record of Employment is not good cause for his delay. The Appellant confirmed in testimony that he took no steps to have the ROE amended either with his employer or Service Canada until some months after his employer indicated that they did not need him back to work.

[37] Courts have told us that waiting for an amended Record of Employment is not good cause for delaying applying for benefits.[25]

[38] So, I find that the Appellant did not have good cause for his delay in filing his claim as he did not act as a reasonable and prudent person would have in his situation; he did not take reasonably prompt steps to understand his rights and obligations under the law. Instead, he made assumptions without any effort to see what benefits he may be entitled to.

[39] I further find that there are no exceptional circumstances that would excuse him from taking reasonably prompt steps to understand his rights and obligations under the law.

---

[24] See *Mauchel v Canada (Attorney General)* 2012 FCA 202.
[25] See *Canada (Attorney General) v Chan* A-185-95

[40] 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.

Conclusion

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

[42] However as mentioned above, due to an error in applying the backdate policy the claim for regular benefits should have been renewed as of September 25, 2022.

[43] So, the Commission is required to pay the Appellant an additional week of benefits for the week of September 25, 2022.

[44] The appeal is dismissed.

Greg Skelly
Member, General Division – Employment Insurance Section