[TRANSLATION]

Citation: *RM v Canada Employment Insurance Commission*, 2023 SST 1936

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R. M.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (595856) dated July 12, 2023 (issued by Service Canada)

Tribunal member:	Guillaume Brien
Type of hearing:	In person
Hearing date:	November 21, 2023
Hearing participant:	Appellant
Decision date:	November 22, 2023
File number:	GE-23-2149

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that she 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 March 10, 2023. She is now asking that the application be treated as though it was made earlier, on August 14, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] I have to 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 hasn't shown that she acted as a reasonable person in the same situation would have acted to meet her obligations and assert her rights under the *Employment Insurance Act* (Act). Among other things, the Appellant waited until late February 2023 to contact the Commission to find out about her rights and obligations.

[6] The Appellant disagrees and says that she did everything reasonable in her situation. She thinks the Commission is looking for any reason to deny her benefits.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on August 14, 2022? This is called antedating (or, backdating) the application.

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

Analysis

[8] To get your application for benefits antedated, you have to prove these two things:[2]

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).

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

[10] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.[3] In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[11] The Appellant has to show that she acted this way for the entire period of the delay.[4] That period is from the day she wants her application antedated to until the day she actually applied. So, for the Appellant, the period of the delay is from August 14, 2022, to March 22, 2023. Her delay is about 221 days. So, this delay of more than six (6) months is substantial.

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.[5] 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

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[2] See section 10(4) of the Act.
[3] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[4] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[5] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

she must show that there were exceptional circumstances that explain why she didn't do so.[6]

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

[14] The Appellant says that she had good cause for the delay because she didn't know she could apply for sickness benefits. She says that she didn't learn about EI sickness benefits until late February 2023.

[15] After reviewing the file and listening to the Appellant at the hearing, her file can be summarized as follows:

a) The Appellant already received EI regular benefits in 2014. So, she knew they existed and how claims for EI regular benefits worked.

b) She became depressed in June 2022. She stopped working due to illness on or around June 24, 2022. She gradually went back to work on September 19, 2022 (two days per week), and she eventually returned full-time the week of October 17, 2022.

c) From June 24, 2022, to August 15, 2022, the Appellant had access to sickness benefits through her group short-term insurance.

d) The Appellant then filed an appeal with her insurer around August 15, 2022, so that it could continue paying her sickness benefits. She was informed in mid-September 2022 that her insurer had dismissed her appeal.

e) Following her insurer's decision, the Appellant says that she looked on the internet and came across the Autorité des marchés financiers [Quebec financial markets authority] (AMF). The Appellant contacted the AMF around October 24, 2022 (after returning to work full-time), and she received an

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

acknowledgement dated November 17, 2022. About one (1) week later, on or around November 24, 2022, the AMF called the Appellant and told her that it didn't have jurisdiction in a dispute against a private insurer. So, the AMF advised her to contact labour standards (CNESST).

f) So, the next day, around November 25, 2022, the Appellant called the CNESST, which told her that it would call her back. About one (1) month later, in late December 2022, the CNESST contacted the Appellant and told her that it didn't have jurisdiction, since her employer is under federal jurisdiction. The CNESST then told her to contact federal labour standards.

g) The Appellant says that she contacted federal labour standards in late January 2023. She was called back about one (1) month later, in late February 2023. During that call, federal labour standards allegedly told the Appellant to contact the Commission and file an EI claim.

h) The Appellant then told me that she tried to log into her online account to apply for EI, but that her old access code (the one from 2014) wasn't working. She tells me that she contacted Service Canada (SC) several times to resolve the issue. She testified that it wasn't until March 10, 2023, that the problem was resolved and that she was able to log into her account to apply for EI.

i) So, the Appellant filed her initial claim for EI sickness benefits on March 10, 2023.

j) The Appellant then explains that SC's website mentioned that she had to submit her Record of Employment (ROE) within 10 days of filing her application. Because her employer refused to give her her ROE, the Appellant went to SC's office to file her T4 in person. It was during this visit on March 23, 2023, which was her very first in-person visit, that the Appellant finally filed her antedate request with an SC agent.

– **The Appellant didn't take prompt steps to understand her entitlement to benefits and obligations under the law**

[16] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits for the following reasons:

a) The Appellant never tried to contact SC or the Commission between August 14, 2022 (the date she asked for the antedate), and late February 2023. This is a substantial period; it is a delay of more than six (6) months.

b) Instead, during that time, the Appellant chose to try to force her private insurer to pay her more sickness benefits. The Appellant's personal choice doesn't have to be assumed by all Canadian taxpayers.

c) Instead of contacting SC or the Commission, the Appellant decided to do the following:

- She filed an appeal with her private insurer (the Appellant received the unfavourable decision from her insurer in mid-September 2022).

- She tried to pursue the matter against her insurer with the AMF (until late November 2022).

- The Appellant attempted to contact the CNESST in late November 2022, only to learn, when it called back in late December 2022, that the CNESST had no authority over this dispute.

- It wasn't until late January 2023 that the Appellant contacted federal labour standards. She says that she was called back in late February 2023 and was told she could file an EI claim with SC.

[17] A reasonable person in the Appellant's situation would have contacted SC much earlier in this case. The Appellant is a very well-educated person (she has a master's degree in computer science from Quebec). She had already received EI benefits in

2014. So, she knew the Commission existed but chose instead to put her efforts toward appealing with her private insurer.

[18] Ignorance of the law, even if coupled with good faith, isn't a reasonable excuse. Even though the Appellant didn't specifically know about EI sickness benefits, she should reasonably have contacted SC to find out. The Appellant had an obligation to take reasonably prompt steps to understand her entitlement to benefits and obligations under the law. She clearly didn't do so in her case.

[19] Also, the Appellant had no medical restrictions for contacting SC to find out about her rights. She went back to work part-time on September 19, 2022, and started working full-time again the week of October 17, 2022. She also explained to the Commission that she was working and studying full-time during that time. I find that the Appellant made a personal choice to put her efforts elsewhere (in the dispute with her insurer and in her full-time studies while working full-time) rather than looking into her legal rights and obligations regarding her EI claim.

– **No exceptional circumstances**

[20] At the hearing, I asked the Appellant whether there were any exceptional circumstances in her case.

[21] The Appellant told me that she was from Congo, so it was normal for her not to know Canadian laws.

[22] I don't accept this as an exceptional circumstance. First, the Appellant testified that she has been in Canada for over ten (10) years and is a Canadian citizen. The Appellant already received EI benefits in 2014. The Appellant obtained a master's degree in computer science in Canada. The Act applies to everyone equally.

[23] Finally, I asked the Appellant whether I had all the medical certificates on file. She told me that I did.

[24] So, I find that there are no exceptional circumstances in the Appellant's file that would have prevented her from filing her application for sickness benefits within the statutory period. The Appellant made a personal choice to invest her efforts in a dispute with her insurer, in her full-time studies, and in her full-time work.

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

Conclusion

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

[27] The appeal is dismissed.

Guillaume Brien
Member, General Division – Employment Insurance Section