



Citation: *PB v Canada Employment Insurance Commission*, 2023 SST 1432

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

Decision

Appellant: P. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (574250) dated March 22, 2023
(issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Videoconference

Hearing date: August 15, 2023

Hearing participant: Appellant

Decision date: August 16, 2023

File number: GE-23-1113

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

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on November 3, 2022. He is now asking that the application be treated as though it was made earlier, on December 1, 2021. 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 says that the Appellant didn't have good cause. It says that a reasonable person in the Appellant's situation would have verified his rights and obligations for benefits. It says that he should have inquired with the Commission about benefits.

[6] The Appellant disagrees. He says that he thought he wouldn't qualify for EI benefits, based on media reports. He says that government officials were reported saying that those with a conflict due to the COVID-19 vaccine aren't qualified to get EI benefits.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on December 1, 2021? This is called antedating the application.

¹ Section 10(4) of the *Employment Insurance Act* (EI 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 he acted as a reasonable and prudent person would have acted in similar circumstances.³ 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.

[11] The Appellant has to show that he acted this way for the entire period of the delay.⁴ 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 December 1, 2021 to November 3, 2022.

[12] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁵ 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.⁶

² See section 10(4) of the EI 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.

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

[13] 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.

[14] The Appellant says that he had good cause for the delay because he thought he wouldn't qualify for EI benefits, based on media reports.

[15] The Commission says that the Appellant hasn't shown good cause for the delay because he didn't act as a reasonable person in the Appellant's situation – he didn't inquire with the Commission about his rights and obligations for benefits.

[16] The Appellant testified that November 30, 2021, was the last day at his job. He says that he was placed on a leave of absence as of December 1, 2021. He says that he was dismissed from his job on February 10, 2022.

[17] The Appellant says that he was dismissed for not following his employer's policy – he was required to wear both a face mask and a shield. He says he was unable to wear a mask due to an underlying condition, as recommended by a physician⁷.

[18] The Appellant says that he worked for his previous employer for 20 years. He says that his focus, once he was placed on a leave of absence and until he was dismissed, was to get his job back.

[19] The Appellant says that, in media reports, government officials said that those with a conflict due to the COVID-19 vaccine aren't qualified to get EI benefits. He says that he didn't think he qualified for EI benefits due to misconduct.

[20] The Appellant says that he retained legal counsel to assist him in pursuing his previous employer. He says the case is ongoing. He says that he didn't discuss his eligibility for EI benefits with his legal counsel.

⁷ See GD2-22.

[21] The Appellant says that he spoke with a friend at the end of October 2022. His friend suggested that his circumstances may be that of wrongful dismissal or human rights, instead of misconduct, and he may be eligible for EI benefits.

[22] The Appellant says that, after speaking with his friend, he decided to apply for EI benefits.

[23] The Appellant says that he hasn't applied for EI benefits before. However, he says that he has 40 years of working experience in Canada and he knows his rights and obligations under the EI program. He says that he knows that, if he loses a job, he could apply for benefits.

[24] The Appellant says that he didn't contact the Commission to ask about receiving benefits. He says that he didn't look on the Commission's website. However, he says that he is aware of the website and can access it.

[25] The Appellant's request for reconsideration says that he had a heart attack in 2018, he was in mental shock due to his circumstances, and he couldn't function properly until the end of June 2022.⁸ However, at the hearing, the Appellant says that he was stressed and a bit depressed, during the time in question, but he was mentally capable.

[26] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. He didn't have the initial intention to apply for benefits, after he was put on a leave of absence, as his focus was to get his job back. He didn't take reasonably prompt steps to understand his rights and obligations, such as calling the Commission or visiting its website.

[27] I find that a reasonable and prudent person would have contacted the Commission to ask about their entitlement at or around the time they stopped working, and especially once they are dismissed, instead of relying on media reports to determine their eligibility for benefits.

⁸ See GD3-24 and 25.

[28] I don't find that there are any exceptional circumstances that would excuse the Appellant from taking reasonably prompt steps to find out his rights and obligations, as he testified that calling the Commission or visiting its website were accessible options for him. He also testified that he knew his rights and obligations under the EI program and was mentally capable.

[29] 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

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

[31] The appeal is dismissed.

Kristen Thompson
Member, General Division – Employment Insurance Section