



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2024 SST 205

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (614431) dated August 23, 2023 (issued by Service Canada)

Tribunal member: Manon Sauvé

Type of hearing: In person

Hearing date: January 15, 2024

Hearing participant: Appellant

Decision date: January 29, 2024

File number: GE-23-2663

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that he had good cause for the delay in applying for benefits.¹ Good cause is a reason the law accepts for the delay. This means that his application can be treated as though it was made earlier.

Overview

[3] The Appellant works as a brush cutter in forestry. He has to travel long distances in the regions.

[4] He finished his job on September 24, 2022. He returned to his hometown around September 25, 2022.

[5] He applied for Employment Insurance (EI) benefits on November 1, 2022. He is now asking the Canada Employment Insurance Commission (Commission) to treat his application as though it was made earlier, on September 25, 2022.

[6] The Appellant's reason for the delay in applying is that he tried several times to reach an agent at Service Canada. He could not get around with his vehicle that needed to be repaired. He had no problem applying over the phone during the pandemic.

[7] The Commission refused the Appellant's request to have his application antedated to September 25, 2022. The Commission says that the Appellant doesn't have good cause for the delay.

[8] The Appellant disagrees with the Commission. He tried to get information from the Commission but was unsuccessful.

¹ Section 10(4) of the *Employment Insurance Act* (Act) uses the term "initial claim" when talking about a claimant's first application for benefits, which is used to determine whether the claimant qualifies to establish a benefit period.

Issue

[9] Can the Appellant's application for benefits be treated as though it was made on September 25, 2022? This is called antedating (or, backdating) the application.

Analysis

[10] 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).

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

[12] 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.

[13] 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 September 25, 2022, to November 1, 2022.

[14] 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

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.

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

[15] 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.

[16] I understand that the Appellant works as a brush cutter in the north. In 2022, he returned around September 24. He was stopped by police because of the condition of his vehicle. He got several tickets that required him to do repairs on his vehicle. He could not afford to pay more than \$10,000.

[17] He made efforts to buy a new car. He also tried to apply for EI benefits over the phone. But there was a bug. He could not get to the Service Canada office. He tried to reach an agent by phone but was unsuccessful.

[18] He went to the Service Canada office around November 1, 2022. He had a vehicle to get to the office. He applied and asked that his application be effective from September 25, 2022.

[19] Also, during the pandemic, he didn't have problems applying over the phone. He doesn't understand why the situation has changed.

[20] The Commission says that the Appellant didn't act like a reasonable person in the circumstances. He hasn't proven that he tried to contact the Commission. He applied to have his application effective only on November 1, 2022. The Commission was unable to reach the Appellant during the reconsideration request. It argues that the Appellant should have promptly learned about his rights.

[21] After reviewing the record, hearing the Appellant, and considering the parties' arguments, I find that the Appellant had good cause for the delay.

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

[22] I find that the Appellant lives and works in isolated locations. He can only rely on himself to meet his needs and get information from the Commission. When he lost access to a vehicle, he could not travel to get information at the Service Canada office. He tried to call but was unsuccessful. He also tried to complete his application over the phone.

[23] At the hearing, the Appellant explained his situation and the efforts he made to complete his application for benefits. As soon as he had access to a vehicle, he made efforts.

[24] In addition, the Commission has an administrative policy in place to process antedate requests.⁷ The Appellant stopped working on September 24, 2022. He asks that benefits start on the Sunday of the week of interruption of earnings. In his case, he asked for benefits to start on September 25, 2022.

[25] The Commission's policy says that you must apply within four calendar weeks. In the Appellant's case, the week starts with the interruption of earnings on September 25, 2022. So, he could apply until October 23, 2022, without having to explain why he was late. The Appellant applied in the fifth week. The Commission decided that benefits would start on that date.⁸

[26] I find that the Appellant had good cause for the delay in applying for benefits, given the Commission's policy. I understand that the Appellant acted as quickly as possible when he had access to a vehicle. As I mentioned, the Appellant lives in the regions, he lives alone, and he doesn't have access to public transit.

[27] Regarding the question of whether the Appellant qualified at the time of his application, I understand that the Appellant answered it. The Commission refused to pay benefits from September 25, 2022, solely because the Appellant had applied late without good cause.

⁷ See Digest of Benefit Entitlement Principles – Chapter 3 – Section 1.

⁸ See GD3-18.

Conclusion

[28] The Appellant has proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[29] The appeal is allowed.

Manon Sauvé

Member, General Division – Employment Insurance Section