



Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 1752

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

Decision

Appellant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (604646) dated August 14, 2023
(issued by Service Canada)

Tribunal member: Marisa Victor

Type of hearing: In person

Hearing date: October 16, 2023

Hearing participants: Appellant

Interpreter

Decision date: October 23, 2023

File number: GE-23-2362

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 February 14, 2023. She is now asking that the application be treated as though it was made earlier, on March 8, 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 didn't act as a reasonable person would have done throughout the entire period of the delay. This is because she made the deliberate decision not to apply even though she was aware of the program, and she was informed of her right to apply by her union.

[6] The Appellant disagrees and says that she could not apply earlier because she did not know why she lost her job. She also believed she could not apply for EI without knowing the reason for her dismissal and because she had another part-time job.

Matter I have to consider first

The Appellant wanted to proceed with the hearing

[7] Before the hearing began, with the help of the interpreter, I asked the Appellant if she was sure she wanted to proceed with her appeal. I told the Appellant that the

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

Commission's documents indicate that if the Appellant is successful with her request to antedate her application, she may be required to pay back some EI benefits because she had a part time job during the delay period. The Appellant assured me that she wanted to proceed with the hearing. So, the hearing went ahead.

Issue

[8] Can the Appellant's application for benefits be treated as though it was made earlier on March 8, 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: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).

[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 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.

[12] 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

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.

she actually applied. So, for the Appellant, the period of the delay is from February 14, 2023 to March 8, 2022.⁵

[13] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁶ 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 she must show that there were exceptional circumstances that explain why she didn't do so.⁷

[14] 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.

[15] The Appellant says that she had good cause for the delay. She says that she had tried to apply online with her husband's help, but the online form required her to say why she had been dismissed and she could not do that because she didn't know the reason for her dismissal. As a result, she says the program did not allow her to continue with the questionnaire and submit the application. She also had another part-time job and so she thought she might not qualify for that reason as well. She did not follow up at a Service Canada centre.

[16] The Appellant's focus was on why she lost her job. She says she had complained about lack of compensation for hours works and harassment. Shortly thereafter she was terminated from her job. The termination letter says she was dismissed with cause for violating a company policy.⁸ The Appellant believed she had to prove she was wrongfully dismissed before she could qualify for EI. She said that she immediately contested her dismissal with her union. She says her union told her shortly after her dismissal that she could be apply for EI benefits. However, her union

⁵ If the Appellant's antedate request is granted, her application would be effective as of March 6, 2022.

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.

⁸ The reason why the Appellant lost her job is not an issue I have jurisdiction to decide in this case.

representative stopped answering her phone calls after 3 weeks. So, she proceeded to file an application before the Ontario Labour Relations Board. She has not had an update on the progress of that application. The Appellant said that she focused on finding out the reason for her dismissal because of a previous experience with losing a different job a number of years ago.

[17] The Appellant also said that she had surgery in February 2023 and was in hospital as a result.

[18] Finally, the Appellant applied for sickness benefits on February 14, 2023. It was only then that she realized she could also apply for regular benefits and ask to antedate her request, which she did.

[19] The Commission says that the Appellant hasn't shown good cause for the delay. It says she:

- a) Delayed 11 months before applying.
- b) Knew about the EI program from the start of the delay period when informed about her right to apply by her union.
- c) Could have contacted Service Canada to inquire about her rights and responsibilities but did not do so.
- d) Chose not to apply to EI and instead focus on her Ontario Labour Relations Board application.
- e) Was not prevented from applying for EI benefits.

[20] I find that the Appellant hasn't proven that she had good cause for the entire period of the delay in applying for benefits. I understand that the Appellant was confused about the reason for her job loss. However, she knew about the EI program early on because her union informed her she could apply for EI. At that point, she needed to take all reasonable steps to do so in a timely manner. Her evidence was that she was informed of the EI program within a month of her dismissal, so April 2022. But

she waited an additional 10 months to apply. She says that she tried to apply online, however, she couldn't complete the form. At this point she could have called Service Canada or gone in person.

[21] I have taken into account that English is not the Appellant's first language. The hearing was conducted with the assistance of an interpreter. The Commission's notes show that when they spoke with the Appellant, a family member translated for her. Certainly, some of the delay can be attributed to a language barrier. The Appellant was unclear about her rights, given that she had been dismissed and could not have easily accessed online information in her own language. In addition, had the Appellant decided to attend a Service Canada centre in person or call on the phone, she would have needed someone's assistance to translate. On the other hand, the Appellant said she knew about EI from a previous application and showed that she was able to file an application before the Ontario Labour Relations Board, despite language barriers. While the Appellant's language barrier could explain a short delay in the Appellant inquiring about her rights and obligations, it does not reasonably account for 11 months of delay.

[22] I also took into account that the Appellant had surgery in February 2023. She said that the surgery was planned. I accept that the surgery accounts for the delay in the month of February. However, it does not explain the delay from April 2022 to January 2023.

[23] The Appellant has not shown good cause for the delay. While I sympathize with the Appellant's situation, I can't change the law.⁹

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

⁹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

Conclusion

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

[26] The appeal is dismissed.

Marisa Victor

Member, General Division – Employment Insurance Section