



Citation: *RG v Canada Employment Insurance Commission*, 2023 SST 1855

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

Decision

Appellant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (591389) dated June 2, 2023
(issued by Service Canada)

Tribunal member: Rena Ramkay

Type of hearing: Teleconference

Hearing date: September 14, 2023

Hearing participant: Appellant

Decision date: October 3, 2023

File number: GE-23-1754

Decision

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

[2] The Appellant hasn't shown 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 on December 21, 2017.²

Overview

[3] The Appellant, R. G., applied for Employment Insurance (EI) benefits on August 2, 2022, and the Canada Employment Insurance Commission (Commission) established a benefit period effective July 17, 2022.

[4] The Appellant is now asking that the application be treated as though it was made earlier, on December 21, 2017. The Commission has already refused this request.

[5] The Commission says the Appellant initially asked for his benefits to be antedated, or backdated, to September 4, 2016. In a call with the Commission on January 3, 2023, he clarified the date. He thought he was eligible from December 2, 2017, to July 24, 2019.³ The Appellant revised these dates to December 21, 2017, to June 27, 2019, when he spoke to the Commission about his reconsideration request. He confirmed these were the correct dates at the hearing.

[6] The Commission says the Appellant didn't meet the conditions to get EI benefits from December 17, 2017. He failed to show he qualified to receive benefits on the earlier date. And, he failed to show good cause throughout the entire period of the delay in applying for EI benefits.

¹ A person who applies for EI benefits is a "claimant." A person who appeals to the Tribunal is an "appellant."

² Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.

³ See GD3-17.

[7] The Appellant disagrees and says he should be able to antedate his claim to December 21, 2017, because he asked for the antedate as soon as he knew he could be eligible. He didn't delay once he knew about antedating. He could not have looked sooner for information on antedating since he wasn't aware that claims could be backdated.

[8] I have to decide if the Appellant has proven that he had good cause for not applying for benefits earlier. If so, I must decide whether he qualified for benefits on an earlier date.

Issue

[9] Can the Appellant's application for benefits be treated as though it was made on December 21, 2017? This is called antedating the application.

Analysis

[10] To get your application for benefits antedated, you have to prove these two things:⁴

- 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, I will start with that.

[12] To show good cause, the Appellant has to prove he acted as a reasonable and prudent person would have acted in similar circumstances.⁵ In other words, he has to

⁴ See section 10(4) of the EI Act.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

show he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[13] The Appellant has to show he acted this way for the entire period of the delay.⁶ 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 21, 2017, to October 27, 2022.

[14] The Appellant also has to show he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁷ This means the Appellant has to show 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.⁸

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

[16] The Commission says didn't have good cause because he didn't act like a "reasonable person" in his situation would have done to verify his rights and obligations under the *Employment Insurance Act* (EI Act). He could have contacted the Commission (Service Canada) to ask about EI benefits. He could have learned about benefits by visiting the Commission's (Service Canada's) website. For these reasons, the Commission says the Appellant didn't show good cause throughout each week during the entire period of the delay.

[17] The Appellant says he had good cause for the delay because he didn't know he could antedate his application, so he could not have applied earlier. He says he isn't the type of person who looks for government handouts.

⁶ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[18] The Appellant worked full-time until he was laid off on August 31, 2016. He received severance pay that the Commission allocated as earnings until December 3, 2017. It told him to apply again on that date. He started a part-time job driving a school bus on December 21, 2017, and forgot about applying for benefits. He says his employer laid off a lot of bus drivers on June 27, 2019.

[19] The Appellant says he didn't apply for EI benefits between December 21, 2017, and June 27, 2019. This is because he was working part-time and didn't think he was eligible. He only learned he could be eligible for benefits as a part-time worker in late June 2019. That was when he overheard a co-worker say he was receiving EI benefits. He applied for EI benefits on June 27, 2019, when he was laid off. He has received benefits since then, reapplying as needed when contracts ended, or he was laid off.

[20] The Appellant says he also didn't know about antedating a claim. On October 27, 2022, he stumbled upon the EI antedate information while searching on Google. He believed he might be eligible, so he contacted the Commission (Service Canada) immediately. He spoke to an agent on the general line and says he was told he could be eligible to antedate his claim to December 21, 2017.

[21] The Appellant says he would not have applied if the agent told him he wasn't eligible. Because he was told he **could** be eligible for antedated benefits, he immediately requested an antedate of his benefit period start date.⁹

[22] The Appellant thinks he should be eligible for EI benefits for the period from December 17, 2017, to June 27, 2019. He was laid off from full-time work and eligible for benefits on December 3, 2017. This was the date his severance allocations ended after his August 31, 2016, layoff. And the Commission told him he would be eligible for benefits on that date. The Appellant worked part-time from December 17, 2017, to June 27, 2019, and didn't collect any EI benefits during this period even though he thinks he could have been eligible.

⁹ See GD3-16.

[23] The Commission says the Appellant hasn't shown good cause during the entire period of the delay, from December 21, 2017, to October 27, 2022, when he applied for an antedate. He made no efforts to learn his rights and obligations under the EI Act. He could have verified his rights and obligations by searching the Commission (Service Canada) website. He could have contacted the Commission (Service Canada) to ask for information about EI benefits.

[24] The Appellant disagrees. He believes a reasonable person would not have researched benefits on the Commission's (Service Canada's) website to see if they were eligible for compensation unless they were motivated to do so. Since he didn't know he could antedate his EI application, he had no reason to contact the Commission to learn more about rights and obligations related to antedating.

[25] The Commission says ignorance of the law, even when there is good faith, or honest intention, is not enough to prove good cause. The test for good cause is whether the Appellant acted as a reasonable and prudent person in his situation would have done to learn about his rights and obligations under the EI Act. The Commission argues the Appellant didn't do enough to inform himself about his eligibility for EI benefits.

[26] I agree with the Commission. I find the Appellant hasn't proven he had good cause for the delay in applying for benefits from December 21, 2017, to October 27, 2022. He may have had **good reason**, or justification, for the delay. But this isn't the test for **good cause**. The Appellant must show, throughout the entire period of delay, he did what a reasonable person would have done to satisfy himself as to his rights and obligations under the EI Act.¹⁰ The law also says he must take reasonably prompt steps to find out about his rights and obligations.¹¹

¹⁰ See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹¹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[27] The Appellant relied on his own personal assumptions that he wasn't entitled to benefits from December 21, 2017, to June 27, 2019. He didn't verify his understanding. The courts have repeatedly said this isn't good cause for delay.¹²

[28] He didn't apply to antedate his application for benefits until October 27, 2022. Despite regular contact with the Commission since June 2019, when the Appellant began receiving EI benefits, he made no effort to ask the Commission if he might be eligible for benefits at an earlier date.

[29] It is the Appellant's responsibility to take reasonably prompt steps to learn if he is entitled to EI benefits and to ensure his rights and obligations under the EI Act.¹³ I find the Appellant didn't take reasonably prompt steps to find out his rights and obligations when he applied to antedate his application for benefits from December 21, 2017, on October 27, 2022. His antedate request is 4 years and 10 months delayed.

[30] Jurisprudence (the courts) says that antedate is an advantage to be applied exceptionally, or uncommonly.¹⁴ An important reason for denying an antedate claim when the claimant isn't aware of his entitlement is because it would be difficult for the Commission to know if the claimant had been available for work during the entire benefit period when it was long past.¹⁵

[31] I find there was nothing preventing the Appellant from contacting the Commission throughout the period of his delay other than his assumption that he did not qualify for EI benefits. In my view, this doesn't establish good cause.

[32] The Appellant argues the jurisprudence says, "Nothing is to be gained by denying benefits to people who would otherwise be entitled on the mere technical grounds that they have not filed at the right time."¹⁶

¹² See *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Trinh*, 2010 FCA 335; and *Canada (Attorney General) v Rouleau*, A-4-95.

¹³ See *Canada (Attorney General) v Carry*, 2005 FCA 367; and *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

¹⁴ See *Canada (Attorney General) v McBride*, 2009 FCA 1.

¹⁵ See *Canada (Attorney General) v Brace*, 2008 FCA 118.

¹⁶ The Appellant quoted CUB 17192.

[33] I reviewed the CUB decision quoted by the Appellant in paragraph 32 above. I find the facts in that appeal are quite different from the facts here. In the CUB decision:

- The claimant's delay in requesting an antedate was five weeks, not close to five years.
- The claimant visited an unemployment insurance office and spoke with a counsellor during the period of delay, making a reasonable attempt to obtain information.
- The counsellor that spoke with the claimant had a duty of care to inform him that he could apply for benefits and she didn't.¹⁷

[34] None of these facts apply in the Appellant's appeal, so I am satisfied the CUB decision isn't relevant for his circumstances.

[35] I find there are no exceptional circumstances for the Appellant's delay in making an initial claim for EI benefits. The Appellant's ignorance, or not knowing, the law isn't enough to establish good cause. And he did not act like a reasonable and prudent person in his situation would have done to verify his rights and obligations under the EI Act. The Appellant didn't act promptly to inform himself of his rights and obligations.

[36] The Appellant must apply within the timeframes set out by the EI Act or prove that he had good cause for his delay. As set out above, I find the Appellant's reasons for delaying throughout the period from December 21, 2017, to October 27, 2022, don't establish good cause.

[37] 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.

¹⁷ See CUB 17192.

Conclusion

[38] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay, from December 21, 2017, to October 27, 2022.

[39] The appeal is dismissed.

Rena Ramkay
Member, General Division – Employment Insurance Section