



Citation: *MT v Canada Employment Insurance Commission*, 2023 SST 1917

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

Decision

Appellant: M. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (610106) dated August 31, 2023 (issued by Service Canada)

Tribunal member: Jillian Evans

Type of hearing: Teleconference

Hearing date: October 25, 2023

Hearing participant: Appellant

Decision date: November 14, 2023

File number: GE-23-2474

Decision

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

[2] The Appellant has not shown that he had good cause for the delay in filing his bi-weekly claims for Employment Insurance (EI) benefits. In other words, the Appellant has not given an explanation that the law accepts.

[3] This means that the Appellant's claims can't be treated as though they were made earlier.

Overview

[4] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.¹ The law requires that a person making a claim for benefits for a certain week of unemployment has to prove that they are entitled to benefits for that week.²

[5] You make these ongoing claims by submitting a report to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you communicate the required information to the Commission by reporting online. I will refer to this information that claimants are required to submit to the Commission on an ongoing basis as Reports.

[6] There are deadlines for making Reports.³ The *Employment Insurance Regulations* say that someone looking to claim benefits for a particular week of unemployment needs to make that claim "within three weeks after the week for which the benefits are claimed."⁴

¹ See section 49 of the *Employment Insurance Act* (EI Act).

² See section 49 (1)(a) and (b)

³ Section 50(4) of the *Employment Insurance Act* says that "A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time."

⁴ See section 26(1) of the *Employment Insurance Regulations*.

[7] The Appellant's last day of work was March 10, 2023 and he completed his online application for regular benefits on March 11, 2023.

[8] His benefit period was established starting March 12, 2023. However, he did not file his bi-weekly Reports for the weeks of March 12, March 19, March 26, April 2, April 9, April 16, April 23, April 30, May 7, May 14 or May 21 within the three-week deadline stated in the *Regulations*.

[9] His first attempt to submit an online Report was June 7, 2023.

[10] He returned to employment on June 12, 2023.

[11] He wants the Commission to treat his late Reports for these 11 weeks as though they had been submitted earlier.

[12] For this to happen, the Appellant has to prove that he had good cause for his delay in completing and submitting his Reports.

[13] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request to treat his Reports as though they were made earlier. The Commission says that the Appellant doesn't have good cause because the online application for benefits clearly states that the Appellant was required to start completing bi-weekly Reports. The Commission says that the Appellant made no efforts to complete any bi-weekly Reports for nearly three months and did not seek any clarification or information from the Commission about the process for submitting Reports.

[14] The Appellant disagrees and says that the information on the documents that he was sent by the Commission were unclear. He also says that his employer told him that he would not be able to get EI benefits until his severance pay had been exhausted and that this information influenced his understanding of the process.

[15] The Appellant also says that the *Act* and *Regulations* only reference deadlines for starting a claim or applying for benefits. He says that the *Act* and *Regulations* do not place deadlines on when Reports need to be made.

Issue

[16] Did the Appellant have good cause for the delay in filing his bi-weekly Reports for EI benefits?

Analysis

[17] The Appellant wants his bi-weekly Reports claiming EI benefits to be treated as though they were made earlier. This is called antedating (or, backdating) the claims.

[18] To get a claim antedated, whether an initial claim or an ongoing/continuing claim, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.⁵ 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.

[19] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁶ 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.

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

[21] The Appellant has to show that he acted this way for the entire period of the delay.⁹ That period is from the day he wants his claim antedated to until the day he

⁵ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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.

⁹ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

actually made the claim. So, for the Appellant, the period of the delay is from April 15, 2023 (three weeks from when his first Report was due) to June 7, 2023.

[22] The Appellant says that he acted reasonably. In his Notice of Appeal and at his hearing he explained that soon after he completed the online application for benefits, he received a letter in the mail from the Commission with his access code. That letter said:

*After you apply to EI you must submit reports to Service Canada every two weeks **as long as you are receiving benefits**.* (emphasis was the Appellant's)

[23] The Appellant says that he knew that he had to submit Reports to the Commission on a regular basis while he was receiving benefits. However, he says that he reasonably interpreted that sentence as saying that he only needed to submit Reports *once he started receiving benefits* – in other words, after he actually got his first payment.

[24] Since he had been paid \$5,000 to \$6,000 in severance pay, the Appellant says that he assumed that he would not be entitled to EI benefit payments for at least 2 months and so did not begin to question why he had not received any payments from the Commission until the end of May or the beginning of June.

[25] The Appellant explained that on June 7, 2023 he logged into the Service Canada site to check on when he could expect his first benefit payment, and then spoke with an agent on the phone. He says that is when he learned that he was “late” with his Reports.

[26] The Appellant says that his interpretation of the letter was reasonable, and that the information provided by the Commission was confusing. The Appellant says that he was a first-time applicant for EI benefits and found the information provided online by the Commission to be very unclear.

[27] The Appellant also argues that the *Employment Insurance Act* does not provide specific deadlines for when Reports need to be made – the law, he says, only talks

about deadlines by which “claims” have to be made. The Appellant says that Reports themselves are not specifically mentioned in the *Act* or *Regulations* and so it is not fair to enforce a three-week deadline.

[28] The Appellant took the Tribunal to a Federal Court of Appeal decision from 1981.¹⁰ In that decision, the presiding Umpire concluded that because the *Act* at that time made no specific reference to deadlines for mailing in what were then paper report cards – it only referenced “making claims” - the Commission could not disqualify a claimant from benefits for failing to submit those paper cards within a certain period.

[29] The Commission agrees that the Appellant can seek benefits for the weeks of May 28 and June 4, 2023. They say that the Appellant should be permitted to submit his Reports for these weeks because he logged into the online Report system within the three weeks required by the law.

[30] But the Commission says that the Appellant hasn’t shown good cause for the delay in filing Reports for the weeks of March 12, March 19, March 26, April 2, April 9, April 16, April 23, April 30, May 7, May 14 or May 21.

[31] The Commission says that the Appellant’s explanations for why he failed to file his Reports for the first 11 weeks of his benefit period are not reasonable. They say that a prudent person who was confused by a letter that they received from the Commission would have contacted the Commission to make sure he properly understood his obligations.

[32] The Commission also says that the case cited by the Appellant has no application to this case as it is no longer relevant. It says that the *Act* and *Regulations* are clear about the fact that bi-weekly reports have to be filed within a specified time period.

¹⁰ *C.E.I.C. v. Hill* A-763-82 (1983) (F.C.A.)

[33] I have reviewed the case that the Appellant submitted and I don't find that it stands for the principle that there is no legal obligation for a claimant to submit their online bi-weekly Reports within a certain period of time.

[34] That case, from more than 40 years ago, addressed a very specific process of mailing in paper cards that no longer applies. In the decades since that decision, the Federal Court of Appeal has been consistently clear that ignorance of the process is not good cause for granting a claimant the very exceptional remedy of backdating their claims.¹¹

[35] Section 49 of the Act says that a person is "not entitled to receive benefits for a week of unemployment until they make a claim for benefits for that week."

[36] That section also says that the person seeking benefits for a given week has to prove their entitlement to benefits for that week.

[37] Section 50(4) specifies that "a claim for benefits for a week of unemployment" has to be made within a specified time, and the Regulations clarify that that timeframe is "within three weeks after the week for which benefits are claimed."

[38] While these sections of the *Act* do not specifically make reference to the term "bi-weekly online reports," I find that they do say that ongoing, continuing claims for benefits need to be submitted to the Commission for each week that a person wants to collect benefits.

[39] The Federal Court of Appeal has explained it like this:

A person who has the right to receive unemployment insurance benefits under the Act... will not, of course, automatically be paid those benefits. The person has to come forward, make known his or her intention to exercise his or her right and show that he or she indeed satisfies the conditions established by the Act. Some of those conditions relate to the employment history and the present circumstances of the newly unemployed person and can be verified once and for all **at the beginning** of the unemployment period ...others relate to the situation or attitude of the person while unemployed and, being essentially dependent on circumstances which **may vary have to be verified regularly in the course of the whole unemployment period.**

¹¹ *Canada (Attorney General) v. Kokavec*, 2008 FCA 307

It is therefore inevitable that a person who has the right to receive benefits will be called upon to come forward and prove that he or she satisfies the conditions of the Act not only once at the beginning of unemployment, but also afterwards and on a regular basis.¹²

[40] Having found that the *Act* does require that the Appellant file his bi-weekly reports with three weeks of the week for which he is seeking benefits, I now consider whether his request to backdate those Reports should be granted. Did he have good cause for his 2 month delay in filing his first Report?

[41] In all the circumstances, I find that the Appellant did not have good cause for his delay. The Appellant applied for benefits within a day or two of losing his job. That online form that he completed contained the following directions:

- "To prove your eligibility and receive any payment you may be entitled to, you are required to complete bi-weekly reports. Failure to do so may result in a loss of entitlement and payment."¹³
- "After you apply for EI benefits, you must start completing bi-weekly reports using the Internet or Telephone Reporting Service as soon as you receive your Access Code in the mail. If you are eligible for benefits, no payments can be issued to you until you have submitted bi-weekly reports."¹⁴

[42] The Appellant says that the information that he received in the letter that he later got from the Commission was confusing. He also says that he assumed, based on information from his employer, that he should not submit bi-weekly reports until his severance payments were exhausted.

[43] I accept that the Appellant believed that he did not need to submit his Reports until he received his first payment. I also accept that he acted in good faith. But that alone does not meet the test for good cause.

¹² *Re Queen v Harbour*, 1986 CanLII 3935 (FCA), at paragraph 2 (emphasis added)

¹³ GD3-13

¹⁴ GD3-13

[44] I do not find that the Appellant behaved in a reasonable manner in the face of conflicting information from different sources. I find that as a first-time claimant, the Appellant should have made inquiries of the Commission to ensure that he properly understood his obligations. I do not find that his behaviour was reasonable or prudent.

Conclusion

[45] The Appellant had not proven that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims cannot be treated as though they were made earlier.

[46] The appeal is dismissed.

Jillian Evans

Member, General Division – Employment Insurance Section