



Citation: *TB v Canada Employment Insurance Commission*, 2023 SST 1838

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

Decision

Appellant: T. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (593236) dated June 21, 2023
(issued by Service Canada)

Tribunal member: Elizabeth Usprich

Type of hearing: Teleconference

Hearing date: August 30, 2023

Hearing participant: Appellant

Decision date: September 7, 2023

File number: GE-23-1872

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 March 19, 2023. She is now asking that the application be treated as though it was made earlier, on June 19, 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 the Appellant didn't have good cause because she didn't act as a reasonable person in similar circumstances would have to verify her rights and obligations under the Act. The Commission says the Appellant was aware of the EI program because she had collected EI before. The Commission says she could have looked into whether or not she qualified this time.

[6] The Appellant disagrees and says she didn't realize that she qualified for EI. She says she didn't know that her employer had sent a Record of Employment (ROE) and thought she needed that to apply.

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

Matter I have to consider first

This hearing was heard along with GE-23-1870

[7] The Appellant had two cases she had filed an appeal on. To make it easier for the Appellant the two appeals were held on the same hearing day. This means one appeal was heard and then the second appeal was heard. The appeals were treated separately.

Issue

[8] Can the Appellant's application for benefits be treated as though it was made on June 19, 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.

² See section 10(4) of the EI Act.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[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 she actually applied. So, for the Appellant, the period of the delay is from June 19, 2022 to March 19, 2023.

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

[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 she had good cause for the delay because she didn't realize that she qualified for any EI benefits. She says she didn't know her employer had sent in a ROE and thought she needed that to apply.

[16] The Appellant worked for an employment placement agency (employer). The employer placed the Appellant at a business in January 2022. The business no longer wished to have the Appellant work for them. The Appellant's last day with the business was on June 17, 2022.⁷

[17] The Appellant says she believed she still worked for her employer. She says she didn't realize the employer had sent in a ROE. The Appellant agrees she wasn't working or getting any placements from the employer after June 17, 2022. The Appellant didn't make any inquiries to her employer about work or a ROE.

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.

⁷ See GD3-17.

[18] The Commission says the Appellant hasn't shown good cause for the delay because she didn't act as a reasonable person in similar circumstances would have to verify her rights and obligations under the Act. The Commission says after the Appellant had an interruption in her work, she should have looked into what was going on and what options she had.

[19] The Commission says the Appellant was aware of the EI program because she had collected EI before. The Commission says she could have looked into whether or not she qualified this time.

[20] The Appellant testified there was nothing preventing her from applying or inquiring about her rights, and obligations, under the Act. She says she didn't inquire because she assumed she wouldn't be eligible.

[21] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she didn't act as a reasonable and prudent person would have in similar circumstances. The Appellant should have done more at the time of the interruption to her work in June 2022. The Appellant says she attempted to contact her employer once a few months after June 2022 to ask what was going on. She says she sent an email that was undeliverable and didn't make any other efforts to contact her employer.

[22] I find it would have been reasonable to ask her employer if she was still going to be getting placements through them. If she learned that she would not be, she could have made inquiries about any entitlement she may have had to EI. I find it also would have been reasonable after her work was interrupted to make inquiries about whether or not the employer issued a ROE.

[23] The Appellant could have made inquiries with the Commission. Had she done so, she would have discovered that she didn't need her ROE to apply.⁸

⁸ See the Government of Canada website <https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit.html> where it says that you can apply for EI benefits even if you don't have your ROE.

[24] The Appellant didn't make any inquiries about EI or about whether or not she was even still employed. I don't find this is what a reasonable and prudent person in similar circumstances would have done.⁹ This means the Appellant could have, and should have, made inquiries about whether or not she was eligible for benefits.

[25] The Appellant testified she only applied to EI because she was told that she had to apply before she would be eligible to receive Ontario Works. The Appellant applied for benefits on March 19, 2023, only after Ontario Works told her she should do so.¹⁰

[26] I asked the Appellant if there were any exceptional circumstances that I should consider. I asked if there were any circumstances that may have prevented her from applying for EI. The Appellant said there was nothing else other than what she had already testified to.

[27] I find that there were no exceptional circumstances that prevented the Appellant from applying. This means unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and obligations under the EI Act.¹¹

[28] 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 *Attorney General (Canada) v Trinh*, 2010 FCA 335, where the Federal Court of Appeal makes it clear that an appellant's reliance on rumors, unverified information or on unfounded and blind assumptions doesn't constitute good cause. This also means that ignorance of the law is not good cause.

¹⁰ See GD3-3 to GD3-16 application for benefits. See GD2-2 where the Appellant says she only applied to EI because she was told she needed to do so.

¹¹ See *Attorney General (Canada) v Trinh*, 2010 FCA 335 at paragraph 10.

Conclusion

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

[30] The appeal is dismissed.

Elizabeth Usprich
Member, General Division – Employment Insurance Section