



[TRANSLATION]

Citation: *WS v Canada Employment Insurance Commission*, 2024 SST 315

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

Decision

Appellant: W. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (621731) dated November 15,
2023 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: In writing
Decision date: January 19, 2024
File number: GE-23-3447

Decision

[1] The appeal is allowed.

[2] I find that the Appellant's claim for benefits can be treated as though it was made on July 2, 2023.

Overview

[3] The Appellant applied for benefits on August 28, 2023. She then asked the Canada Employment Insurance Commission (Commission) to start her benefit period on July 2, 2023.

[4] On November 15, 2023, the Commission decided that the Appellant didn't have good cause for the delay in applying for benefits between July 3, 2023, and August 25, 2023.

[5] The Appellant says that she meant to apply earlier, but she experienced difficulties and asked her daughter for help.

[6] I have to decide whether the Appellant's claim for benefits can be treated as though it was made on July 2, 2023.

Issue

[7] Did the Appellant have a reasonable explanation for the delay?

Analysis

[8] A benefit period can be established on an earlier date when two conditions are met: the claimant qualified for benefits on the earlier day, and they had good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

[9] The Appellant's qualifying for benefits isn't in dispute, and I note that a benefit period was established for her effective August 28, 2023.

[10] To get her claim antedated, the Appellant has to prove that she had good cause for the delay during the entire period of the delay.¹ 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.

[11] In addition, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in a similar situation.² In other words, she has to show that she acted as reasonably and carefully as anyone else would have if they were in a similar situation.

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the Act.³ This means that she has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If she didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.⁴

[13] The Appellant has to prove that she had good cause for the delay during the entire period of the delay.⁵ That period is from the day she wants her claim antedated to until the day she actually applied. So, the period of the delay is from July 2, 2023, to August 28, 2023.

[14] The Appellant stopped working because of a shortage of work on June 29, 2023. On her application for benefits, she indicated that she stopped working because of a shortage of work, and she provided a date of return of August 31, 2023.

[15] On August 31, 2023, she told a Commission employee that she had tried to apply for benefits earlier but had experienced difficulties. She had gotten an error message

¹ See *Paquette v Attorney General of Canada*, 2006 FCA 309; and section 10(4) of the *Employment Insurance Act*.

² See *Attorney General of Canada v Burke*, 2012 FCA 139.

³ See *Attorney General of Canada v Somwaru*, 2010 FCA 336; and *Attorney General of Canada v Kaler*, 2011 FCA 266.

⁴ See *Attorney General of Canada v Somwaru*, 2010 FCA 336; and *Attorney General of Canada v Kaler*, 2011 FCA 266.

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

and was unable to submit her claim. She then asked that her claim for benefits be established effective July 2, 2023.

[16] The Commission says that the Appellant hasn't established good cause for the delay in applying for benefits. It says that she didn't act as a reasonable person would have acted in the same circumstances, since she didn't contact the Employment Insurance (EI) office for advice or next steps.

[17] It also says that the Appellant has been making EI claims since 2019 and is familiar with the process. It argues that her health issues didn't prevent her from doing her job until the end of the 2023 school year.

[18] The Appellant, meanwhile, says that after trying to make her claim for benefits, she contacted her daughter, who agreed to help her. She says that she has concussion symptoms and that it is difficult to concentrate. She provided a document showing appointments she attended as part of a study. She attended 32 appointments between June 7, 2023, and August 2, 2023.

[19] I have to determine whether the Appellant had, for the entire period of the delay in applying for benefits, good cause for not applying between July 2, 2023, and August 28, 2023. She has to prove that she did what a reasonable person in her situation would have done to meet their obligations and assert their rights under the Act.⁶

[20] It is true that in general, good faith and ignorance of the Act aren't, in themselves, good cause for delaying an application for benefits. So, a claimant can't justify the delay in applying by simply saying that they don't know how to apply for benefits or aren't familiar with the EI system. That could be a valid reason if the Appellant is able to show that he [*sic*] acted as any reasonable person would have acted in the same circumstances to meet their obligations and assert their rights.⁷

⁶ See *Attorney General of Canada v Kaler*, 2011 FCA 266; and *Albrecht*, A-172-85.

⁷ See *Attorney General of Canada v Beaudin*, A-341-04.

[21] In this case, the Appellant didn't give up on her claim. On the contrary, she has shown a continuing intention to apply. As she explained, she tried to make her claim on her own. In July 2023, she completed all the steps and tried to submit her claim, but she got an error message. She then reached out to her daughter for help.

[22] Her daughter visited her on August 28, 2023, and they went directly to the Service Canada office. The Appellant explained that she didn't go without her daughter because she had recurring concussion symptoms during that period.

[23] Since her claim for benefits was granted effective August 28, 2023, and she went back to work on August 30, 2023, the Appellant didn't need benefits anymore at that time. For this reason, she is asking for an antedate to July 2, 2023, because she needs benefits only for the few weeks of July and August 2023.

[24] So, while she wasn't familiar with the EI system, she tried to make her claim and reached out to her daughter for help. Her daughter told her that she could help her. However, one detail particularly caught my attention: The Commission's file shows that the Appellant contacted the Commission on September 11, 2023, and that her daughter acted as an interpreter. The Commission employee spoke in English, and the Appellant's daughter interpreted for her.

[25] Although the Commission argues that the Appellant didn't act as a reasonable person in her situation would have acted, my view, on the contrary, is that she did her best despite the symptoms she was experiencing. She needed help not only submitting her claim, but also making it. She waited for her daughter to help her submit her claim and act as an interpreter.

[26] It is true that it was up to the Appellant to get information from the Commission about her rights and obligations, and I find that she has shown she asked for help. In my view, she should not be penalized because she waited until she had an interpreter before talking to a Commission agent.

[27] So, even though she had difficulty applying, I find that, through her attempts to submit her claim, by asking for her daughter's help and trying to contact the Commission, the Appellant has shown that she acted as a reasonable person would have acted in the same circumstances. She has shown that she had a continuing desire to apply for benefits during that period.

Conclusion

[28] I find that the Appellant had a reasonable explanation for the delay in applying for benefits between July 2, 2023, and August 28, 2023.

[29] The appeal is allowed.

Josée Langlois

Member, General Division – Employment Insurance Section