



Citation: *XX v Canada Employment Insurance Commission*, 2023 SST 1915

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

Decision

Appellant: X. X

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (554472) dated November 4, 2022 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Videoconference

Hearing date: June 16, 2023

Hearing participant: Appellant

Decision date: June 29, 2023

File number: GE-22-3897

Decision

[1] X. X is the Appellant. The Canada Employment Insurance Commission (Commission) says his Employment Insurance (EI) benefits can't start on an earlier date. The Appellant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Appellant's appeal. I find that he hasn't proven that he had good cause for applying late for EI benefits. He hasn't given an explanation for his delay that the law accepts as good cause for a delay. This means the Commission doesn't have to treat his application as if he made it on an earlier date.¹

Overview

[3] The Appellant stopped working on August 4, 2022. Then, he applied for EI benefits nearly six weeks after his last day of work. He asked the Commission to treat his application as if he made it earlier, in the week he stopped working. The Commission refused his request.

[4] The Commission says the Appellant doesn't have good cause for his delay in applying for EI benefits. The Commission says he didn't act quickly to understand his rights and expectations under the law. The Commission says a reasonable person in his situation would have asked for advice about EI benefits sooner.

[5] The Appellant disagrees. He says that he delayed because he was getting severance pay. He says he didn't know the rules about applying severance pay were temporarily suspended. He also says that his delay was short because he only delayed a few days past the Commission's usual four-week grace period. He says he acted as any reasonable person in the same situation would have acted.

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

Issue

[6] Can the Appellant's application for benefits be treated as though it was made on July 31, 2022? The Commission calls this antedating (or, backdating) the application.

Analysis

[7] 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).

[8] The Commission says the Appellant qualifies for EI benefits on the earlier date. The Appellant agrees. Nothing in the appeal file makes me doubt that the Appellant qualifies for EI benefits starting on July 31, 2022. So, I accept that he qualifies on the earlier date.

[9] But the main arguments in this case are about whether the Appellant had good cause. So, I have to decide if the Appellant has good cause for his delay in applying for EI benefits.

[10] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.³ 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.

[11] The Appellant has to show that he acted this way for the entire period of the delay.⁴ That period is from the day he wants his 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.

he actually applied. So, for the Appellant, the period of the delay is from July 31, 2022 to September 11, 2022.

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

[13] 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.

[14] The Appellant argues that he has good cause for his delay. He says he acted as a reasonable person in the same situation would have done. He says his delay wasn't very long. And he says he delayed because he was looking for work. He also says that he got a lump-sum severance payment that was meant to represent nine weeks of salary. He says I should consider the temporary change in the law about applying severance pay as an exceptional circumstance, because normally he wouldn't have received EI benefits until his severance pay ran out.

[15] The Commission disagrees. The Commission says the Appellant made a deliberate choice to delay applying for EI benefits instead of asking the Commission for advice about his situation. The Commission says a reasonable person in the same situation would have acted quickly to contact the Commission and ask for advice.

[16] I agree with the Commission. I find that the Appellant hasn't proven that he had good cause for his delay in applying for EI benefits. This is because case law says that antedating provisions are demanding and strict.⁷

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 *Canada (Attorney General) v Brace*, 2008 FCA 118, paragraph 7.

[17] At the hearing, the Appellant explained the reasons for his delay in applying for EI benefits. He said he was looking for other work. He was waiting for his employer to give him a copy of his Record of Employment (ROE). He also received nine weeks of severance pay and he thought he couldn't get EI benefits until his severance pay ran out. He didn't know that the rules about applying severance pay had been temporarily suspended.

[18] The Appellant also argues that his delay was short. He says he only delayed a short time beyond the Commission's usual four-week grace period.

[19] I understand the Appellant's arguments, but I have to follow case law when I make my decisions. And case law says that I shouldn't look at the length of the delay, but instead the reasons for the delay.⁸

[20] Case law also says that it isn't good cause if you delay applying because you expect to find other work, or if you're relying on severance pay.⁹ Ignorance of the law, even if you're acting in good faith, isn't enough to show good cause for a delay.¹⁰

[21] The Appellant hasn't proven that he acted reasonably quickly to understand his rights and expectations under the law. This is because he didn't take any steps to contact the Commission during his delay. He assumed that he couldn't get EI benefits because of his severance pay, but he didn't ask the Commission for advice on this point. At the hearing, he said he didn't think it was a serious issue to delay his application for EI benefits, but if he had contacted the Commission promptly, he would have understood the expectation that he apply for EI benefits quickly.

[22] So, I find that the Appellant hasn't proven that he had good cause for his delay in applying for EI benefits.

⁸ See *Canada (Attorney General) v McBride*, 2009 FCA 1, paragraph 6.

⁹ *Howard v Canada (Attorney General)*, 2011 FCA 116, paragraph 7. Also see *Shebib v Canada (Attorney General)*, 2003 FCA 88, paragraph 34.

¹⁰ *Canada (Attorney General) v Kaler*, 2011 FCA 266, at paragraph 4.

Conclusion

[23] I am dismissing the Appellant's appeal. I find that he hasn't proven that he had good cause for his delay in applying for EI benefits. This means his benefits can't start from the earlier date.

Amanda Pezzutto

Member, General Division – Employment Insurance Section