



Citation: *AD v Canada Employment Insurance Commission*, 2023 SST 1994

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

Decision

Appellant: A. D.
Representative: C. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (539959) dated October 3, 2022
(issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: In person
Hearing date: August 2, 2023
Hearing participant: Appellant

Decision date: August 10, 2023
File number: GE-23-1672

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's claim can't be treated as though it was made earlier.

Overview

[3] 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 You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.²

[4] The Appellant made his claim after the deadline. He wants his claim to be treated as though it was made earlier, on October 31, 2021.

[5] For this to happen, the Appellant has to prove that he had good cause for the delay.

[6] The Commission decided that the Appellant didn't have good cause and refused his request. The Commission says that the Appellant doesn'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 Act. It says the Appellant had previous experience applying for benefits, so he knew he had to file reports after he submitted his renewal application.³

[7] The Appellant disagrees and says that this was the first time he had ever renewed an EI claim and he was inexperienced. He had just gotten back from being at sea for over two months, and was moving to a new apartment. After he moved, he had

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

² See section 26 of the *Employment Insurance Regulations* (Regulations).

³ See GD4-3.

no internet access or cell reception at his new apartment.⁴ He didn't realize he had missed payments of benefits, because he was working offshore and it was overlooked.⁵

Issue

[8] Did the Appellant have good cause for the delay in claiming EI benefits?

Analysis

[9] The Appellant wants his claim for EI benefits to be treated as though it was made earlier, on October 31, 2021.⁶ This is called antedating (or, backdating) the claim.

[10] To get a claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.⁷ The Appellant has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that he had good cause for the delay.

[11] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁸ 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.

[12] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law. 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.⁹

⁴ See GD3-18.

⁵ See GD3-14.

⁶ See GD3-14.

⁷ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the Act.

⁸ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[13] The Appellant has to show that he acted this way for the entire period of the delay.¹⁰ That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Appellant, the period of the delay is from October 31, 2021, until January 13, 2022.

Did the Appellant have good cause for the delay?

[14] I find the Appellant has not shown good cause for the entire period of the delay for the following reasons.

[15] The Appellant made an initial claim for EI benefits and a benefit period was established effective May 30, 2021. He returned to work on August 28, 2021, until October 31, 2021. He submitted a renewal application for benefits on November 25, 2021. He returned to work at sea on December 15, 2021.

[16] The Commission says the Appellant had until December 3, 2021, to make his report for the period starting October 31, 2021.¹¹

[17] This only means that the Appellant would have been able to file his report up to the date of December 3, 2021, without being locked out of the system. However, he still would have been late in filing his report. He must show that he had good cause for the delay from October 31, 2021 to January 13, 2022.

[18] I find that the Appellant had good cause between December 15, 2021 and January 13, 2022. This is because he was working at sea during this period, with no access to internet and no cellular service. It was therefore impossible for him to submit his report during that period.

[19] However, he has not shown good cause for the period from October 31, 2021 to December 15, 2021.

[20] The Appellant testified as follows:

¹⁰ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹¹ GD4-1.

- He returned from working at sea on October 31, 2021. It was a very busy time when he got home, because he was getting ready to move. He had expected to be away working for three weeks, but he ended up being at sea for nine weeks.
- He moved to a new apartment on November 19, 2021. Internet service wasn't hooked up in his new apartment until December 14, 2021. There was also no cellular service at his new apartment. So, he had to leave his apartment and go to his mother's house or the library to use the Internet or make phone calls.
- He went to his mother's house to submit his renewal application online. He didn't really know what a renewal application was, because he had never submitted a renewal application before. He thought he was just re-applying for EI. He was trying to do what he had done the previous summer. He had trouble submitting his application online, so he called the Commission.
- He tried two or three times to call the Commission. Every time he called, he waited on hold for at least an hour. He couldn't go in to a Service Canada location in person, because the offices were closed due to the Covid-19 pandemic.
- He thinks he got through to the Commission about a week after he first tried to submit his renewal application, and that he was told to try submitting his application again, which he did. It ended up that he submitted two applications, and his November 25, 2021 application was the second application he submitted.
- He didn't receive an access code from the Commission in the mail after he submitted his renewal application. His mail was going to his mother's house, and she kept it for him. He noticed that he hadn't received an access code, and thought maybe it was delayed in the mail.
- He thinks he called the Commission to ask about his access code, and that the Commission might have told him he had to do his reports. He was quite confused

by what was going on, and about how EI works. He wasn't getting much help from the Commission over the phone.

- He waited for his renewal application to be processed, and to start receiving benefits, but he didn't receive benefits.
- He didn't know in November or December 2021 that he had to submit bi-weekly reports to have his claim re-opened. He read the application for benefits, but it didn't register with him that he had to fill out reports.
- He went back to work at sea on December 15, 2021. He had no internet or cellular service while he was at sea.
- In January, 2022, his ship was in port and he was able to access the internet at a coffee shop. He thinks he must have gotten an email from the Commission saying something was wrong with his application. He tried to file a report, but he didn't have an access code to do it. He thinks he tried to do it using his bank as a "sign-in partner." He didn't know that his attempt to file a report didn't work.
- By February 2022, his claim was sorted out and he was receiving benefits. He didn't notice that he didn't receive benefits for the period from October 31, 2021 to December 14, 2021, until he did his taxes in May 2022.

[21] The Appellant says he had good cause for the delay because after he got back from sea on October 31, 2021, he was very busy with moving, and he didn't know he had to submit reports for his renewal claim. He went back to sea on December 15, 2021, and didn't have internet or cellular access again until the ship he was working on was in port, on January 13, 2022.

[22] The Commission says that the Appellant hasn't shown he had good cause for the delay, because he didn't act like a reasonable person in his situation would have done to verify his rights and obligations under the Act. It says the Appellant had previous experience applying for benefits in June 2021, and completed reports for 13 weeks during that claim. It says he didn't contact it until May 11, 2022, to request payments for

the weeks of October 31, 2021, to December 12, 2021, and that a person concerned about their financial situation would have enquired in a timely manner about his rights and entitlement under the Act.¹²

[23] All claimants for EI benefits are required to submit their claimant reports within 3 weeks of the period of unemployment.¹³ The Commission says that the Appellant's attempt to file a report on January 13, 2022, failed because the report had to be processed at the latest on December 3, 2021.¹⁴ This means the Appellant had waited so long to file a report that the claim wasn't accepting reports due to the passage of time.

[24] I find that from October 31, 2021, to December 15, 2021, the Appellant hasn't shown good cause for his delay.

[25] The Appellant testified that during his June 2021 claim, he was sent an access code and filed bi-weekly reports online. He said he filed the reports every two weeks, and had no problems doing so. He just logged in and did it.

[26] But after he submitted his renewal application, he noticed that he didn't receive an access code from the Commission. And he wasn't receiving benefits. I find that a reasonable and prudent person in the Appellant's circumstances would have contacted the Commission to ask about his access code, to verify his rights and obligations, and to ask why he wasn't receiving benefits. He testified that he thinks he might have called the Commission about not receiving an access code, and that the Commission might have told him he had to do his reports. If that was the case, if he were acting as a reasonable and prudent person would in that situation, he would have watched the mail for his access code, and when it still didn't arrive, contacted the Commission again.

[27] The Application for benefits that the Appellant filled out says that a failure to complete bi-weekly reports can result in a loss of entitlement and payment.¹⁵ The Appellant testified that he read the application for benefits. He had completed reports

¹² See GD4-3.

¹³ See section 26(1) of the Regulations.

¹⁴ See GD4-1.

¹⁵ See GD3-11.

before, and I find that it is reasonable to expect that he knew, or should have known, that he would have to complete reports again, after submitting his renewal claim.

[28] The Appellant says that when he didn't receive benefits, he assumed something was wrong with his application. He said he tried to call the Commission before he went back to work on December 15, 2021, but he couldn't get through. I find that a reasonable and prudent person who had applied for EI benefits, but wasn't receiving benefits as expected, would persist in contacting the Commission, to ask about the status of his claim, particularly since he was waiting for a call from his employer to soon return to work at sea. He also could have looked online for information. He had internet connected at his new apartment on December 14, 2021,¹⁶ and didn't go back to work until the next day. He also testified that he could have gone to his mother's house or the library to access the internet. He could have done so between December 4 and 15, 2021.

[29] I find the Appellant did not act as a reasonable and prudent person would have in similar circumstances. I further find he did not take reasonably prompt steps to understand his rights and obligations under the law.

[30] I understand that the Appellant moved on November 19, 2021. He testified that his partner was busy working on her masters degree studies, so he took care of the entire move himself. I can imagine that this was a very busy time for the Appellant. But he was able to apply to renew his claim on November 25, 2021, and I find that he also could have contacted the Commission to ask what he needed to do to receive benefits, and ask about why he hadn't received an access code.

[31] The Appellant has also not presented any exceptional circumstances that would excuse him from the requirement to take reasonably prompt steps to understand his rights and obligations under law. The fact that he moved on November 19, 2021 didn't prevent him from doing so - he testified that although he didn't have internet or cellular service at his new apartment, he could have gone to his mother's house or the library to

¹⁶ See GD3-19.

access the internet or make a phone call to the Commission. He wasn't prevented from taking reasonably prompt steps to understand his rights and obligations under law because he was working at sea – he wasn't working at sea from October 31, 2021 to December 15, 2021.

[32] I find that the Appellant didn't have good cause for the delay from October 31, 2021 to December 15, 2021, for the reasons outlined above. Since the Appellant does not have good cause for the entire period of the delay, this means his claim cannot start on the earlier date he is requesting.

Conclusion

[33] The Appellant hasn't proven that he had good cause for the delay in making his claim for benefits throughout the entire period of the delay. This means that his claim can't be treated as though it was made earlier.

[34] The appeal is dismissed.

Susan Stapleton
Member, General Division – Employment Insurance Section