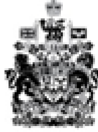

Citation: *YA v Canada Employment Insurance Commission*, 2023 SST 1991

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	Y. A.
Representative:	Tadesse Gebremariam
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (590283) dated May 1, 2023 (issued by Service Canada)

Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	Videoconference
Hearing date:	August 22, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	September 20, 2023
File number:	GE-23-1428

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he had good cause for the delay in applying for benefits. So his application can't be treated as though it was made on October 16, 2022.[1]

[3] The Appellant hasn't shown that he was available for work. This means that he can't receive Employment Insurance (EI) benefits from February 12, 2023.

Overview

[4] The Appellant stopped working on October 12, 2022. He then moved to Alberta in search of work. He didn't find a job. He moved to Ontario in hopes that he'd be able to find work there.

[5] After moving to Ontario, he applied for Employment Insurance (EI) benefits. He made his application on February 13, 2023.

[6] He asked the Canada Employment Insurance Commission (Commission) to antedate (backdate) his application to October 16, 2022.

[7] The Commission refused his request. It also decided that he wasn't entitled to receive EI benefits from February 12, 2023, because he hadn't proven that he was available for work.

[8] To get EI regular benefits, a claimant has to be capable of working, available for work, and unable to find a suitable job. It is up to the Appellant to show that he meets these conditions. He has to prove this on a balance of probabilities. In other words, to get EI regular benefits the Appellant must show that it's more likely than not that he meets the availability requirements under the *Employment Insurance Act* (EI Act).

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

[9] So, I have to decide whether the Appellant has proven that:

- he had good cause for not applying for benefits earlier, and
- he met the availability requirements.

Issues

– **Antedate**

[10] Can the Appellant's application for benefits be treated as though it was made on October 16, 2022?

– **Availability**

[11] Was the Appellant available for work?

Analysis

Antedate

[12] To get your application for benefits antedated (backdated), you have to prove these two things:[2]

- 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.
- You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

[13] The main arguments in this case are about whether the Appellant had good cause. So, I will start with that.

[14] 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

[2] See section 10(4) of the EI Act.
[3] See *Canada (Attorney General) v Burke*, 2012 FCA 139.

to show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[15] 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 he actually applied. So, for the Appellant, the period of the delay is from October 16, 2022, to February 13, 2023.

[16] 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]

[17] 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.

– **What the Appellant says**

[18] The Appellant says his application should be backdated because there were good reasons for his delay in applying. He was moving to Alberta, then Ontario, in search of work. He was having emotional problems too. He said his life was messed up because of how he was being treated by his former coworkers.

– **What the Commission says**

[19] The Commission says that the Appellant didn't have good cause for the delay. It argues that nothing prevented him from filing his claim for benefits earlier. It says that looking for a job rather than immediately applying for benefits is commendable, but not good cause for a delay in applying for benefits.[7]

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[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 page GD4-3.

– The Appellant didn’t have good cause for the delay

[20] For the reasons that follow, I find that the Appellant hasn’t proven that he had good cause for the delay in applying for benefits.

[21] I find that the Appellant didn’t act as a reasonable and prudent person would have done in similar circumstances. A reasonable and prudent person would have applied for EI benefits as soon as possible after leaving his job. Such a person wouldn’t have waited until after he moved, as the Appellant did. The Appellant was having trouble with his phone. But a reasonable and prudent person would have looked for another way to apply for EI benefits, such as going to a Service Canada Centre or using a library computer.

[22] I find that the Appellant didn’t take reasonably prompt steps to find out about his entitlement to EI benefits, or what he needed to do to receive them. He didn’t make any attempt to find out about his benefits, so it can’t be said that he did so promptly.

[23] I considered that he was moving, that his telephone and accounts had been hacked, and he wasn’t sleeping. He explained that his mind and life were messed up then, and the situation was terrible.

[24] But he hasn’t shown that these circumstances were exceptional. Many people have a difficult time upon becoming unemployed and still find out about and apply for benefits within a reasonable time. The Appellant hasn’t provided any compelling evidence to show that his situation was different from most others. As an example only, there is no medical evidence that would suggest that the Appellant wasn't capable of finding out about or applying for EI benefits earlier.

[25] I don’t need to consider whether the Appellant qualified for benefits on the earlier day. Since the Appellant doesn’t have good cause, his application can’t be treated as though it was made earlier.

Availability

[26] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, he has to meet the criteria of both sections to get benefits.

[27] First, the EI Act says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.[8] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[9] I will look at those criteria below.

[28] Second, the EI Act says that a claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.[10] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[11] I will look at those factors below.

[29] The Commission started the disentitlements on February 12, 2023. So I'm considering the period from February 12, 2023, until the date of the hearing.

Reasonable and customary efforts to find a job

[30] The law sets out criteria for me to consider when deciding whether the Appellant's efforts are reasonable and customary.[12] I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[31] The Commission says that the Appellant didn't do enough to try to find a job. It says that he had to do more to find a job other than wait to be called by his union, especially since he only became a union member in May 2023.

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[8] See section 50(8) of the EI Act.
[9] See section 9.001 of the *Employment Insurance Regulations* (EI Regulations).
[10] See section 18(1)(a) of the EI Act.
[11] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[12] See section 9.001 of the EI Regulations.

[32] The Appellant disagrees. He says he moved twice in search of work. He was looking for work but can't provide the evidence because his telephone was hacked by those he used to work with (even after he moved to another province). He says that his former coworkers must have contacted people in Alberta because despite applying for work, he couldn't get a job there.

[33] I find that the Appellant has not proven that he was making reasonable and customary efforts to find a job.[13] He hasn't shown that he applied for work, or that there was no suitable work for him to apply for since February 2023. I understand that his phone and accounts were compromised, but that happened well before February 2023. He had enough time between February 2023, and the hearing to start new job bank accounts and to apply for new jobs. He has not provided convincing evidence that he has done this.

[34] He made efforts to get into the union, and became a member in May 2023. He is expecting to start a union job soon. Waiting a few weeks or even a month for the union to call him for work would have been reasonable. But waiting all summer was not reasonable. To show that he was making reasonable and customary efforts to find work, he needed to show that he was doing something to find work outside the union. Simply becoming a member of the union isn't enough – it doesn't show a sustained effort to find work.

[35] For these reasons, the Appellant hasn't proven that his efforts to find a job were reasonable and customary.

Capable of and available for work

[36] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:[14]

[13] See section 9.001 of the EI Regulations to see the criteria that I had to and did consider.
[14] These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A- 57-96. This decision paraphrases those three factors for plain language.

a) He wanted to go back to work as soon as a suitable job was available.

b) He made efforts to find a suitable job.

c) He didn't set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

[37] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[15]

– **Wanting to go back to work**

[38] The Appellant has shown that he wants to go back to work as soon as a suitable job is available. He did this by moving from Alberta, where he couldn't find a job, to Ontario, in search of work. He made efforts to join the union and took some necessary training.

– **Making efforts to find a suitable job**

[39] The Appellant made some effort to find a job. The Appellant approached the union in Ontario is February 2023. He took the necessary training to be registered with the union. He let the union know that he was available for work. He prepared a resume, and contacted the Ethiopian Association for help.

[40] But his job search efforts aren't enough to meet the strict availability requirements under the law.

[41] After moving to Ontario, the Appellant didn't make any efforts to find a job outside of his union. There is no evidence that the Appellant couldn't have found suitable work (for example, work at the same payrate and similar conditions) outside the union. By not applying for any other work, he hasn't shown that he couldn't have found such suitable work.

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[15] Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

– **Unduly limiting chances of going back to work**

[42] The Appellant set personal conditions that might have unduly limited his chances of going back to work. The Appellant relied on the union for work. Limiting his job search in this way might have unduly limited his chances of getting back to work.

– **So, was the Appellant capable of and available for work?**

[43] Based on my findings on the three factors, I find that the Appellant hasn't shown that he was capable of and available for work but unable to find a suitable job.

Conclusion

[44] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay. So his application won't be antedated to October 16, 2022.

[45] The Appellant hasn't shown that he was available for work within the meaning of the law. This means he is disentitled from receiving benefits from February 12, 2023.

[46] The appeal is dismissed.

Angela Ryan Bourgeois

Member, General Division – Employment Insurance Section