



Citation: *FM v Canada Employment Insurance Commission*, 2024 SST 261

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

Decision

Appellant: F. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (627089) dated November 16, 2023 (issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Videoconference

Hearing date: January 17, 2024

Hearing participant: Appellant

Decision date: January 25, 2024

File number: GE-23-3389

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[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 claims can't be treated as though they were 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 did not file any of his claims after the deadline. He wants them to be treated as though they were made earlier, on June 4, 2023.

[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 the Appellant's request. The Commission says that the Appellant doesn't have good cause because he did not act as a reasonable person and did not contact the Commission to find out about his rights and responsibilities during the period of the delay.

[7] The Appellant disagrees and says that this was his first time dealing with EI benefits. He was unfamiliar with reporting requirements. He had personal difficulties going on in his life which impacted his ability to fulfill the reporting requirements, as he

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

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

was unaware of them. He had paid EI premiums since 2009, so he was entitled to receive EI benefits.

Matter I have to consider first

I will accept the documents sent in after the hearing

[8] During the hearing, the Appellant screen shared two brief outline documents related to his testimony on loans from his brother, and events during 2023 in his personal life. As they were provided during the hearing and related to reasons the Appellant relied on in support of his appeal, I have accepted those documents as part of the record in this appeal.

Issue

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

Analysis

[10] The Appellant wants his claims for EI benefits to be treated as though they were made earlier, on June 4, 2023. This is called antedating (or, backdating) the claims.

[11] 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.³ 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.

[12] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ 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.

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[13] 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

[14] The Appellant has to show that he acted this way for the entire period of the delay.⁷ That period is from the day he wants his claim antedated to until the day he actually made the request to antedate. So, for the Appellant, the period of the delay is from June 4, 2023, to September 1, 2023.

[15] The Appellant says that he had good cause for the delay because this was his first time dealing with EI benefits. He was unaware of the reporting requirements. He had personal difficulties going on in his life which impacted his ability to fulfill the reporting requirements, as he was unaware of them.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because he did not act as a reasonable person and he did not contact the Commission to find out about his rights and responsibilities during the period of the delay.

[17] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he has not proven good cause during the period of the delay, for the reasons set out below.

– **Background facts**

[18] The Appellant applied for EI benefits on May 4, 2023. This was his first time applying for EI benefits. He had been let go from his job in February 2023. The employer paid him two months' severance pay. The Commission granted him regular benefits, subject to an allocation of the severance pay. The severance pay was applied

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 Burke*, 2012 FCA 139.

at the rate of his normal weekly earnings from April 30 to June 3, 2023. The application of those earnings to those weeks meant that he could not receive EI benefits for those weeks. For the week beginning June 4, 2023, the remaining \$22.00 from the severance pay was applied to that week. The Appellant might receive EI benefits starting that week.

[19] The Appellant did not file any of the biweekly reports as required.

[20] The Appellant made his request to antedate his claims on September 1, 2023.

[21] The Appellant told the Commission on October 4, 2023, that he had started a new full-time job in early July 2023.

– **Assessment of the Appellant’s explanation for the delay in filing reports**

[22] The Appellant put forward a number of explanations for the delay. He was unfamiliar with the EI process. He had not been given enough information by the Commission. He had difficulties contacting the Commission. His personal circumstances before, during and after the delay period were also a factor.

[23] Unfamiliarity with the process. The main point the Appellant raised here was that he was not aware of the requirements or of reporting periods. He told the Commission when he requested the antedate that he had been told not to complete reports as there was an allocation in effect. He then said that he was not informed he had to complete reports.

[24] The Appellant testified that he received no letters from the Commission after he applied for benefits. He also testified that he followed up with the Commission in June 2023. He had tried to access his My Service Canada Account (MSCA) but was locked out because he had not filed reports. He did see the May 8, 2023, decision letter in MSCA in June, not before. That letter dealt with the allocation of the severance pay ending the week of June 4, 2023, and not to include the severance pay on his reports.

[25] That evidence about not being aware of the reporting requirements and not being told he had to complete reports is inconsistent with other evidence in the file. The

testimony that he had been told not to complete reports is inconsistent with the decision letter from the Commission dated May 8, 2023. That letter refers to the allocation amounts being applied against benefits, so “do not include them in your reports.” It does not say do not file reports. If the Appellant did not receive that letter, he got the “do not file reports” information from some other source.

[26] The more important difficulty for the Appellant is the MSCA. The Commission sends a letter for recipients of EI benefits about signing up for MSCA for online services as the recommended source of information while receiving benefits. The letter includes a specific access code for the person addressed in the letter. The generic form of this letter is in evidence (GD3-14 and 15). The Commission did not provide a copy of that letter addressed to the Appellant. The Appellant, when shown the form letter in evidence, testified that he did not receive this letter. The first time he saw the letter was when he accessed the MSCA account in June. The letter is quite clear: “1. You must submit your biweekly reports using your access code.” It continues with information on finding out when to submit reports, and the notice, “if you have applied or are receiving EI regular...benefits, **you must submit biweekly reports.**” [emphasis in original]. In order to set up an MSCA account, you must have the access code in this letter. If the Appellant checked his MSCA account in June 2023, as he testified, that means that he received this letter. That contradicts his testimony that he received no letters from the Commission after applying for benefits.

[27] Not enough information from the Commission. The Appellant stated that he was not informed about the need to file reports. The application form has text stating the requirement to complete biweekly reports, and the possible loss of benefits if reports are not filed (GD3-11). The form also refers to the Access Code, the need to start completing the reports as soon as you receive the Access Code, and that “no payments can be issued to you until you have submitted biweekly reports.” (GD3-12). In his testimony about those statements in the application form, the Appellant said that he may have overlooked them, then said that he never read them, then said that even if he read them he was distracted. That testimony is inconsistent.

[28] The Appellant said that he did not learn about the need to file reports until his call in September, when he applied for the antedate. In his testimony, the Appellant said that he spoke to the Commission in June or July about setting up the MSCA. He testified that he filed his first report for the period June 15 to 30, 2023. He also testified that he only missed two or three reports, not 15 reports. Those statements about the reports are contradictory. The claim that he filed a report in June, and only missed two or three reports, is contradicted by his statement in his request for reconsideration that his attempts to file reports in July, August and September “were met with the discouraging information that reports could not be submitted due to the lateness of my request.” That claim of filing reports is also contradicted by the evidence from the Commission. It said that the Appellant filed no reports for the period of the delay, April 30 to August 26, 2023. An additional factor casting doubt on that claim is this. Had he filed reports, in the normal course the Commission would have either paid him benefits or contacted him about deficiencies or questions related to the reports. There is no evidence that either of those things happened.

[29] Difficulties contacting the Commission. The Appellant said that he had difficulty connecting with the Commission by phone. He testified that he called in June, but the call dropped. In testimony, in his request for reconsideration and in his notice of appeal, he said that he phoned again in July, August and September. In a conversation with the Commission, the Appellant is recorded as making inconsistent statements about when he called the Commission. On this item, the Appellant has been consistent in his testimony, notice of appeal and request for reconsideration, so I accept that he did call in June, July, August and September.

[30] Personal circumstances. The Appellant referred to a number of personal matters that contributed to stress and depression following the end of his employment in February 2023. He had purchased a house and become engaged to marry, both in the fall of 2022. The wedding was set for June 2023, but due to his financial situation, it was postponed to December 2023, then to June 2024. He borrowed \$25,000.00 from his brother to pay living expenses such as the mortgage and taxes on his house. From May 2023 to January 2024, his father was hospitalized after suffering a stroke. The

Appellant provided care to both his parents during all of 2023. The Appellant testified that during 2023, his priority was his father, his job search (February to June) and his financial situation. I accept this evidence from the Appellant and will deal with it at the end of this decision.

[31] Outcome of the assessment. For the purposes of this decision, the most important evidence is that dealing with the Appellant's unfamiliarity with the EI process and with lack of information from the Commission. I have found the Appellant's own evidence to be inconsistent or contradictory in some areas. I have also found that some of his evidence is contradicted by the Commission evidence, or by the normal course of events after filing a report. Overall, the Appellant has taken a very passive approach to obtaining information about EI benefits. Throughout, from the application for EI benefits to the hearing of this appeal, the Appellant took the position that he was unaware of the requirement to file reports, and that he did not receive official communication instructing him to file reports. If only he had been told, he would have filed his reports. He made minimal efforts to find out what he had to do to receive benefits.

[32] Based on the review of the evidence above, I make the following findings of fact. First, no one told the Appellant not to file reports at any time. Second, I do not accept that the Appellant learned in June about the need to file reports. He only learned of that requirement in September when he requested an antedate. Third, the Appellant did not file any reports in the April to August period of delay. Fourth, the Appellant did call the Commission in June, July, August and September, but did not always connect. Fifth, the Appellant was unfamiliar with the EI process, as he had not applied for EI benefits in the past.

[33] With the above findings and evidence, I will now deal with deciding whether the Appellant has met the legal requirement of showing good cause for the delay in filing his reports.

– **Ruling on the antedate issue**

[34] The Appellant has to prove that he had good cause for the delay during the entire period of the delay. To show good cause, the Appellant has to prove that he acted as a

reasonable and prudent person would have acted in similar circumstances. The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[35] The period of the delay is from June 4, 2023, to August 26, 2023. While the Appellant said that he did file many reports, I have found that he did not file any biweekly reports during that period.

[36] The Appellant says that he has shown good cause in his circumstances, based on the reasons he gave for explaining the delay in filing his reports. He also says that the benefits payable are only for a short period.

[37] The Appellant did not act as a reasonable person in his circumstances would. He expected to start receiving EI benefits deposited to his bank once the allocation of his severance pay ended. When that did not happen, he attempted in June to contact the Commission but the call was dropped, but not before he was told that his account was locked. He did not call back at that time to try to continue the call to get more information. In July, the Commission told him that his file had to be reactivated. He assumed that the reactivation would be automatic. He contacted the Commission some time later and made his antedate application to reactivate his file on September 1, 2023.

[38] That sequence of events does not show the actions of a reasonable person. Such a person would have followed up quickly to resolve whatever the problem was so that he could start receiving the EI benefits he needed due to his financial situation.

[39] Ignorance of the law is not considered to be a good cause for the delay.⁸ So the Appellant's unfamiliarity with the EI system does not show good cause.

[40] The Appellant did not meet the other part of the test for good cause: showing that he fulfilled his duty to learn about his rights and obligations in order to receive EI benefits. His approach to learning his rights and obligations was casual. Maybe he did read the information about his obligations on the application form. Maybe he forgot the

⁸ See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

information after reading it. Or maybe he didn't look at it. He knew late in June that he had not received a deposit of EI benefits to his bank. His calls to the Commission were spread out from June to September 1, 2023. It was on the last date that he applied for an antedate to try to resolve the problem. As noted above, the Appellant has taken a very passive approach to obtaining information about EI benefits. A reasonable person would have acted more quickly to learn what he had to do to resolve the problem.

[41] The reasonable person test for assessing the duty to learn about rights and obligations may be relaxed if there are exceptional circumstances.⁹ The standard for meeting exceptional circumstances is quite high. For example, being busy with school, working and changing jobs, financial struggles, and moving are not exceptional circumstances, even when considered cumulatively.¹⁰ Appellant's circumstances included personal issues (stress and depression, caring for elderly parents, the cost of maintaining his house, a delayed wedding, financial issues, taking an online course, and beginning a new job). While challenging, the evidence does not show that they did not rise to the level of exceptional. They did not prevent the Appellant from contacting the Commission. They did not prevent him from making further inquiries, rather than overlooking the important information on the application form, or assuming that reactivation of his account would be done automatically.

[42] I cannot decide an appeal on the basis of sympathetic circumstances or broad considerations of fairness, as commonly understood. I must decide the appeal on the basis of the proven facts and the EI legal rules that apply.¹¹

[43] The Appellant said that he was entitled to receive benefits because he had paid into the program since 2009. That is not correct. Employment insurance is not an automatic benefit. Like any other insurance scheme, you must meet certain requirements to qualify, such as having enough hours of employment and having an interruption of earnings. To receive regular EI benefits, you must also file reports on a

⁹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336 at paragraph 11.

¹⁰ See *NO v Canada Employment Insurance Commission*, 2022 SST 987; leave to appeal denied, 2022 SST 986.

¹¹ See *Canada (Attorney General) v Shaw*, 2002 FCA 325; *Canada (Attorney General) v Knee*, 2011 FCA 301; and *Nadji v Canada (Attorney General)*, 2016 FC 885.

biweekly basis. Payment of EI premiums alone does not qualify anyone to receive EI benefits.

[44] The Appellant did raise the issue of discrimination in his request for reconsideration. The basis of the discrimination, as set out in the request and in testimony, was that the Appellant had paid into EI in his whole employment period, and now that he needed benefits, he was denied. No one who claims EI benefits is entitled to receive benefits solely because they have paid EI premiums. Since this rule applies to all persons claiming EI benefits, there is no discrimination against the Appellant.

[45] The Appellant also mentioned that the benefits would only be payable for a short period of April or May to June. The length of time benefits would be payable is not a factor in assessing whether to allow the antedate or not. The same rules apply to deciding that issue whether the benefits would be payable for one week or the maximum of 45 weeks.

Conclusion

[46] The Appellant hasn't proven that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims can't be treated as though they were made earlier. This also means that he is not entitled to receive EI benefits for the time between the allocation of his severance pay ending in the first week of June, and the start of his new job on July 1, 2023.

[47] The appeal is dismissed.

Paul Dusome
Member, General Division – Employment Insurance Section