



Citation: *JC v Canada Employment Insurance Commission*, 2023 SST 1894

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (605731) dated September 11, 2023 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Teleconference

Hearing date: November 1, 2023

Hearing participant: Appellant

Decision date: November 3, 2023

File number: GE-23-2705

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't proven that she meets the conditions to have her application for benefits antedated (in other words, backdated).

Overview

[3] The Appellant lost her job on July 15, 2022.

[4] She was given a one-year severance package, so she delayed applying for Employment Insurance (EI) benefits. This is because she thought she couldn't apply for EI benefits until her severance package ran out.

[5] She filed her application for benefits on June 29, 2023.

[6] The Canada Employment Insurance Commission (Commission) reviewed the Appellant's application and decided that she hadn't worked enough hours in her qualifying period to qualify for benefits.¹ It also refused to antedate her application. It says she doesn't have good cause for not applying for benefits sooner.

[7] The Appellant doesn't dispute that she doesn't have enough hours in her qualifying period to qualify for benefits. But she would qualify for benefits if her claim were antedated to a date closer to the date that she lost her job. So, she's appealing the Commission's decision not to antedate her claim.

[8] The Appellant says she looked online to learn about her entitlement to EI. From the information she read, she concluded that she had to file her application within four weeks of her severance running out. She also relied on what she had learned from a previous EI claim and on information obtained from her employer.

¹ Section 7 of the *Employment Insurance Act* (Act) says that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

[9] She says she made an honest mistake. She doesn't understand why her claim can't be antedated to a date closer to the date that she lost her job. She has paid into the EI system for over 35 years. She feels she should be able to access these funds now that she needs them.

Issue

[10] Can the Appellant's application be antedated to July 17, 2022?

Analysis

[11] The law says the period you can get benefits starts the **later** of the week you had an interruption of earnings or the week you filed an application for benefits.² It also says you have to have enough hours to qualify for benefits.³

[12] Since the start of your benefit period determines the period during which your qualifying hours are counted, the law allows a claimant to request that their application for benefits be treated as though it was made on an earlier date.⁴ This is called antedating the application.

[13] The Appellant filed her application for benefits almost a year after she was laid off. As a result, most of the hours she had worked prior to being laid off couldn't be counted to establish her entitlement to benefits. Because of this, the Commission found she didn't have enough hours to qualify for benefits. So, she asked the Commission to antedate her application for benefits to the time she was laid off.

² See section 10(1) of the Act. An interruption of earnings occurs when you have been out of work and haven't received any earnings for 7 consecutive days (see section 14(1) of the *Employment Insurance Regulations*).

³ See section 7(2)(b) of the Act.

⁴ See section 10(4) of the Act.

[14] To get your application for benefits antedated, you have to prove two things:

- 1) You qualify for benefits on the earlier date (that is, the day you want your application antedated to).
- 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 for making your application for benefits later than you should have.

[15] The Commission says the Appellant has sufficient hours to qualify for benefits if her claim were antedated to July 17, 2022. I have no evidence that contradicts this, so I accept it as fact.

[16] This means that I only need to determine if the Appellant has good cause for the delay in filing her application.

Has the Appellant shown good cause for the delay?

[17] I find that the Appellant hasn't shown good cause for not filing her application sooner.

[18] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.⁵ In other words, she has to show that she applied the same level of care, attention, and common sense as anyone else in a similar situation would have.

[19] The Appellant has to show that she acted this way for the entire period of the delay.⁶ That period is from the day she wants her application antedated to, until the day she applied for benefits.

[20] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to EI benefits.⁷ This means that the Appellant has to show

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

⁶ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336 and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

that she tried to learn about her rights and responsibilities under the law as soon as possible and as best she could. If the Appellant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.⁸

[21] The Appellant has the burden of proof. This means she has to show that it's more likely than not that she had good cause for not filing her application sooner.

[22] Good cause for the delay is interpreted very strictly.⁹ This is because it's difficult for the Commission to administer claims and properly review a claimant's entitlement to benefits when their application for benefits isn't filed promptly.¹⁰ So, it's only in exceptional circumstances that an application can be antedated.

[23] The Appellant says she didn't apply for benefits sooner because she had received a one-year severance package. She thought that because she had received a year's salary, she could only apply for EI once the year was up.

[24] She testified that in 2004, after losing her job, she called the Commission to find out what to do. She says the person she spoke with told her that she couldn't apply for benefits until her severance had run out. She found another job before that happened, so she never applied for benefits at the time. But she was left with the impression that you can't apply for EI during the period for which you receive severance.

[25] When she was laid off in 2022, she experienced a great deal of distress. She says for several months she couldn't even get out of bed.

[26] When she started to feel better, in about September 2022, she went online to find out about her entitlement to EI. She says the information she found confirmed her understanding that she couldn't apply for EI until her severance ran out.¹¹

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336 and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁹ See *Canada (Attorney General) v Brace*, 2008 FCA 118.

¹⁰ See *Canada (Attorney General) v Beaudin*, 2005 FCA 123.

¹¹ The Appellant says she consulted the websites mentioned in GD6.

[27] She also spoke to her employer's human resources department about claiming EI. She was told she would only get EI at the end of the period for which she had been paid severance.

[28] So, based on all of the information she had, she concluded that she had to wait to file her application for benefits.

[29] The Commission says the Appellant didn't act the way a reasonable person would have acted in the circumstances. This is because she never contacted the Commission to confirm her understanding that she could only claim EI once her severance ran out.

[30] Acting as a "reasonable person" in the context of an antedate request has consistently been held by the courts to mean taking steps, promptly after you've stopped working, to learn about your rights and obligations under EI law.¹² Simply relying on information contained online isn't sufficient. This is because the information found online is general in nature. It doesn't deal with a claimant's particular circumstances.¹³

[31] Although the Appellant says she did go online to enquire about her rights and obligations, she didn't follow that up with a call or visit to the Commission to ensure that she understood what she had read. Had she done so, she would likely have learned that she had to file her claim immediately.¹⁴ She also would likely have learned that at

¹² See *Mauchel v Canada (Attorney General)*, 2012 FCA 202, *Bradford v Canada Employment Insurance Commission*, 2012 FCA 120, *Canada (Attorney General) v Kaler*, 2011 FCA 266, *Canada (Attorney General) v Innes*, 2010 FCA 341, *Canada (Attorney General) v Scott*, 2008 FCA 145, *Canada (Attorney General) v Brace*, 2008 FCA 118, *Canada (Attorney General) v Beaudin*, 2005 FCA 123; *Shebib v Canada (Attorney General)*, 2003 FCA 88, *Canada (Attorney General) v Ehman*, A-360-95; *Canada (Attorney General) v Rouleau*, A-4-95, *Canada (Attorney General) v Larouche*, A-644-93, *Canada (Attorney General) v Smith*, A-549-92, *Canada (Attorney General) v Caron*, A-395-85, and *Canada (Attorney General) v Albrecht*, A-172-85.

¹³ See *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

¹⁴ I note that one of the sites she says she looked at in the fall of 2022 says you should apply for benefits as soon as you are terminated and should contact Service Canada if you are unsure if you are eligible for benefits (see GD6-5). Unfortunately, the Appellant didn't do that.

the time she lost her job, the law had been temporarily changed and her severance wouldn't have been allocated (in other words, applied) against her claim.¹⁵

[32] So, I find that by failing to contact the Commission, the Appellant didn't do what would be expected of a reasonable person in such circumstances.¹⁶

[33] I also find that there wasn't anything exceptional about the circumstances the Appellant was in. Other than during the first couple of months after her lay off, where she says she couldn't even get out of bed, there's no evidence that the Appellant was prevented from contacting the Commission to understand her rights and obligations.

[34] I accept that the Appellant made an honest mistake. She misunderstood the law. She wasn't able to differentiate between the establishment of a benefit period and the allocation of earnings against her benefits. But case law confirms that good faith and not knowing the law doesn't give rise to good cause for the delay in filing an application for benefits.¹⁷ The law is complicated, so claimants are required to seek advice from the Commission on how to proceed, and to do that as soon as they can.

[35] Case law also confirms that relying on mistaken advice from someone else, such as your lawyer or your employer, doesn't give rise to good cause for the delay.¹⁸ So the fact that the Appellant relied on what her employer told her about the impact of her severance on her ability to file a claim for EI can't establish good cause.

[36] The Appellant also relied on information she obtained from the Commission in 2004, to the effect that she couldn't claim EI until she had exhausted her severance.¹⁹ But she had obtained that information almost two decades prior. I find that she should have called again after losing her job in 2022, to verify if the information she had

¹⁵ Under the *Budget Implementation Act 2021* the provisions regarding the allocation of severance were temporarily suspended for claims made between September 26, 2021, and September 25, 2022.

¹⁶ When I say she didn't act as a reasonable person would have I am using the terminology used by the case law. The Appellant is clearly a sensible, intelligent person and I am not at all suggesting otherwise.

¹⁷ See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁸ See *Shebib v Canada (Attorney General)*, 2003 FCA 88 and *Pirotte v Unemployment Insurance Commission*, A-108-76)

¹⁹ It appears the Appellant either misunderstood the information she was given or was given incorrect information.

received at the time continued to apply. In my view, a reasonable²⁰ person wouldn't rely on information that was almost 20 years old.

[37] So based on the evidence, I find that the Appellant doesn't have good cause for the delay in filing her application for benefits.

[38] The Appellant argues that even if she doesn't have good cause for the delay, after contributing to the EI system for her entire working life she should be able to benefit from those contributions. She says the Commission is withholding monies that belong to her and that she is entitled to.

[39] But the EI program isn't a savings account, it's an insurance plan. Like other insurance plans, you have to meet certain requirements to receive benefits.²¹ In this case, the Appellant doesn't meet the requirements, so she doesn't qualify for benefits. The monies she contributed don't belong to her, they are effectively insurance premia.

[40] The Appellant is clearly a hard-working and sincere person. She's finding it very difficult to find a job and she's going through tough financial times. She's very concerned about her financial future.

[41] Although I truly empathize with her, I must nonetheless apply the law as it has been interpreted by the courts.²² The Appellant didn't do enough to ensure that she understood her rights and obligations with respect to EI.²³ So, I'm unable to find that she had good cause to delay filing her application for benefits in the circumstances.

²⁰ Once again, I am using the term reasonable here as it is used in the case law.

²¹ See *Pannu v. Canada (Attorney General)*, 2004 FCA 90.

²² See *Canada (Attorney General) v. Knee*, 2011 FCA 301.

²³ When I say she didn't do enough I am basing myself on the criteria set out by the courts, as explained above.

Conclusion

[42] I find that the Appellant doesn't meet the conditions to have her application for benefits antedated. She hasn't proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[43] This means that the appeal is dismissed.

Elyse Rosen

Member, General Division – Employment Insurance Section