Citation: *EP v Canada Employment Insurance Commission*, 2023 SST 2000

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	E. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (594008) dated June 22, 2023 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	Teleconference
Hearing date:	September 6, 2023
Hearing participant:	Appellant
Decision date:	October 3, 2023
File number:	GE-23-1959

Decision

[1] The appeal is allowed in part. The Tribunal agrees in part with the Appellant.

[2] Regarding the antedate, the Appellant hasn't shown that he had good cause for the entire delay in applying for benefits. In other words, the Appellant hasn't given an explanation that the law accepts.

[3] Regarding the hours, the Appellant has shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[4] The Appellant applied for EI regular benefits, but the Canada Employment Insurance Commission (Commission) decided that the Appellant hadn't worked enough hours to qualify.[1]

[5] The Commission denied the Appellant's antedate request. This means his claim can not be treated as though it were made earlier. The Commission also says that the Appellant doesn't have enough hours because he needs 700 or more hours but has only 672.

[6] The Appellant disagrees for two reasons.

- The first is that he should be allowed an antedate. This would allow his qualifying period to be earlier and thereby include more hours.
- The second reason he disagrees is regarding his qualifying period. He argues that he should benefit from an extension of his qualifying period. This would also allow more hours to be included in the extended qualifying period.

[1] Section 7 of the *Employment Insurance Act* (Act) and section 93 of the *Employment Insurance Regulations* (Regulations) say 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."

Matter I have to consider first

I agreed to accept post hearing documents

[7] During the hearing the Appellant spoke about his inability to work for 2 weeks in December 2022. The Appellant had written about this fact when submitting his appeal.[2] During the hearing Appellant offered to send supporting documents to support his testimony. I agreed to accept the document during the hearing.

[8] The Appellant did provide a document after the hearing. It was added to his appeal.[3] The document was sent to the Commission to allow them the opportunity to provide any additional representations. The Commission elected to not provide any additional submissions.

[9] I am satisfied that the documents have probative value to the issue.

Issue

[10] I have to decide two issues:

- Did the Appellant show he had good cause for the delay in claiming EI benefits? This is call Antedate.
- Has the Appellant worked enough hours to qualify for EI regular benefits?

Analysis

[11] There are two ways the Appellant may qualify for benefits. I will start my analysis with the antedate request. I will then proceed to the hours issue.

[2] See GD2 page 9.
[3] See GD5.

Antedate request

[12] The Appellant wants his claims for EI benefits to be treated as though they were made earlier. This is called antedating (or, backdating) the claim. The Appellant wants the claim antedated to either May 1, 2022, or alternatively to December 19, 2022.

[13] He argues that either date would allow for benefits to be paid as his qualifying period would then have sufficient hours.

[14] 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.[4] 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, he had good cause for the delay.

[15] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[5] 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.

[16] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[6] This means that the Appellant has to show 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 there were exceptional circumstances that explain why he didn't do so.[7]

[17] The Appellant has to show he acted this way for the entire period of the delay.[8] The period is from the day he wants his claim antedated to until the day he actually

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[4] See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the Act.
[5] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[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 Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[8] See *Canada (Attorney General) v Burke*, 2012 FCA 139.

made the claim. In this case, the period of the delay is from May 1, 2022, until April 20, 2023.

[18] The Appellant says he had good cause for the delay because he has always been told by either professors, school mates or Commission employees that his schooling meant he was ineligible for benefits.

[19] The Appellant says he called in December 2022 and spoke to the Commission. He says he was told that while in school full time, he was not eligible for benefits. He called back during the spring 2023 semester while his school was interrupted for a labour dispute and was given a similar answer.

[20] The Appellant says he was given faulty information when asked about entitlement to benefits while in school. I do not agree. This does not mean I do not believe the Appellant. I believe he was told that full time students are likely not entitled to benefits.

[21] To receive regular benefits, an individual must meet two main things. The first being the criteria to establish a claim. The other is meet the ongoing entitlement conditions. For regular benefits, one such condition (among others) is that a person must prove his or her availability.

[22] In the Appellant's case, his questions related to his studies. It would be a natural answer regarding schooling as it what courts have said on this issue. Courts have said that full time students are presumed not to be available. They must rebut this presumption to be entitled to benefits. Another court decision sets out three factors a claimant has to prove:[9]

- He/She wants to go back to work as soon as a suitable job was available.
- He/She made efforts to find a suitable job.

[9] These three factors come from the Federal Court of Appeal's decision in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

- He/She didn't set personal conditions that might unduly (in other words, overly) limit his/her chance of going back to work.

[23] Given the above, I find it very likely that the Appellant was told by others and the Commission that benefits are not payable while in school. This, however, does not prevent the Appellant from applying. Given the answers he received, the Appellant says he did not apply. However, the only way to determine if a person is entitled to benefits is full fact finding on the above. This is done after an application is submitted and questions answered.

[24] Had the Appellant asked if he could receive illness benefits while recovering from the dental surgery, he would have undoubtedly been given a different answer.

[25] An antedate to May 2022 or December 2022 does not mean the Appellant would have been entitled to benefits while in school. Given the hours, he may very well be able to establish a claim, but he would then have to prove his availability while in school.

[26] The Appellant says he waited to apply and did so as soon as school was over. He did so to avoid any negative consequences. He did not want to be accused of fraud. In response, the Commission says there is no issue with fraud when a claim is filed and questions are answered honestly.

[27] The Commission says there is no evidence to support the Appellant called because there is no "supplementary record of claim". I am not persuaded by this argument. A supplementary record of clam is a record added to a claim. It stands to reason that if there is no claim, there can be no supplementary record of claim.

[28] Did the Appellant act like a reasonable person? I believe the Appellant called the Commission. I believe he asked if eligible for benefits while in school. However, I am not persuaded he asked if he could apply. I am not persuaded he asked about illness benefits.

[29] The questions a person could ask are many. Each claim is different.I do not believe the intent of an antedate is to backdate a claim just to have more hours to

qualify just to then subsequently disentitled a claimant while in school. Had the Appellant known about hours and how to ask questions, this may have been a possibility to discuss at the time. The Commission says that ignorance of the law is not a valid reason for an antedate. I agree. This is what the courts have said.[10]

[30] The Appellant explained in detail how he was still capable of working, despite saying he was not able to deal with his daily tasks. He says his hope for work was his way to get moving and out of the house. In the past when he worked, he had no time for medical issues as he often worked 60 hours per week. He say he has a family history of depression and his father taught him to just deal with it on his own. So he learned to work through it.

[31] The law says that unless there are exceptional circumstances, a claimant is expected to take reasonable prompt steps to understand their rights and obligations under the law.[11]

[32] I find this is a case where the cumulative effects of the Appellant's circumstances support a finding that there were exceptional circumstances during the relatively short 9-week delay. I recognize the Commission provides submissions in response to each separate issue raised by the Appellant. But they failed to consider the totality of these circumstances.

[33] I acknowledge the antedate provisions in the Act are not the product of "mere legislative whim."[12] They contain a policy that is vital to the Act's efficient administration. Antedating a claim for benefits may adversely affect the integrity of the system, because it gives a claimant a retroactive and unconditional award of benefits, often without any possibility of verifying the eligibility criteria during the period of retroactivity.[13]

[34] An antedate is not a right of every claimant, but is an advantage for which he must qualify. The courts have said it is an advantage that should be applied

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[10] *Canada (AG) v. Kaler*, 2011 FCA 266 *Rodger v. Canada (AG),* 2013 FCA 222
[11] See *Canada v Somwaru,* 2010 FCA 336 at para 11.
[12] See *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at para 5.
[13] See *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at para 5.

exceptionally. The obligation to promptly apply for benefits is seen as very demanding and strict.[14] This is why the "good cause for delay" exception is cautiously applied.

[35] Neither party disputes the Appellant failed to take prompt steps to learn about his rights and obligations under the law. But the law also allows for exceptional circumstances.

[36] I am not convinced that this is a case where the Appellant acted based solely on unfounded assumptions that work was forth coming. Instead, I accept the Appellant has shown he acted reasonably and carefully just as anyone else would have when in a similar situation. I believe him when he said everything he was going through contributed to his actions and the reasons why he delayed in submitting his claims. This includes issues with mental health, his family situation, moving, COVID lockdowns, personal intimacy issues, and dealing with the cockroach infestation. As he put it, these blew him over the edge and were enough to give him a mental breakdown.

[37] So, I find the Appellant has not shown there were exceptional circumstances, which prevented him from taking reasonably prompt steps to understand his rights and obligations under the law, throughout the entire period of delay in submitting his claim.

How to qualify for benefits

[38] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[15] 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 qualifies for benefits.

[39] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the "qualifying period."[16]

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[14] See *MR v Canadian Employment Insurance Commission (CEIC)*, 2019 SST 1292.
[15] See section 48 of the Act.
[16] See section 7 of the Act and section 93 of the Regulations.

[40] In general, the number of hours depends on the unemployment rate in your region.[17] He would have needed 700 hours.[18] The Appellant did not dispute his economic region, the unemployment in his economic region or the number of hours required under the general rule.

[41] There is no evidence that makes me doubt the need for 700 hours under the general rule. So, I accept this as a fact. I find that the Appellant needs 700 hours to qualify.[19]

The Appellant's qualifying period

[42] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different time frame. Your benefit period is the time when you can receive EI benefits.

[43] The law says that the benefit period starts the later of

- the Sunday of the week in which the interruption of earnings occurs, and,
- the Sunday of the week in which the initial claim for benefits is made.[20]

[44] The Appellant had an interruption of earnings starting December 16, 2022.[21] The Appellant applied for benefits on April 20, 2023.

[45] I therefore find the that the benefit period starts April 16, 2023.

[46] As noted above, the hours counted are the ones the Appellant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.[22] However, there is the possibility to extend the qualifying period.[23]

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[17] See section 7(2)(b) of the Act and section 17 of the Regulations.
[18] See GD03 pages 21 – 24.
[19] Section 7 of the Act sets out the general rule.
[20] See Section 10(1) of the EI Act.
[21] See GD3 page 19.
[22] See section 8 of the EI Act.
[23] See section 8(2) of the EI act.

[47] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from April 17, 2022 until April 15, 2023.

[48] The Commission argues that the conditions to extend the qualifying period were not met. I agree that with the information they had at the time, this was the correct answer. There is, however, new information. I have to decide which is more probable.

[49] Throughout the evidence and the hearing, this change in statement is the only instance where I found the Appellant's credibility tested. I find it possible that the Appellant would forget about wisdom teeth extraction and its impact on their ability to work. The Appellant has since provided proof to support his latest statements. I believe the Appellant. I believe it was an honest oversight on his part.

[50] For the reason set out above, I find that the Appellant has met one of the conditions set out in the law to extend the qualifying period.[24] In the Appellant's case, he does qualify for a extension of the qualifying period by two weeks. The doctor's note says he was unable to work from December 19, 2022 until January 2, 2023.

[51] Based on the evidence before me, I find the qualifying period of January 9, 2022, to January 7, 2023, to be correct.

The hours the Appellant worked

– The Appellant agrees with the Commission

[52] The Appellant did not dispute the number of hours. The Appellant agrees with the hours from the two different records of employment.

[53] The Appellant doesn't dispute the hours, and there is no evidence that makes me doubt it. So, I accept it as fact.

[24] See GD04 page 7. We can find there the conditions mentioned in section 8(2) which allow for an extension.

[54] I can't change that number. So, this is the number that I will use to decide the Appellant's appeal. From these 555 hours, 535 fall inside the Appellant's qualifying period.

So, has the Appellant worked enough hours to qualify for benefits?

[55] Yes. The Appellant has accumulated 535 hours in her qualifying period while needing 600.

Conclusion

[56] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[57] The Appellant does have enough hours to qualify for EI regular benefits with his current start date of April 16, 2023.

[58] This means that the appeal is dismissed.

Marc St-Jules
Member, General Division – Employment Insurance Section