



Citation: *SW v Canada Employment Insurance Commission*, 2024 SST 277

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

Decision

Appellant: S. W.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (627425) dated November 13, 2023 (issued by Service Canada)

Tribunal member: Elyse Rosen
Type of hearing: Teleconference
Hearing date: January 9, 2024
Hearing participant: Appellant
Decision date: January 11, 2024
File number: GE-23-3287

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he had good cause for the delay in making his claims for each week of unemployment between December 20, 2020, and September 18, 2021. This means that his claims can't be treated as though they were made earlier.

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on December 3, 2020. He filed a claim for each week of unemployment between December 6, 2020, and January 2, 2021, by filing electronic reports through the Canada Employment Insurance Commission's (Commission) online reporting system.

[4] When completing his online report for the period of December 20, 2020, to January 2, 2021, he was prompted to contact the Commission. This is because in light of the answers he had given, the completion of his report required the assistance of an agent.

[5] The Appellant didn't contact the Commission, as he was prompted to do. He says he didn't understand that this is what he was being asked to do.¹

[6] He says that in around July or August 2021 he realized that he hadn't received any benefits since December 2020. He asked a friend to help him understand why. His friend told him to go to a Service Canada office to get more information.

[7] The Appellant says that the person he spoke to when he attended at a Service Canada office told him to file his reports by telephone and gave him a number to call.

¹ The Appellant is from Ethiopia and English isn't his first language.

[8] The Appellant says he tried calling several times, but it was an automated telephone system, and he didn't understand the prompts he was given. So, he gave up trying.

[9] On October 6, 2021, the Appellant called the Commission with his friend and submitted a claim for the weeks of September 19 to October 2, 2021.

[10] The Appellant called the Commission again on November 29, 2021, to ask to have his claims for his weeks of unemployment between December 20, 2020, to September 19, 2021, antedated (in other words, treated as though they had been made on time).

[11] The Commission decided that the Appellant didn't have good cause for not filing his claim reports on time. It refused to antedate his claims. Because of this, it says the Appellant isn't entitled to benefits from December 20, 2020, to September 18, 2021.

[12] The Appellant says he wasn't familiar with the EI system and didn't know how to follow up to understand why he wasn't receiving benefits. He says he needed his friend, who speaks better English than he does and has a better understanding of the EI system, to help him.

Issue

[13] Did the Appellant have good cause for not filing his claims on time?

Analysis

[14] 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.² You make a claim by completing a report and submitting it to the Commission. Usually, you make your claim online, but that isn't the only way.

² See section 49 of the *Employment Insurance Act* (EI Act).

[15] There are deadlines for making your claim.³ If you miss the deadline, you can ask the Commission to backdate your claim and treat it as though it was made at an earlier date. This is called antedating.

[16] To get a claim antedated, you have to prove that you had good cause for the delay. And, that good cause has to have continued during the entire period of the delay.⁴ You have to prove this on a balance of probabilities. This means that you have to show that it is more likely than not that you had good cause for the delay.

[17] To show good cause, you have to prove that you acted as a reasonable and prudent person would have acted in similar circumstances.⁵ In other words, you have to show that you acted as reasonably and carefully as anyone else in your shoes would have.

[18] You also have to show that you took reasonably prompt steps to understand your entitlement to benefits and your obligations under the law.⁶ This means that you have to show that you tried to learn about your rights and responsibilities as soon as possible and as best you could. If you didn't take these steps, then you must show that there were exceptional circumstances that explain why you didn't.⁷

[19] You have to show that you acted reasonably and prudently for the entire period of the delay.⁸ That period is from the day you want your claim antedated to, until the day you actually made the claim.

[20] The Appellant hasn't shown good cause for the delay in filing his claim reports.

[21] First, if the Appellant wasn't able to complete his claim reports online (because he was being prompted to call the Commission in order to complete them), he should

³ See section 26 of the *Employment Insurance Regulations*.

⁴ See *Paquette v Canada (Attorney General)*, 2006 FCA 309 and section 10(5) of the EI 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.

have had the reflex to call or to go into a Service Canada location to find out why he was being prevented from completing his reports. I find that he should have done this regardless of whether or not he understood that he was being prompted by the system to call the Commission. A reasonable and prudent person who was having difficulty filing their reports would have contacted the Commission to find out why.

[22] Second, it took the Appellant until July or August 2021 to realize that he hadn't received any benefits since December 2020, to ask his friend what to do about it, and to go to a Service Canada location to try to resolve the issue. I find that a reasonable person who required the income support that EI provides, and wasn't receiving it, would have been motivated to act far sooner. If he didn't know what to do, surely he could have sought advice or taken some type of action sooner than he did.

[23] Third, if the Appellant wasn't able to complete his reports using the telephone reporting system he had been told to use by the person he spoke with when he visited a Service Canada location in July or August, he should have continued to pursue the matter until he had a resolution. That is what a reasonable person in those circumstances would have done. Instead, he simply gave up.

[24] Fourth, although the Appellant says he doesn't see the friend who ultimately helped him call the Commission in October 2021 very often, and that his friend had been out of town, a reasonable person would have either insisted that his friend help him sooner or would have found someone else to help. The Appellant has been working with the same employer since 2017. I have to believe that someone in his employer's human resources department could have helped him had he asked.

[25] Finally, I note that after asking to have his claim reports antedated in November 2021, the Appellant never called the Commission again despite the Commission's attempts to reach him and its requests that he contact them. It was only in 2023, after the Commission finally reached him, that the matter of his antedate request was finally

decided. A reasonable person would have continued to follow up after making their antedate request.⁹

[26] I recognize that English isn't the Appellant's first language and that his language difficulties played a role in the delay in filing his claim reports. However, I found the Appellant's English to be good enough to have been able to call the Commission to get assistance filing his claim reports.¹⁰ Yet he never made that call.

[27] I also note that the Appellant was able to make himself understood when the Commission reached out to him on October 16, 2023, to complete its fact finding on his antedate request.¹¹ So his language difficulties clearly can't, in and of themselves, constitute good cause for the delay.

[28] I find that the Appellant should have acted sooner than he did. There wasn't anything preventing him from doing so. There isn't any evidence of exceptional (in other words, special) circumstances that prevented him from informing himself about why he hadn't been paid benefits since December 2020, or about what steps he had to take to complete his claim reports. The reasons he provided aren't exceptional.

Conclusion

[29] I find that the Appellant hasn't shown he had good cause for the delay making his claims between December 20, 2020, and September 18, 2021. He didn't act as a reasonably prudent person would have in the same circumstances. This means that his claims can't be treated as though they were made earlier.

[30] So, the appeal is dismissed.

Elyse Rosen

Member, General Division – Employment Insurance Section

⁹ Although caselaw says I must consider whether the Appellant had good cause between December 20, 2020, and November 29, 2021, his lack of action after November 29, 2021, demonstrates a continuation of the same laissez-faire attitude the Appellant demonstrated during the delay.

¹⁰ In fact, at the outset of the hearing the Appellant said he would only use the assistance of the interpreter he had asked for if he really needed her.

¹¹ See GD3-56.