Citation: *JS v Canada Employment Insurance Commission*, 2023 SST 1927

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (630600) dated November 30, 2023 (issued by Service Canada)

Tribunal member:	Ambrosia Varaschin
Type of hearing:	Teleconference
Hearing date:	December 18, 2023
Hearing participant:	Appellant
Decision date:	December 18, 2023
File number:	GE-23-3415

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 **entire** delay in applying for benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's application can't be treated as though it was made earlier.[1]

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on October 24, 2023. He is now asking that the application be treated as though it was made earlier, on March 23, 2023. The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] I have to decide whether the Appellant has proven that he had good cause for not applying for benefits earlier.

[5] The Commission says that the Appellant didn't have good cause because the Appellant didn't make any attempt to inform himself of his rights and responsibilities under the EI Act before he applied. It says that even though he suffered a mental health crisis for part of the delay, he was not prevented from applying earlier.

[6] The Appellant disagrees and says that he didn't know the EI benefits were available when he was laid off from his first job. He says that after a month of unemployment he took out payday loans to pay his bills, and then the pressure of those loans caused a mental health crisis.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on March 23, 2023? This is called antedating (or, backdating) the application.

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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.

Analysis

[8] To get your application for benefits antedated, you have to prove these two things:[2]

a) You had good cause for not applying during the **entire period** of the delay. In other words, you have an explanation that the law accepts for the whole time you delayed in applying for benefits.
b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

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

[11] 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 March 23 to October 24, 2023.

[12] 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]

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

[13] 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.

[14] The Commission says that the Appellant hasn't shown good cause for the delay because:

- The Appellant didn't take any steps to understand his entitlement to benefits and his obligations under the law until after he was laid off at the end of September.
- The Appellant was had the ability to attend his medical appointments, counselling sessions, and apply for work, so his mental health crisis would not have kept him from applying for EI benefits.

[15] The Appellant says that he had good cause for the delay because:

- He wasn't aware that Employment Insurance existed. He is an immigrant and has never lost a job before this year.
- His mental health crisis did prevent him from applying because he relied on his friends to take him to his medical appointments and most of his daily tasks.

[16] I find that the Appellant hasn't proven that he had good cause for the **entire delay** in applying for benefits because he has only demonstrated good cause from May 21 through October 24, 2023.

The Appellant didn't know the law

[17] The Appellant doesn't have good cause for the delay from March 23 through May 21 because he didn't know that he could be eligible for EI benefits. Not knowing the law by itself is not a valid reason to justify a delay.[7]

[18] The Appellant made no effort to inform himself of his rights and obligations. While I sympathize with the argument that newcomers are unfamiliar with Canada's systems and programs, that very unfamiliarity is the strongest reason a claimant should make all reasonable efforts to inform themselves of their rights, responsibilities, and services available to them. The Appellant formerly worked as a restaurant manager for six years.

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[7] See *Canada (Attorney General) v Carry*, 2005 FCA 367; and *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

While I appreciate his argument that he thought EI benefits were only for COVID support, there was a significant amount of news and information regarding **changes** to the EI benefit program because of COVID. As a manager in one of the hardest hit industries during the pandemic, the Appellant had a reasonable expectation to know and understand what EI benefits were.

[19] In CUB 52548, the claimant argued the only reason he put off the submission of his application was, as an immigrant, he was not even aware of the Employment Insurance Act since no such law exists in his countries of origin, Lebanon and Mali. The Umpire confirmed the Board's decision, saying "despite the appellant's brilliant submission and all the sympathy we might feel for him because of the difficult situation in which he finds himself, the jurisprudence clearly indicates that ignorance of the law and good faith cannot suffice to excuse having waited almost a year to submit an application for benefits."

[20] In CUB 76667, the claimant was an immigrant with no experience applying for EI benefits. She said she wasn't aware of the obligation to apply for benefits within a month of losing her employment and thought she was expected to make a good effort to find employment before applying for benefits. No one had told her of the obligation to apply for benefits at the time. The Board of Referees denied her appeal because she had "concentrated on finding employment and had not enquired in regard to the procedures for applying for regular benefits." The Umpire affirmed the Board's decision, stating, "the claimant made no effort to inform herself of her rights and obligations for some eight months…Nothing had prevented her from applying for benefits or, at the very least, from informing herself of her rights and obligations in regard to a claim for regular benefits. This inaction on her part cannot be said to represent what a reasonable person would have done in the claimant's circumstances as defined in constant jurisprudence."

The Appellant took out payday loans

[21] I find that the Appellant taking out loans during the period of delay in the anticipation of finding work are not good cause for the delay.

[22] The Appellant says that he thought he'd get work right away because there were lots of jobs in hotel and restaurant management, and he has great experience in that industry. He says he applied to over 100 jobs in the first month he was unemployed, but he didn't receive a call from any of them.

[23] So, the Appellant didn't have a reasonable expectation of work, he only assumed that he would have work soon. Generally speaking, waiting for a job is not good cause for a delay in making an EI application.[8]

[24] The Appellant says that after that first month, he began taking out payday loans. He says he didn't understand how the interest worked on these loans, and some of them are accruing 48% interest. He says these debts are the primary reason he had a mental health crisis. The law says that choosing to live on savings shows there isn't an intent to file for benefits, so it isn't good cause for a delay.[9] Legally speaking, living off savings is the same concept as taking out a loan, despite the different implications for the Appellant. The Appellant is still using his own private resources to live, which means he didn't intend to file for benefits.

[25] The Appellant taking out loans is not good cause for delay because they don't prevent him from applying for EI benefits.

The Appellant was ill

[26] I find that the Appellant's mental health crisis was an exceptional circumstance that would keep him from taking steps to find out his rights and obligations under the EI Act.

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[8] See *Howard v Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v Ouimet*, 2010 FCA 83; *Canada (Attorney General) v Smith*, A-549-92; *Canada (A.G.) v. Dunnington*, [1984] 2 F.C. 978 (F.C.A.) A-1865-83; *Canada (A.G.) v. Caron*, [1986] F.C.J. No. 85 (F.C.A.) A-395-85; and *Shebib v. Canada (A.G.)*, [2003] F.C.J. 88 (F.C.A.) A-24-01.
[9] See *Bradford v Canada Employment Insurance Commission*, 2012 FCA 120 and *Howard v Canada (Attorney General)*, 2011 FCA 116.

[27] The Commission says the Appellant's mental health was sufficient to attend his medical appointments, counselling sessions, and look for work. So, he was not so ill that he couldn't apply for EI benefits.

[28] The Appellant disagrees. He testified that his friends were the ones who managed his day-to-day affairs while he was ill. He says that he was not able to function as a responsible adult during his mental health crisis.

[29] The Appellant said he began to feel depressed the last week of May, and his friends made him an appointment with his doctor for June 6. Between June 6 and June 13, the Appellant attempted suicide once, and attended the Emergency Department at his local hospital. On June 13, the Appellant was connected with his local mental health crisis support. He testified that his friends took him to all of his appointments, made sure he ate and took his medications, and were the ones looking for work on his behalf. He said they asked at their workplaces, and people they knew, if there was any work for the Appellant once he was well enough to begin working again.

[30] The Appellant testified that he began to feel better in August, and started work as a factory worker on August 21. He said it was only when he was laid off from that job that he learned about EI benefits.

[31] I find that the Appellant has shown he was not able to inquire about, or apply for, EI benefits as of May 21, 2023. The Appellant was clearly in a severe mental health crisis and required the help of his friends for day-to-day tasks, so it wouldn't be reasonable to assume he was able to ask about, or apply for, EI benefits.

[32] So, the Appellant had good cause for the delay from May 21, 2023, until he applied on October 24, 2023.

Good cause must exist for the entire period of delay

[33] The law says that unless there are exceptional circumstances, a claimant has to take "reasonably prompt steps" to determine their entitlement to benefits and to ensure

their rights and obligations under the EI Act.[10] I have already found that exceptional circumstances exist for the Appellant. However, his medical issues didn't start until the last week of May, and he is requesting antedate to March 23.

[34] The EI Act requires the Appellant to have good cause for the **entire period** of delay.[11] The law also says good cause must be shown **for the entire period** of the antedate.[12] I find that the Appellant doesn't have good cause for the delay between March 23 and when his mental health crisis started, around May 21. So, I can't allow his appeal for good cause.

[35] Antedate is not something given lightly, it's an exception to the rule.[13] Ontime applications are essential to the proper administration of EI. Requiring claimants to apply on time ensures everyone is treated the same.[14] I must echo the Federal Court of Appeal's sentiments that, "regrettably, it is often those who have little or no experience with employment insurance benefits and who have the best of intentions who get caught out in the maze of statutory and regulatory provisions."[15]

[1] Unfortunately, on the present state of the law, the Appellant doesn't have cause for antedating his claim for employment insurance benefits, even though he has good cause for the last part of the delay, because he is requesting a date earlier than May 21, 2023. If he had requested antedate to May 21, 2023, this Appeal would have had a different result.

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

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[10] See *Canada (Attorney General) v Carry*, 2005 FCA 367.
[11] See section 10(4) of the EI Act.
[12] See *Canada (Attorney General) v Chalk*, 2010 FCA 243.
[13] See *Canada (Attorney General) v McBride*, 2009 FCA 1; *Canada (Attorney General) v Scott*, 2008 FCA 145; *Canada (Attorney General) v Brace*, 2008 FCA 118; and *Canada (Attorney General) v Smith*, A-549-92.
[14] See *Canada (Attorney General) v Beaudin*, 2005 FCA 123; *Canada (Attorney General) v Brace*, 2008 FCA 118; and *Canada (Attorney General) v Chalk*, 2010 FCA 243.
[15] See *Shebib v Canada (Attorney General),* 2003 FCA 88 at para 38.

Conclusion

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

[38] The appeal is dismissed.

Ambrosia Varaschin
Member, General Division – Employment Insurance Section