



Citation: *HL v Canada Employment Insurance Commission*, 2023 SST 1945

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

Decision

Appellant: H. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (561474) dated December 14, 2022 (issued by Service Canada)

Tribunal member: Jean Yves Bastien

Type of hearing: Videoconference

Hearing date: November 9, 2023

Hearing participant: Appellant

Decision date: November 28, 2023

File number: GE-23-95

Decision

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

[2] The Appellant hasn't shown that she had good cause for the 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 was suspended from her job between April 5, 2022, and June 20, 2022, because she refused to be vaccinated against COVID-19. This suspension is the subject of a separate appeal (GE-22-3971).

[4] The Appellant applied for Employment Insurance (EI) benefits on June 16, 2022. She is now asking that the application be treated as though it was made earlier, on April 3, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[6] The Commission says that the Appellant didn't have good cause because "the claimant stopped working on April 5, 2022, but she delayed applying for benefits until June 16, 2022, that is, two and half months later."² The Commission argues "that the claimant did not act like a 'reasonable person' in her situation would have done to verify her rights and obligations under the Act."³

[7] The Appellant disagrees. She told the Commission on October 21, 2022, that "she was unaware of the time frames and delays to file an Employment Insurance claim. [She] said that she simply did not have the time and that filing a claim was not a priority

¹ Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.

² See page GD4-2 of the appeal file.

³ See page GD4-3 of the appeal file.

at the time.... The claimant said that there was nothing in particular that prevented her from applying earlier. It was simply a case of her not knowing the law and simply not having the time to apply.”⁴

Matters I have to consider first

The Hearing was rescheduled a number of times

[8] The Appellant was first contacted on March 7, 2023, by Tribunal Staff to ask if she was available for a hearing on either March 10 or 16, 2023. The Appellant was taken aback and stated that she was surprised that a hearing would happen so soon. The Appellant said that she didn’t think that she would be available until August or September (of 2023).

[9] A Case Conference was held on March 17, 2023. One of the purposes of the conference was to discuss possible hearing dates. The Appellant requested that her Hearing be delayed until “after the third week of September”. I noted that this was an unusually lengthy delay, but since the Commission, who attended the conference, had no objection, the hearing was rescheduled for September 26, 2023.

[10] The Hearing started as scheduled on September 26, 2023, however, the Appellant raised an allegation of bias. The hearing was then paused to allow the Tribunal to consider and decide on this issue. An interlocutory decision was issued finding that the Appellant failed to prove that there was a reasonable apprehension of bias on October 31, 2023, and a date of November 9, was set for the hearing to continue.

Issue

[11] Can the Appellant’s application for benefits be treated as though it was made on April 3, 2022? This is called antedating (or, backdating) the application.

⁴ See page GD3-12 of the appeal file.

Analysis

[12] To get your application for benefits antedated, you have to prove these two things:⁵

- a) 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.
- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[14] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.⁶ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[15] The Appellant has to show that she acted this way **for the entire period of the delay**.⁷ That period is from the day she wants her application antedated to until the day she actually applied. So, for the Appellant, the period of the delay is from April 3, 2022, to June 16, 2022.

[16] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁸ This means that the Appellant has to show that she tried to learn about her rights and responsibilities 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.⁹

⁵ See section 10(4) of the EI Act.

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

⁷ See *Canada (Attorney General) v Burke*, 2012 FCA 139. Emphasis added.

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

[17] The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she had good cause for the delay.

[18] The Appellant says in a letter to the Commission on November 23, 2022, that she had good cause for the delay because:¹⁰

- Service Canada has expressed the position that they would not pay EI benefits to the employees being placed on ALWOP due to vaccine mandate. This was exposed on main media CBC soon after the vaccine mandate was implemented
- in reality, my co-workers and friends' EI application caused by the vaccine mandate were denied. This was consistent with the media exposure
- at the beginning, I was confused with the situation regarding the vaccine mandate. I need to know if I can have EI benefit before I apply [for] it. To understand this, I have to resolve many questions. [the Appellant then goes on to list 18 separate questions]
- I went to Justice Canada Website, Health Canada, and other websites which provide a lot of information related to various vaccine mandate issue. Canadian Charter of Rights. I read through case laws to familiar the subjects related to this issue
- finally, I have to say that I agree with the statement that "the vaccine mandate is unconstitutional, illegal, unscientific, unethical." And I also understand that my employer denied my religious accommodation request has no basis at all
- it took me quite some time to confirm my position and confident to state. It also cause the delay of applying the EI benefit
- it is reasonable for me to fully understand the situation before proceeding the EI application. Although it cause delay, but I am much better than those EI service officers who are still denying for the employees who were suffered from the vaccine mandate without taking time to fully understand the legality issue of the vaccine mandate or scared to uphold and honor

¹⁰ See pages GD3-16 to GD3-18 of the appeal record. Quotations are verbatim.

our constitutional charter rights even after the vaccine mandate was suspended

- therefore, the delay is fully understandable and reasonable

[1] The Appellant concludes her letter by arguing:¹¹

To sum up, it was the Service Canada's position, the complexity of the vaccine mandate at that specific political environment, made me delayed the EI application. If Service Canada could realize that the vaccine mandate was illegal, the employer denied its employee's religious accommodation in unreasonable way. Then I would not hesitate to apply EI application immediately. Plus due to the limited time and energy, not an expert of EI, I do not know that filing late will make me lost the benefit I was entitled to.

[19] The Commission says that the Appellant hasn't shown good cause for the delay because she stopped working on April 5, 2022, but delayed applying for benefits until June 16, 2022, that is, two-and-half months later.

[20] The Commission says that the Appellant did not act like a 'reasonable person' in her situation would have done to verify her rights and obligations under the Act. Specifically, the claimant delayed in applying because:¹²

- she heard she would not be entitled to benefits based on different sources such as the media, coworkers, and friends
- she had never read about EI. She was not aware there was a timeframe for applying or that she could lose benefits if applying late
- it was not her priority; she had limited time and energy to deal with the issue as she is not a superwoman, she has children to care for, financial and mental stress to deal with and her employer's vaccine mandate was hurting her emotionally, physically, and mentally

¹¹ See page GD3-18 of the appeal record.

¹² See page GD4-3 of the appeal record.

- she was confused with the situation regarding the vaccine mandate and needed to find out if she was entitled to EI benefits before she applied for it
- It took her sometime to resolve her questions related specifically to the employer's vaccine mandate and confirm her position which also caused the delay in applying

[21] The Commission argues that the Appellant's reasons for delaying her claim do not constitute good cause. "Even if it was not clear to her if she was entitled to benefits or not, a reasonable person would have contacted Service Canada (SC) to inquire about their rights and obligations. However, there is no record on file showing that the claimant contacted SC before she applied on June 16, 2021. If she had taken action at an earlier date to inquire about her rights and obligations, she could have avoided this unfortunate situation."¹³

[22] The Commission cites case law and argues that "The Federal Court of Appeal has re-affirmed that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause. The correct legal test for good cause is whether the claimant acted as a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the Act."¹⁴

[23] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she didn't take reasonably prompt steps to understand her entitlement to benefits and obligations under the law. Instead, she chose to wait several months while she conducted her own research rather than simply contacting Service Canada for advice.

¹³ See page 4-3 of the appeal record.

¹⁴ See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[24] I prefer the Commissions argument that: “In the case at hand, not knowing there was a specific timeframe for applying, assuming that she would not be entitled to benefits or not having the time to apply are not reasons that can be considered as good cause for applying late.”¹⁵

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

Conclusion

[26] The Appellant hasn’t proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[27] The appeal is dismissed.

Jean Yves Bastien
Member, General Division – Employment Insurance Section

¹⁵ See page GD4-4 of the appeal record.