Citation: *AB v Canada Employment Insurance Commission*, 2023 SST 2022

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (619242) dated October 4, 2023 (issued by Service Canada)

Tribunal member:	John Rattray
Type of hearing:	Teleconference
Hearing date:	December 7, 2023
Hearing participant:	Appellant
Decision date:	December 16, 2023
File number:	GE-23-2917

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 applied for Employment Insurance (EI) benefits on March 6, 2023. 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.

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

[5] The Commission says that the Appellant didn't have good cause because she didn't act like a "reasonable person" in her situation to verify her rights and obligations under the law. She didn't contact Service Canada during the delay, and wasn't prevented from filing for benefits earlier.

[6] The Appellant disagrees and says that she made an honest mistake in not applying earlier because she was unaware of a time limit to apply and thought that she could not receive EI benefits while she was receiving severance payments. She also thought that she needed to wait until she received her record of employment before applying.

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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.

Issue

[7] 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.

Analysis

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

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).

[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 she acted as a reasonable and prudent person would have acted in similar circumstances.[3] 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.

[11] The Appellant has to show that she acted this way for the entire period of the delay.[4] 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 March 6, 2023.

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.[5] This means that

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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.

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.[6]

[13] 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.

[14] The Appellant says that she had good cause for the delay because it was an honest mistake that she didn't apply earlier. She thought that she had to wait because she hadn't received her record of employment and was still receiving severance payments.

[15] She also says she focused on getting new employment and didn't want to be a burden on government social assistance programmes.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because she didn't show good cause for the entire period of delay from April 3, 2022, to March 6, 2023. It says a reasonable person would make timely enquiries of the Service Canada to determine their rights and obligations. The Appellant wasn't prevented from applying for EI benefits and didn't contact Service Canada.

[17] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she didn't act as a reasonably prudent person in the same situation. She didn't make reasonably prompt enquiries to learn about her rights and obligations under the Act, and didn't reach out to Service Canada for almost one year.

[18] I must also consider whether the other circumstances the Appellant was facing are exceptional and excuse her from taking reasonably prompt steps. The Appellant testified that there were no exceptional circumstances that prevented or delayed her applying for EI benefits or contacting Service Canada to learn about her rights and

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

obligations. I accept the Appellant's testimony. I find that the circumstances weren't exceptional, and didn't excuse the entire period of delay.

[25] This means that 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.

Other matters

[19] I make the above finding reluctantly. The Appellant's lived experience was working and contributing to society. Since arriving in Canada 40 years ago, she had worked continuously until her employer terminated her employment in April 2022. She didn't want to be a burden on government social assistance programs and thought that applying for EI benefits would imperil her entitlement to her severance package.

[20] When she was terminated, she was offered a separation package that she was advised to sign and return to HR. One of the terms of the separation required her to report immediately any employment or self-employment to her employer.[7] She thought that if she applied for EI benefits any payments would be considered compensation that would jeopardize her severance. She depended on her severance payments to get by financially.

[21] Her employer is a large, sophisticated company with an HR department. Its separation package told the Appellant to keep the terms of her package confidential and required her to sign an indemnity in favour of the employer. What it didn't do was tell her to reach out to Service Canada to enquire about her eligibility for EI benefits.

[22] Also, her employer didn't comply with its legal obligation to issue the record of employment to the Appellant on time. Instead, it waited more than a year after it terminated the Appellant's employment before issuing it.[8]

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[7] See GD3-36.
[8] See GD3-15.

[23] The record of employment form contains information about applying for EI benefits, but it's of no use to a claimant who hasn't received it. Also, it fails to tell potential claimants that they should immediately make enquiries of Service Canada about their entitlement to EI benefits even if they're receiving severance payments.

[24] Timely delivery of the record of employment by the employer, and the use of plain language on the record of employment form, would have helped the Appellant receive the EI benefits she was otherwise entitled to receive.

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.

John Rattray

Member, General Division – Employment Insurance Section