



Citation: *AS v Canada Employment Insurance Commission*, 2024 SST 396

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

Decision

Appellant: A. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (603418) dated August 29, 2023
(issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Teleconference

Hearing date: January 30, 2024

Hearing participant: Appellant

Decision date: February 6, 2024

File number: GE-23-3197

Decision

[1] The appeal is allowed, in part.

[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

[3] However, the Appellant applied for benefits on June 6, 2022, so she doesn't have to show good cause after this date.

Overview

[4] The Appellant applied for Employment Insurance (EI) benefits on June 6, 2022. She is now asking that the application be treated as though it was made earlier, on November 28, 2021. 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 from November 28, 2021, to June 18, 2022. It says that she didn't act like a reasonable person in her situation would have done to verify her rights and obligations for EI benefits. It says that she waited almost 6-months to file her application because she was waiting for her employers to issue Records of Employment (ROEs), but the application gives options if she had difficulty getting the ROEs.

[7] The Appellant disagrees. She says that she applied for EI benefits on May 20, 2022. She says that she didn't make a deliberate decision to delay her application,

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

instead her employers delayed in giving her the ROEs. She says that she acted honestly and in good faith.

Issue

[8] Can the Appellant's application for benefits be treated as though it was made on November 28, 2021? This is called antedating the application.

Analysis

What does the Appellant have to show?

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

- you had good cause for the delay during the entire period of the delay
- you qualified for benefits on the earlier day (that is, the day you want your application antedated to)

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

[11] 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.

[12] 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.

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.

[13] 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 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

[14] 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.

When did the Appellant apply for benefits?

[15] I find that the Appellant applied for EI benefits on June 6, 2022.

[16] The Appellant says that she applied for EI benefits on May 20, 2022.

[17] The Commission says that she applied for EI benefits on June 6, 2022. It says that she hasn't shown good cause from November 28, 2021, to June 18, 2022.⁷ It says that, on May 20, 2022, the Appellant modified her application, but it wasn't submitted.

[18] The Appellant submitted a document showing that she received a temporary password to make an application for EI benefits online, dated May 3, 2022.⁸

[19] The Appellant submitted a document showing that she "modified" her application, dated May 20, 2022. The document says that she has accepted her rights and responsibilities under the EI program.⁹

[20] At the hearing, the Appellant says that she started her application for benefits on May 3, 2022, but was told her application was incomplete because she didn't have an ROE from her parttime employer. She says that, on May 20, 2022, she modified the

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.

⁷ See GD3-33 and 53.

⁸ See GD8-2.

⁹ See GD8-3 to 5.

application to show that she couldn't get the ROE from her parttime employer. She says that she submitted her application on this date.

[21] In the notice of appeal and appeal documents, the Appellant says that she submitted her application in June of 2022.¹⁰

[22] The Commission submitted a document showing that it received the Appellant's application for EI benefits on June 6, 2022. The documents says that the Appellant has accepted her rights and responsibilities under the EI program. It also says that she declares the information given in the application to be true, to the best of her knowledge, and she wants to submit her application for EI benefits online.¹¹

[23] I find that the Appellant applied for EI benefits on June 6, 2022. I rely on the document submitted by the Commission, as it confirms that the Appellant submitted her application for EI benefits online, on June 6, 2022. I agree with the Commission that the document dated May 20, 2022, shows that the Appellant modified her application, but doesn't show that it was submitted to the Commission.

[24] The Appellant has to show that she had good cause for the delay from the day she wants her application antedated to until the day she actually applied. I disagree with the Commission that the period is from November 28, 2021, to June 18, 2022. For the Appellant, I find that the period of the delay is from November 28, 2021, to June 6, 2022.

Did the Appellant have good cause for the delay?

[25] I find that the Appellant didn't have good cause for the delay.

[26] The Appellant says that she had good cause for the delay because she didn't make a deliberate decision to delay her application, instead her employers delayed in giving her the ROEs. She says that she acted honestly and in good faith.

¹⁰ See GD2-9 and 6-2.

¹¹ See GD3-3 to 18.

[27] The Commission says that the Appellant hasn't shown good cause for the delay because she didn't act like a reasonable person in her situation would have done to verify her rights and obligations for EI benefits. It says that she waited almost 6-months to file her application because she was waiting for her employers to issue ROEs, but the application gives options if she had difficulty getting the ROEs.

[28] The Appellant says that she had two jobs. She was let go from her fulltime job on November 29, 2021. She was let go from her parttime job on November 15, 2021.

[29] The Appellant says that she requested ROEs from her employers, in December 2021, but her requests were ignored.

[30] The Appellant says that she delayed her application because she didn't have the ROEs. She says that she understood that, if you don't have the ROE, you won't be entitled to proceed further with an application. She says that her employers weren't playing by the rules.

[31] The Appellant says that her fulltime employer told her, in December 2021, that it would issue an ROE directly to Service Canada. Soon after, she called Service Canada to ask about next steps. She was told that she could create an online account to see the ROE.

[32] The Appellant says that she visited the Service Canada website in December 2021. She says that she learned that, even if you don't have an ROE you can apply for EI benefits, but there may be a delay.

[33] The Appellant's fulltime employer issued an ROE dated December 17, 2021.¹²

[34] The Appellant says she requested her personal access code on December 20, 2021, to create an online account, and received it in January 2022.

¹² See GD3-19 and 20.

[35] The Appellant says that, between December 2021 to March 2022, she was making best efforts to get her ROEs.

[36] The Appellant says that, in March 2022, her online account was set up. She says that she also received an ROE from her fulltime employer in the mail.

[37] The Appellant says that in March 2022, her parttime employer gave her a draft ROE.¹³ She says that she couldn't use this ROE to apply for benefits because it was incomplete and said "draft" on it.

[38] The Appellant says that, on May 20, 2022, she modified her application to show that she couldn't get the ROE from her parttime employer. She says that, because she previously learned in December 2021, she can apply for EI benefits even if she doesn't have the ROE, she applied.

[39] The Appellant says that her delay from December 2021 to May 2022, was due to stress from losing her jobs and the pandemic. She says that she wasn't receiving any medical assistance for stress at this time.

[40] The Appellant's parttime employer issued several ROEs, dated June 21, 2022, July 7, 2022, September 1, 2022, and again on September 1, 2022.¹⁴

[41] The Appellant says that she hasn't received EI benefits before. She says that she has been gainfully employed since she was 18 years old.

[42] The application for benefits says that it's the applicant's responsibility to provide ROEs from every employer they worked for in the last 104 weeks. It says that the claim cannot be finalized without all of the ROEs. It says that, if an applicant has difficulty getting their ROE, they can contact Service Canada or complete the Request for ROE Form.¹⁵

¹³ See GD6-7.

¹⁴ See GD3-21 to 28.

¹⁵ See GD3-10.

[43] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits. She testified that, as of December 2021, she was aware that, even if she didn't have an ROE she can apply for EI benefits, although there may be a delay. She was told by a Service Canada agent, in December 2021, that she could create an online account to see the ROE issued by her fulltime employer. I find that a reasonable and prudent person would have applied for benefits shortly after being advised of this information.

[44] The Appellant hasn't shown any exceptional circumstances. She says that she was stressed from losing her jobs and the pandemic, but as she wasn't receiving any medical assistance and didn't provide any corroborating evidence, I don't find that she was prevented from taking reasonably prompt steps in applying.

Does the Appellant qualify for benefits?

[45] This Tribunal held that the Appellant isn't disqualified from receiving EI benefits from June 5, 2022, because of misconduct.¹⁶ The Commission reversed its decision on the Appellant's availability.¹⁷ She may still not qualify to receive benefits for other reasons, but she doesn't have to show good cause for delaying her application as at or after June 6, 2022.

Conclusion

[46] The Appellant hasn't proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay. But she applied for benefits on June 6, 2022, so she doesn't have to show good cause for delaying her application at or after this date.

[47] The appeal is allowed in part.

Kristen Thompson
Member, General Division – Employment Insurance Section

¹⁶ See GE-23-494, unpublished decision dated June 27, 2023.

¹⁷ See GD2-19.