



Citation: *AP v Canada Employment Insurance Commission*, 2023 SST 1881

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: A. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (609425) dated August 30, 2023 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Videoconference

Hearing date: November 8, 2023

Hearing participant: Appellant

Decision date: November 9, 2023

File number: GE-23-2612

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means the Appellant's claims can't be treated as though they were made earlier.

Overview

[3] 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.¹ You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two-weeks. Usually, you make your claims online. There are deadlines for making claims.²

[4] The Appellant made his claims after the deadline. He wants them to be treated as though they were made earlier, on March 26, 2023.

[5] For this to happen, the Appellant has to prove that he had good cause for the delay.

[6] The Commission decided the Appellant didn't have good cause and refused his request. The Commission says the Appellant didn't have good cause, because a reasonable person in his situation would have contacted them to inquire about their rights and responsibilities.

[7] The Appellant disagrees and says he lost his access code and didn't want to waste people's time attempting to secure another code. He says he decided to wait until he found his access code and let his EI benefits accumulate.

¹ See section 49 of the *Employment Insurance Act* (EI Act).

² See section 26 of the *Employment Insurance Regulations*.

Issue

[8] Did the Appellant have good cause for the delay in claiming EI benefits?

Analysis

[9] The Appellant wants his claims for EI benefits to be treated as though they were made earlier, on March 26, 2023. This is called antedating (or, backdating) the claims.

[10] To get a claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.³ 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.

[11] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ 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.

[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

[13] The Appellant has to show that he acted this way for the entire period of the delay.⁷ That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Appellant, the period of the delay is from March 26, 2023, to May 12, 2023.

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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.

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

[14] The Appellant says he had good cause for the delay because he didn't want to waste anyone's time asking for another access code. He says he assumed when he found his access code he would receive a lump sum payment for the benefits he missed.

[15] The Commission says the Appellant hasn't shown good cause for the delay, because he made no effort to resolve the issue with his access code or satisfy himself as to his rights and responsibilities under the law (EI Act).

[16] I find the Appellant hasn't proven that he had good cause for the delay in applying for benefits for the following reasons:

[17] First: The Appellant didn't do what a reasonable person would have done and secure another access code to file his claimant reports. I realize the Appellant testified that he didn't want to wait for a lengthy time on the telephone to speak with a Commission officer about his lost access code. The Appellant further testified he assumed he would be paid all his benefits when he found his access code. However, I cannot conclude the Appellant acted as a reasonable person when he lost his access code and didn't contact the Commission to secure another code. In short, a reasonable person would have contacted the Commission to secure another access code so they could file their claimant reports by the deadlines required.

[18] Second: There were no exceptional circumstances that prevented the Appellant from obtaining a new access code and filing his claimant reports on time. The Appellant was forthright during his testimony that there were no medical problems or family emergencies that prevented him from securing another access code and filing his claimant reports on time.

Additional Testimony from the Appellant

[19] I realize the Appellant testified that he was advised to file his claimant reports every two-weeks. However, the Claimant further testified that no one told him he wouldn't be paid at all if he didn't file his claimant reports. Nevertheless, a reasonable

person would have contacted the Commission about securing another access code and inquire about the consequences for not filing his claimant reports on time.

[20] I further realize the Appellant testified that since he lost his access code it was logical to let his benefits accumulate so he would have a lump sum of benefits to pay his rent or credit card balance. On this matter, the Appellant might have his own logic and personal reasons for not filing his claimant reports on time. However, in this case the Appellant's personal reasons and logic wouldn't be "good cause" for the delay. As mentioned, to show good cause a person must demonstrate they acted as a reasonable person would have done to satisfy themselves of their rights and responsibilities under the EI Act.

[21] Finally, I realize the Appellant was frustrated and displeased that he didn't receive EI benefits for the period of delay. However, I must apply the legal test for good cause to the evidence. In other words, I cannot ignore the law even for compassionate reasons.⁸

Conclusion

[22] The Appellant hasn't proven that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims can't be treated as though they were made earlier.

[23] The appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁸ *Knee v Canada (Attorney General)*, 2011 FCA 301.