



Citation: *MM v Canada Employment Insurance Commission*, 2024 SST 173

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

Decision

Appellant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (624940) dated October 30, 2023 (issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Teleconference

Hearing date: January 10, 2024

Hearing participant: Appellant

Decision date: January 16, 2024

File number: GE-23-3327

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 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 July 17, 2023. He is now asking that the application be treated as though it was made earlier, on February 17, 2019. 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 he wasn't able to show good cause for the delay which is more than four years. During the four years of delay, the Appellant made EI claims and received sick benefits after a request to have a claim antedated. The Commission said it didn't agree that the Appellant acted like a reasonable person would and that he should have followed up sooner.

[6] The Appellant disagrees and says that he didn't know he could get sick benefits when he was without an income between February 2019 to June 2019. He said he was fighting his service provider's decision not to qualify him for long term disability. He learned from someone that he could get sick benefits when he was off in January 2021. He applied and got backdated sick benefits for the period January 24, 2021 to

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

May 8, 2021. So he is now asking for another claim to be antedated so he can receive sick benefits from February 17, 2019.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on February 17, 2019? 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 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 February 18, 2019 to July 7, 2023.⁵

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 GD3-56 for the Decision Letter dated August 1, 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.⁶ 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.⁷

[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 Appellant says that he had good cause for the delay because he was fighting his service provider's denial of long-term disability (LTD) benefits. He applied for LTD after a claim for short-term disability (STD) was approved for 60 days. He was off work due to illness from February 18, 2019 to June 10, 2019 with no income.⁸

[15] At the time, he didn't know about EI sick benefits. In January 2021 he was told about sick benefits by someone he knows. He applied for sick benefits and got them. So he decided to try and get benefits for 2019 when he was sick with no income.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because he knew how to request an antedate and had already done so. On January 29, 2021, he made a claim for sick benefits. He didn't submit his reports, but later that year he asked to have his benefits backdated. The Commission agreed and backdated his claim, so he received sick benefits from January 24, 2021 to May 8, 2021.⁹ Because of this, the Commission said he should have known and said he didn't prove good cause for the delay.

[17] The Appellant didn't make a request for antedate for the February 2019 period until July 17, 2023. At that time, he made a claim for sick benefits which was denied

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

⁸ See Records of Employment (ROE) on GD3-17 to GD3-18.

⁹ See GD3-26.

because he didn't have enough hours. So he asked to have it antedated to February 17, 2019 when he was sick so he could receive these benefits from July 7, 2023.

[18] The Appellant said he hadn't known about sick benefits in January 2019. He didn't know about sick benefits until January 2021. He said he was fighting his service provider's denial of his LTD claim from January 2019.

[19] He explained that he told the Commission about his sick leave from 2019 when he talked to them in January 2021. He said he thought the Commission would sort it out and let him know if his claim could be backdated.

[20] Even though the Appellant found out about sick benefits and how to antedate in January 2021, he waited more than two years before asking to receive benefits for February 2019. During that time, he requested an antedate to his January 2021 claim because he said he didn't know about EI sick benefits and was waiting to hear about his LTD claim.¹⁰

[21] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he hasn't shown good cause for the entire period of time. The circumstances described by the Appellant that he said caused the delay are not exceptional.

- The Appellant said he learned about sick benefits in January 2021, yet he waited until July 2023 to make a request for antedate. He made this request after he had made claims for other periods of time.
- He said he didn't know about benefits at the time (in 2019) and was fighting his disability claim. However, he had an opportunity to make this request after he learned about sick benefits in January 2021.

¹⁰ See GD3-21 to GD3-23.

- He made other requests for antedate and received sick benefits. So I don't accept this as the real reason for this delay because he had already received advice and information after using this same reason in 2021.
- The Commission allowed his 2021 request for antedate even though it is well established that ignorance of the law doesn't constitute good cause.¹¹ It also considered at the time that he had been hospitalized against his will.¹²
- The Appellant returned to work for one year between June 2019 and August 2020. During that time he could have looked into EI and called Service Canada to ask about the benefits.
- He said he was fighting his LTD service provider, but he could have made a claim for benefits while he waited. He had already received benefits in 2021 while he was fighting his LTD claim. So this proves that fighting his disability claim wasn't a barrier to making and receiving benefits.
- He said the Commission should have followed up when he told them about being sick in 2019. The Commission provided evidence that it tried to reach the Appellant, but it had difficulty.¹³ Even so, it is the responsibility of the claimant to follow up and complete the necessary paperwork, not the Commission's.

[22] 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.

¹¹ *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Trinh*, 2010 FCA 335; *Canada (Attorney General) v Ouimet*, 2010 FCA 83; *Canada (Attorney General) v Mehdinasab*, 2009 FCA 282; *Canada (Attorney General) v Carry*, 2005 FCA 367; *Canada (Attorney General) v Labrecque*, A-690-94; *Canada (Attorney General) v Chan*, A-185-94; *Canada (Attorney General) v Larouche*, A-644-93; *Canada (Attorney General) v Smith*, A-549-92; *Canada (Attorney General) v Dunnington*, A-1865-83).

¹² See GD3-22 for a transcript from the Commission dated November 14, 2021.

¹³ See GD3-25, and GD3-22.

Conclusion

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

[24] The appeal is dismissed.

Katherine Parker
Member, General Division—Employment Insurance Section