



Citation: *SM v Canada Employment Insurance Commission*, 2023 SST 1997

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

Decision

Appellant: S. M.
Representative: Jeanine Noseworthy

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (575647) dated March 22, 2023
(issued by Service Canada)

Tribunal member: Bret Edwards

Type of hearing: In person
Hearing date: July 11, 2023
Hearing participants: Appellant
Appellant's representative

Decision date: August 4, 2023
File number: GE-23-1138

Decision

[1] The appeal is allowed in part.

[2] The Appellant made one Employment Insurance (EI) benefit claim on time. He doesn't need to show good cause for the delay in making this claim because there was no delay.

[3] But the Appellant didn't make his other claim on time and hasn't shown he had good cause for the delay in doing this. In other words, the Appellant hasn't given an explanation that the law accepts. This means this claim can't be treated as though it was made earlier.

Overview

[4] 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

[5] The Appellant says he made his claim for the weeks of October 2, 2022 to October 15, 2022 on time when he submitted his reports on November 3, 2022.

[6] The Appellant also says he tried to make his claim for November 20, 2022 to November 26, 2022 on January 6, 2023, after the deadline, but he wants it to be treated as though it was made earlier, on December 16, 2023.

[7] The Commission says the Appellant only tried to make his claims on January 6, 2023 and that he didn't have good cause for the delay in making the claims.

[8] I have to decide whether the Appellant made his claims on time and, if not, whether he had good cause for the delay in failing to do so.

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

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

Matter I have to consider first

I accepted the Appellant's post-hearing documents

[9] The Appellant submitted post-hearing documents.³ I accepted the documents because they relate to the Appellant's argument that he did make his claim for October 2, 2022 to October 15, 2022 on time and he had good cause for the delay in making his claim for November 20, 2022 to November 26, 2022. The Appellant also brought the documents to the hearing and referred to them during his testimony, so I accepted them for this reason too.

Issue

[10] Did the Appellant make his claim for the weeks of October 2 to October 15, 2022 on time?

[11] Does the Appellant have good cause for the delay in making his claim for November 20, 2022 to November 26, 2022?

Analysis

Did the Appellant make his claim for the weeks of October 2 to October 15, 2022 on time?

[12] The Appellant testified that he did make his claim for the weeks of October 2, 2022 to October 15, 2022 on time. He testified that he was in the process of converting his sickness benefits claim to a regular benefits claim and didn't realize the conversion hadn't happened yet, so when he submitted the reports for this claim, they were still attached to his sickness claim and the Commission didn't automatically process them.

[13] At the hearing, the Appellant also referred to evidence that he says shows he did submit the reports for this claim on time. He also submitted this evidence after the hearing, as discussed above.

³ GD5-1 to GD5-5.

[14] I have reviewed the Appellant's evidence. It is an email, dated November 3, 2022 at 12:51pm, from the Appellant to a union representative.⁴

[15] I note the email begins with the following: "Hi [name], this is what I have claimed to the E.I. for the weeks of Oct 2 and Oct 9 weeks. Can you please cross check if indeed these were the weeks we were on lay off. Please print and [name] can bring to me".⁵

[16] I note the email includes a copy of the Appellant's Employment Insurance Claim Record and Attestation for the weeks of October 2, 2022 to October 15, 2022, and includes the Appellant's answers to the standard report questions.⁶

[17] I note the end of the Appellant's Claim Record and Attestation then shows the following message: "Claim submitted on: November 03, 2022 12:38:14. We need more information about your claim for sickness benefits before we can process your claim."⁷

[18] I find this evidence shows the Appellant submitted his reports for the weeks of October 2, 2022 to October 15, 2022, on November 3, 2022. This is what the Claim Record and Attestation clearly says.

[19] I acknowledge this evidence also shows that while the Appellant submitted his reports for October 2, 2022 to October 15, 2022 on November 3, 2022, the Commission didn't process it on November 3, 2022 because it needed more information about his sickness benefits claim first.

[20] But I find the fact the Commission didn't process the Appellant's claim on November 3, 2022 and why it didn't do that isn't relevant here. Here are my reasons.

[21] The Employment Insurance Act (Act) says that a "claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time."⁸ The Act

⁴ GD5-3 to GD5-5.

⁵ GD5-3.

⁶ GD5-3 to GD5-4.

⁷ GD5-5.

⁸ See section 50(4) of the Act.

also says that a “claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.”⁹

[22] Based on what the Act says, I find the process of making a claim only refers to the steps a person must follow to send a claim to the Commission, which involves filling out the required documents and submitting them to the Commission. I find the process doesn’t encompass anything that happens after the point when the claim is submitted, which could include actions the Commission, as the receiver of the claim, might take with respect to the claim.

[23] In my view, if Parliament had envisioned the process of making a claim to include things that happen after a person submits the required documents to the Commission, it would have made this clear in the legislation by specifying what actions the Commission, as the receiver of the claim, must also take to ensure a claim is considered to have been made. But given what the Act says, I can’t conclude that Parliament intended to define the process this way.

[24] So, since the Appellant got a confirmation message that his report for the weeks of October 2, 2022 to October 15, 2022 was submitted to the Commission on November 3, 2022, I find this means he made a claim for these weeks on November 3, 2022, even if the Commission didn’t process it then.

[25] I also find that the Commission’s need for more information from the Appellant before it could process this claim isn’t the issue before me.¹⁰ Instead, it’s the Appellant’s delay in making the claim and whether he had good cause for the delay. This is what the Commission’s reconsideration decision and submissions solely focus on.¹¹

⁹ See section 50(3) of the Act.

¹⁰ See section 50(5) of the Act.

¹¹ For the Commission’s reconsideration decision, see GD3-40. For the Commission’s submissions, see GD4-1 to GD4-7.

[26] Additionally, I note that I gave the Commission the opportunity to reply to the Appellant's post-hearing evidence that I have discussed above¹², but it didn't respond.

[27] For these reasons, I find the Appellant did make a claim for October 2, 2022 to October 15, 2022 on November 3, 2022 because that is the date when he submitted his reports based on the confirmation message he received.

[28] Since I find the Appellant did make his claim for October 2, 2022 to October 15, 2022 on November 3, 2022, I now need to decide if this means he made this claim on time.

[29] The law says that an appellant has to make a claim for benefits within three weeks after the week they are claiming benefits for.¹³ This means for the Appellant's claim for October 2, 2022 to October 15, 2022 to be considered on time, he needed to have made it by November 5, 2022.

[30] I find the Appellant made his claim for October 2, 2022 to October 15, 2022 on time. He made it on November 3, 2022, which was within the three-week deadline.

[31] I also find the Appellant doesn't need to show good cause for the delay in making his claim for October 2, 2022 to October 15, 2022 because there was in fact no delay. He made this claim on time.

[32] Even if I'm wrong about the Appellant making his claim on time, I find he still had good cause for his entire delay in making this claim, which is based on the legal test that I discuss more in the next section.

[33] The Appellant testified that he was under the impression he had submitted his reports on November 3, 2022 because that's what the confirmation message said. He testified that he did try to contact the Commission over the following weeks to try and

¹² See file correspondence, July 13, 2023.

¹³ See Section 26 of the Regulations.

clear up the confusion over the conversion of his claim from sickness to regular benefits, but that didn't change the fact he felt he had submitted his reports on time.

[34] In my view, this is how a reasonable and prudent person would have acted in similar circumstances. It's reasonable to believe that after receiving the confirmation message, a person in the Appellant's situation would have assumed that this meant their report had at the very least been submitted on that day, regardless of what else the message said, and would have continued to operate on that assumption going forward in the absence of clear information to the contrary.

[35] So, I find the Appellant doesn't need to show good cause for the delay in making his claim for October 2, 2022 to October 15, 2022 because he made his claim on time. But if I'm wrong, he still had good cause for the delay because he acted as a reasonable and prudent person would have acted in similar circumstances.

[36] However, I find the Appellant's other claim, for the week of November 20, 2022 to November 26, 2022, was not made within three weeks, which means it was late. He doesn't dispute this. This means he has to show that he has good cause for the delay in making this claim.

[37] So, I will now look at whether the Appellant has good cause for the delay in making his claim for the week of November 20, 2022 to November 26, 2022.

Does the Appellant have good cause for the delay in making his claim for November 20, 2022 to November 26, 2022?

[38] I find the Appellant doesn't have good cause for the delay in making his claim for November 20, 2022 to November 26, 2022.

[39] The Appellant tried to make his claim for November 20, 2022 to November 26, 2022 on January 6, 2023, but couldn't because it was past the three week period and therefore late.

[40] The Appellant wants his claim to be treated as though it was made earlier, on December 16, 2022. This is called antedating (or, backdating) the claims.

[41] To get a claim antedated, the Appellant has to prove he had good cause for the delay during the entire period of the delay.¹⁴ The Appellant has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that he had good cause for the delay.

[42] And, to show good cause, the Appellant has to prove he acted as a reasonable and prudent person would have acted in similar circumstances.¹⁵ 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.

[43] The Appellant also has to show he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.¹⁶ This means the Appellant has to show 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.¹⁷

[44] The Appellant has to show he acted this way for the entire period of the delay.¹⁸ That period is from the day he wants his claim antedated to until the day he made the claim. So, for the Appellant, the period of the delay is from December 16, 2022 to January 6, 2023.

[45] The Appellant says he had good cause for the delay because he was outside Canada from November 28, 2022 to December 29, 2022 to deal with a family matter, so he wasn't around to submit his report. He also says he was suffering from anxiety and depression, which affected his ability to think clearly and made him feel overwhelmed.

[46] The Commission says the Appellant hasn't shown good cause for the delay because he didn't act as a reasonable person would in his situation. It says he didn't

¹⁴ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

¹⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹⁶ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁸ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

make any attempts to submit his report until January 6, 2023, even though he has a long history of filing for EI benefits and so knew it was his responsibility to complete biweekly reports within three weeks.¹⁹

[47] I find the Appellant hasn't proven he had good cause for the delay in claiming benefits because he didn't act as a reasonable and prudent person would have acted in similar circumstances and didn't take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[48] I acknowledge the Appellant was outside Canada for part of his delay period (from December 16, 2022 to December 29, 2022) and find he couldn't reasonably have been expected to make his claim while he was outside of the country. He couldn't visit a Service Canada office in-person. He also couldn't call without difficulty because of a possible time difference (depending on where he was) and because he likely would have incurred extra charges from calling long distance. And he couldn't safely submit his report online because his personal information (such as SIN number) could have been compromised if he was logging in from an unsecure location.

[49] In other words, I find a reasonable and prudent person wouldn't be expected to make a claim from outside Canada because of the various challenges and risks that might be involved.

[50] But I also find the Appellant didn't act as a reasonable and prudent person would have acted when he delayed in making his claim after returning to Canada.

[51] I find there's no evidence to show the Appellant made any attempt to make his claim after he returned to Canada (on December 29, 2022) until January 6, 2023. He didn't tell the Commission or testify that he tried to make this specific claim before January 6, 2023.

[52] I acknowledge the Appellant says he was suffering from anxiety and depression around this time. He provided evidence (which is the other part of his post-hearing

¹⁹ GD4-3.

document) that he was being treated for anxiety and depression in August 2022²⁰ and testified that it has continued since then. I found his testimony to be credible as it was honest and detailed. Based on this evidence, I accept the Appellant was suffering from anxiety and depression as he says.

[53] But even though I accept the Appellant was suffering from anxiety and depression, I still find he could reasonably have made his claim immediately after he returned to Canada.

[54] In my view, the fact the Appellant was able to take care of the necessary travel arrangements (such as a passport and/or visa) for his trip shows he did have the mental capacity to remember important tasks. Since he was able to do these other things, he could have also made his claim sooner than he did, especially given his history of making EI claims on time.

[55] I also don't see any evidence that the Appellant's mental capacity had deteriorated around this time to the point where he was no longer capable of remembering important tasks or coping with daily life. He didn't mention this to the Commission or at the hearing. In my view, it's reasonable to believe that if the Appellant's mental capacity had deteriorated to such a point, he would have brought it up either with the Commission or during his testimony.

[56] In other words, I find the Appellant's mental health challenges shouldn't have prevented him from making his claim right after he returned to Canada since he still had the awareness and ability to manage his life and responsibilities.

[57] So, for the reasons above, I find the Appellant didn't act as a reasonable and prudent person would have acted in similar circumstances once he returned to Canada.

²⁰ GD5-2.

Conclusion

[58] The Appellant has shown that he made one claim (for the weeks of October 2, 2022 to October 15, 2022) on time. This means he doesn't need to prove he had good cause for the delay in making this claim because there was no delay.

[59] But the Appellant didn't make his other claim (for the week of November 20, 2022 to November 26, 2022) on time and hasn't proven he had good cause for the delay in making this claim throughout the entire period of the delay. This means this claim can't be treated as though it was made earlier.

[60] The appeal is therefore allowed in part.

Bret Edwards

Member, General Division – Employment Insurance Section