



Citation: *JS v Canada Employment Insurance Commission*, 2024 SST 443

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: J. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (631241) dated December 4,
2023 (issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Videoconference

Hearing date: February 15, 2024

Hearing participant: Appellant

Decision date: February 16, 2024

File number: GE-24-98

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 claiming Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's claim can't be treated as though it was 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 claim after the deadline. He wants it to be treated as though it was made earlier, on December 25, 2022.

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

[6] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request. It says that he didn't apply because he expected to return to work. It says that he didn't know the impact of applying if he did return to work, and he didn't verify his rights and obligations under the Act on this issue. It says that he wasn't prevented from applying for EI benefits.

[7] The Appellant disagrees and says that he was told by a Service Canada agent that he can apply for EI benefits at any point in time. He says he wasn't told there is a deadline for making a claim.

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 claim for EI benefits to be treated as though it was made earlier, on December 25, 2022. This is called antedating the claim.

[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 December 25, 2022, to March 24, 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 that he had good cause for the delay because a Service Canada agent told him that he can apply at any point in time. He wasn't told that there is a deadline for making a claim.

[15] The Commission says that the Appellant hasn't shown good cause for the delay because he didn't verify his rights and obligations under the Act regarding the impact of receiving EI benefits if he returned to work. It says that he didn't apply because he expected to return to work. It says that he wasn't prevented from applying for EI benefits.

[16] The Appellant stopped working on December 23, 2022.⁸ He applied for benefits on March 24, 2023.⁹ The Commission started his claim on March 19, 2023.¹⁰

[17] The employer issued a Record of Employment (ROE) on January 13, 2023, due to a shortage of work (or end of contract or season).¹¹

[18] The Appellant says that he was told by the employer that there would be a shortage of work for only two weeks.

[19] The Appellant says that he spoke with a Service Canada agent in January 2023. He was told he needs the ROE to apply. He was told that he can do the application at any point in time.

[20] The Appellant says that he received a physical copy of the ROE around January 20, 2023. He says that he didn't know, until March 2023, that the employer also submitted the ROE electronically.

[21] The Appellant says that he didn't apply upon receipt of the ROE because he was told he can apply at any point in time. He wasn't told that he should apply within 4-weeks of being let go from his job.

⁸ See GD3-18.

⁹ See GD3-3 to 17.

¹⁰ See GD3-25.

¹¹ See GD3-18.

[22] The Appellant says that he was working sporadically for the employer. He says that one crew returned to full-time hours mid-January 2023. But his crew was given sporadic hours, based on seniority. He was also doing safety and workplace training.¹² He says he was in constant contact with the employer to ask about work.

[23] The Appellant says that he was supporting himself through his savings.

[24] The Appellant says that he didn't know if he could work while receiving EI benefits. He says that he didn't want to make a mistake or get in trouble with the government.

[25] The Appellant says that, during the first week of March 2023, his employer said he would return to full-time hours the following week. But he didn't work any hours. He says that, as he couldn't trust the employer to give him work and he was supporting himself through his savings, he applied for EI benefits on March 24, 2023.

[26] The Appellant says that he also spoke with agents in February and March 2023. He says that no one mentioned there is a 4-week deadline for applying. He says that, had he known about the deadline, he would have applied earlier.

[27] The Appellant says that he is unionized. He says that he didn't speak with his union about applying for EI benefits or returning to work.

[28] The Appellant says he wasn't prevented from applying for EI benefits. But he says that he expected and relied on the information he received from the agent to be correct.

[29] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits during the entire period of delay. The Appellant didn't have an initial intention to apply for benefits, as he expected to return to work with his employer.

[30] The Appellant was told that he needed the ROE to apply for benefits by a Service Canada agent in January 2023, but upon receiving the ROE he didn't apply for benefits.

¹² See GD2-1 and 2.

I think a reasonable and prudent person would have taken reasonably prompt steps to apply for EI benefits upon receipt of the ROE, despite of and because he was told by the agent that he can apply at any point in time.

[31] The Appellant was concerned about how his sporadic work and training would affect his eligibility for EI benefits, but he didn't take steps to learn about his rights and obligations about this issue. I find that the Appellant didn't have an exceptional circumstance that prevented him from learning about his rights and obligations about this issue, especially considering he said that he spoke with an agent in January, February, and March.

[32] I disagree with the Commission that the Appellant has to show that he was prevented from applying. Instead, he has to show he had good cause for the delay during the entire period of the delay. I've considered that he wasn't given all the information about the EI program from the agent, including how applying late can affect his eligibility, and it's his first time applying. However, I don't think that not knowing the deadlines is a good cause for the Appellant's delay in applying.

Conclusion

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

[34] The appeal is dismissed.

Kristen Thompson
Member, General Division – Employment Insurance Section