



Citation: *DD v Canada Employment Insurance Commission*, 2024 SST 329

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:

D. D.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (626228) dated November 16,
2023 (issued by Service Canada)

Tribunal member:

Bret Edwards

Type of hearing:

Teleconference

Hearing date:

February 6, 2024

Hearing participant:

Appellant

Decision date:

February 12, 2024

File number:

GE-24-36

Decision

[1] The appeal is dismissed. I disagree 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 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 asked to make his claim after the deadline. He wants it to be treated as though it was made earlier, specifically from the week starting October 9, 2022.³

[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. The Commission says that the Appellant doesn't have good cause because he didn't prioritize his claim during the delay and didn't take steps to verify his rights and obligations under the law.

[7] The Appellant disagrees. He says he had good cause because he was waiting to hear back from the Commission about a previous antedate request and thought it was

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

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

³ GD3-17.

better not to file another request until the first one was settled. He also started working again in January 2023 and was very busy with his job.

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 October 9, 2022. This is called antedating (or, backdating) the claim.

[10] To get a claim antedated, the Appellant has to prove he had good cause for the delay during the entire period of the delay.⁴ 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.

[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.⁵ 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.⁶ This means 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 show that he acted this way for the entire period of the delay.⁸ That period is from the day he wants his claim antedated to until the day he

⁴ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

actually made the claim. So, for the Appellant, the period of the delay is from October 9, 2022 to August 10, 2023.

[14] I note the parties agree on the period of the delay. The Commission says the Appellant asked on August 10, 2023 to antedate his claim to October 9, 2022.⁹ The Commission's record indicates this too.¹⁰ And the Appellant confirmed at the hearing that these dates are correct.

[15] The Commission says the Appellant hasn't shown good cause for the delay because he didn't prioritize his claim during the delay and didn't take steps to learn about his rights and responsibilities under the law.¹¹

[16] The Appellant says he had good cause for the delay for the following reasons:¹²

- He first applied for EI benefits in April 2022 when his employer went bankrupt.
- He couldn't get his Record of Employment (ROE) from that employer for about a year. By the time he did (in spring 2023), he was told it was too late to apply and he needed an antedate. He had to wait months for that antedate to be approved.
- He had found work with another employer from June 7, 2022 to October 7, 2022.
- In August 2023, he asked for a second antedate back to when he stopped working in October 2022.
- He didn't ask for the second antedate sooner because he was still waiting to hear back from the Commission about his initial application and antedate for most of that period.
- He thought it was better to wait for his first antedate to be approved before he asked for a second antedate. He didn't want to create more confusion by adding a second antedate into the mix prior to then.

⁹ GD4-3.

¹⁰ GD3-17.

¹¹ GD4-3 to GD4-4.

¹² GD2-5, hearing recording.

- He spoke to the Commission many times about the status of his first antedate. He just kept being told that it was coming, so eventually he stopped calling and just waited.
- He also started working again in January 2023. It was a very important job, and he didn't even start thinking about his second antedate because he was very busy and still dealing with the delay from his first application and antedate request.
- He can see now that there was a timeframe he should have followed, but he didn't realize how important it was to report on time and he also wanted his first antedate approved before he submitted his second request. That's just what was going through his head then.
- His second antedate request was going to be approved, but he didn't pick up the phone when the Commission called because he thought it was spam, so that's why it was denied.

[17] I want to briefly address that the Appellant says he thinks his second antedate request was only denied because he didn't pick up the phone when the Commission called.

[18] At the hearing, I explained to the Appellant that the Commission says it tried to contact him for fact finding after he asked for a second antedate request, but it couldn't reach him multiple times and so went on to deny his request.¹³ I also explained that after he filed a reconsideration request of that decision, the Commission did speak to him but still decided to maintain its initial decision.¹⁴

[19] In other words, I explained to the Appellant that the Commission's decision to deny his second antedate request didn't have anything to do with him not picking up the phone when the Commission called. Instead, the Commission's decision was based on

¹³ GD3-21, GD4-2.

¹⁴ GD3-24 to GD3-25.

the available evidence, including what the Appellant said when they later spoke. After I explained this, the Appellant said he better understood now what had happened.

[20] That said, I find the Appellant hasn't proven that he had good cause for the delay in applying for benefits. Here are my reasons.

[21] I find the Appellant hasn't shown that he acted as a reasonable and prudent person would have acted in similar circumstances.

[22] I acknowledge the Appellant says he started another job in January 2023 and was very busy at the time.

[23] Unfortunately, I still find the Appellant could have made his claim sooner even though he started a new job in January 2023.

[24] I understand that work, especially a new job, can be time consuming. But in my view, a reasonable person in the Appellant's situation would have still found time to make their claim around their work schedule to make sure they did it on time. They could have done this on a day they weren't working when their schedule wasn't as hectic.

[25] I also acknowledge the Appellant says he didn't make his antedate request for this claim sooner because he was waiting for the Commission to process a previous antedate request for another claim and wanted to avoid creating more confusion. And I acknowledge he says he was frustrated with the Commission's delay in approving his first antedate request and just thought it better to wait after a certain point until that was done.

[26] Unfortunately, I find the Appellant could still have made his antedate request for this claim sooner even though he had another antedate request that hadn't yet been settled.

[27] I note there's no evidence that the Appellant ever asked the Commission whether his other pending antedate request would affect this claim or that the Commission ever told the Appellant to wait to submit this claim because of that other request. The

Commission's call logs don't indicate they had a conversation about this subject prior to when the Appellant called on August 10, 2023 to ask to antedate this claim.¹⁵ And the Appellant didn't mention any previous conversations with the Commission about the above subject in his testimony. Instead, as discussed above, he testified that he just thought it better to wait to ask for an antedate on this claim to avoid creating confusion.

[28] In my view, a reasonable person in the Appellant's situation wouldn't have assumed that they should wait to submit a second antedate request while their first antedate request (for an entirely different time period) was still being processed. Instead, they would have reached out to the Commission (by phone, in person, or online) to specifically clarify if they should wait, rather than make this decision on their own. By doing this, they would then have known exactly what to do next.

[29] And, in my view, a reasonable person in the Appellant's situation would have still reached out to the Commission even though they had previously done that for their first antedate request with limited success. They would have realized that their second antedate request was related to a different claim from their first request and therefore they had to make the Commission aware of it too so that it could be processed.

[30] In other words, even though the Appellant was frustrated with the Commission for taking so long to approve his first antedate request, it was still reasonable for him to reach out to clarify the next steps on his second antedate request to make sure that he was following the proper procedures related to this specific claim.

[31] I also find the Appellant hasn't shown that he had exceptional circumstances that prevented him from taking reasonably prompt steps to understand his obligations under the law.

[32] More specifically, I find there's no evidence that the Appellant had any other reasons for the delay. He told the Commission this¹⁶ and confirmed it at the hearing. I

¹⁵ GD3-15, GD3-16.

¹⁶ GD3-25.

find this means he didn't face any exceptional circumstances that prevented him from making his claim sooner.

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

Conclusion

[34] 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 was made earlier.

[35] The appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section