



Citation: *YH v Canada Employment Insurance Commission*, 2024 SST 565

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

Decision

Appellant: Y. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (559003) dated November 29, 2022 (issued by Service Canada)

Tribunal member: Stuart O'Connell

Type of hearing: Teleconference

Hearing date: August 23, 2023

Hearing participant: Appellant

Decision date: January 13, 2024.

File number: GE-22-4193

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 lost his job as a professor at a college when he refused to comply with his employer's mandatory COVID-19 vaccination policy.

[4] The Appellant applied for Employment Insurance (EI) benefits on June 21, 2022.² He is now asking that the application be treated as though it were made earlier, on December 15, 2021.³ The Canada Employment Insurance Commission (Commission) has already refused this request.

[5] I have to decide whether the Appellant has proven that he had good cause for not applying for benefits earlier.

[6] The Commission says that the Appellant didn't have good cause because a 'reasonable person' in his situation would have done more to verify his rights and obligations under the Act.

[7] The Appellant disagrees and says that he was misled as to the Government's policy on EI eligibility for unvaccinated individuals who lost their job. Government and media accounts at the time suggested that they would not be eligible for benefits. This justifies his delay in making an application for benefits. Additionally, his employer delayed several months before issuing a Record of Employment on March 16, 2022.

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

² GD3-3 to GD3-13.

³ GD3-14.

Issue

[8] Can the Appellant's application for benefits be treated as though it was made on December 15, 2021? This is called antedating (or, backdating) the application.

Analysis

[9] To get your application for benefits antedated, you have to prove these two things:⁴

- 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).

[10] The main arguments in this case are about whether the Appellant had good cause. So, I will start with that.

[11] 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 has to show that he acted this way for the entire period of the delay.⁶ That period is from the day he wants his application antedated until the day he actually applied. So, for the Appellant, the period of the delay is from December 15, 2021, to June 21, 2022.

[13] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁷ This means that

⁴ See section 10(4) of the EI Act.

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

⁶ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

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.⁸

[14] 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.

Position of the Appellant

[15] The Appellant says that he had good cause for the delay.

- His Record of Employment (ROE) was issued three months late by his employer. By law an employer must issue a ROE five days after an employment interruption.
- The federal government announced an official policy in December 2021: unvaccinated employees who have been terminated by their employers for refusing the COVID-19 vaccination are ineligible for EI benefits.⁹ This policy was widely disseminated in the media. Also, according to the Appellant, at the end of 2021 until approximately June 2022, Service Canada announced on its website that anyone unvaccinated is not entitled to EI benefits. As a result, he held a reasonable belief that his application for EI benefits would not be successful. He therefore hesitated in applying. In June, the Appellant began to see decisions from this Tribunal which suggested that it was not necessarily the case that an unvaccinated person will be denied benefits.

[16] The Appellant has submitted news articles from CBC News (October 2021) and the *National Post* (December 2021). Both have reported on the Government's position regarding EI eligibility for individuals terminated from their employment because they did

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁹ GD2-6.

not comply with their employer's vaccination policy. He has also filed copies of statements posted on the Service Canada website (August 2022).

Position of the Commission

[17] The Commission says that the Appellant hasn't shown good cause for the delay:

- There was a delay of three months between when the employer issued the Record of Employment (March 16, 2022) and when the Appellant filed an application for benefits (June 21, 2022). Though the Appellant said he attempted to contact the Commission in January or February of 2022, he did not take any other steps to inquire as to his rights and responsibilities.
- The Appellant has not been consistent in his explanation as to why he delayed applying for benefits. Initially he claimed it was because he was working part-time hours with another employer and did not think of applying sooner.¹⁰
- If the Appellant was concerned that the reason for his separation from employment would affect his ability to qualify for benefits, he could have contacted the Commission to make inquiries. Alternatively, he could have filed an application for benefits to allow the Commission the opportunity to make that determination. A reasonable person in the situation would have done this.

The Appellant hasn't proven good cause for the delay

[18] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits.

[19] The Appellant's strongest argument is that he was misled by government statements, media reportage, and even Service Canada as to EI eligibility for those who lose their jobs because they are not vaccinated against COVID-19. I will begin with that.

¹⁰ GD3-14.

[20] I have reviewed the press clippings from December 2021, which the Appellant has provided as well as statements posted on the Service Canada website.¹¹

[21] While press headlines may have suggested a clear rule around eligibility, the content of the articles filed by the Appellant do not. In the CBC News article, a lawyer comments, “I think it's very arguable about whether employees terminated for not getting the vaccine requirement is just cause for termination.” The federal Minister quoted in both articles is careful to use qualifiers when referring to ineligibility. These include “likely”, “could”, and “may not”, all of which suggest that ineligibility is uncertain. She even states that “this is not yet a firm public policy decision.” The *National Post* article refers to a notice issued by Employment and Social Development Canada to employers enforcing vaccine mandates, which lays out multiple factors that could be significant. The obvious implication of this is that an employer-imposed vaccine policy may depend on the employer meeting particular requirements (the notice, as reported, offers clear communication of its policy as just one example).¹² This hardly makes ineligibility automatic.

[22] Statements on the Service Canada website provided by the Appellant refer to ineligibility “[i]n most cases”, not all cases.

[23] The Appellant also says that he attempted to apply online for benefits in December 2021, but was not permitted to complete the application for benefits after he responded “yes” to a question asking him if he had lost his employment because his employer mandated vaccination as a condition of his employment. This statement conflicts with his statement that he delayed applying for benefits due to a late ROE. Further, no such question is asked on the copy of his June 2022 application provided in the appeal file (though at the hearing the Appellant said he answered a question about vaccination on his June application and was permitted to proceed with the application) and no documentary evidence was provided to support his recollection of the

¹¹ [“Don't expect EI if you lose your job for not being vaccinated, minister says”](#) CBC News, (October 21, 2021).

¹² [“Unvaccinated workers who lose jobs ineligible for EI benefits, minister says”](#) *The National Post* (Dec 31, 2021).

application process in December 2021. I find that the Appellant is mistaken on this point.

[24] An application for benefits can be filed without a Record of Employment, which further inquiries may have revealed.

[25] The Appellant stated that he tried to telephone Service Canada in January and February of 2022 multiple times to determine his eligibility. He did not speak to a live representative, and he did not want to leave his phone number for a callback. The Appellant gave evidence that at the time Service Canada did not want clients to come in person to Service Canada locations. I accept that the Appellant attempted to contact Service Canada in the first two months of the year. However, he ought to have persevered in his attempts to speak to a Service Canada representative instead of effectively giving up and waiting until June to file his application. Given my finding about the application process, it also would have been reasonable in the circumstance for the Appellant to have filed an application for benefits much earlier than he did to allow the Commission the opportunity to make a determination as to whether he qualified for benefits.

[26] I conclude that the Appellant did not take reasonably prompt steps to understand his entitlement to benefits and obligations under the law. There were no exceptional circumstances.

[27] 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.

Conclusion

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

[29] The appeal is dismissed.

Stuart O'Connell
Member, General Division – Employment Insurance Section