



Citation: *SD v Canada Employment Insurance Commission*, 2024 SST 592

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

Decision

Appellant: S. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (635496) dated December 12, 2023 (issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Teleconference

Hearing date: February 26, 2024

Hearing participant: Appellant

Decision date: February 27, 2024

File number: GE-24-264

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown that he had good cause for the delay in applying for benefits. In other words, the Appellant has given an explanation that the law accepts. This means that the Appellant's application can be treated as though it was made earlier.¹

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on October 11, 2023, and it was made effective on October 8, 2023. He is now asking that the application be treated as though it was made earlier, on May 21, 2023. 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 didn't contact the Commission to inform himself about Employment Insurance benefits. It said that it doesn't accept his claim that mental health prevented him from applying because he was able to search for jobs and attend job interviews.

[6] The Appellant disagrees and says that his mental health was the reason he didn't apply. He said his mental health was compounded by the shame and embarrassment of losing his job. He said he didn't tell anyone he was unemployed. He was living a false life by pretending his was still working. He said this caused him great suffering.

Issue

[7] Did the Appellant have good cause for the delay in claiming EI benefits?

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

Analysis

[8] The Appellant wants his claim for EI benefits to be treated as though it was made earlier, on May 21, 2023. This is called antedating (or, backdating) the claim.

[9] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.² 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.

[10] The Appellant has to show that he acted this way for the entire period of the delay.³ 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 May 21, 2023, to October 11, 2023.

[11] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁴ This means that the Appellant has to show that he tried to learn about his rights and responsibilities as soon as possible. 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.⁵

[12] 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.

[13] The Appellant says that he had good cause for the delay because his situation was exceptional. He said he is the oldest son raised in a strict Indian family. He said that his family depended on him and looked to him for stability. He was paralyzed with anxiety, and he didn't know where to turn. He said that his mental health suffered, and he focused on getting new employment as soon as possible.

² See *Canada (Attorney General) v Burke*, 2012 FCA 139.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[14] The Commission says that the Appellant hasn't shown good cause for the delay because his mental health didn't prevent him from his job search and job interviews. It said that a reasonable person would have contacted the Commission to start benefits while he continued looking for a job.

[15] I find that the Appellant has proven that he had good cause for the delay in applying for benefits because his situation was exceptional, and it compounded his mental health issues. He experienced mental health problems when he lost his job unexpectedly, then he felt he had to live a lie and pretend he was still working to avoid disgracing his family. He said this caught up with him until he finally confided in a former colleague who gave him advice on how to proceed.

- The Appellant is the oldest son raised in a strict Indian family. He felt the onus was on him not to bring shame or embarrassment to his family. So he hid the fact that he lost his job and was unemployed because he believed it would bring disgrace.
- The Appellant delayed in making his application because he was certain he would find employment quickly before anyone found out he lost this job.
- When it became apparent that someone close to him was catching on to his falsehood, he sought advice. He learned at that time that he could and should apply for EI benefits. He then acted immediately.

[16] I found the Appellant to be credible, honest, and straightforward in his testimony. I believe his evidence that his circumstances were exceptional and caused him mental health suffering to the extent that he delayed making a claim for EI benefits.

Conclusion

[17] The Appellant has proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay. This means that his claim can be treated as though it was made earlier.

[18] The appeal is allowed.

Katherine Parker
Member, General Division—Employment Insurance Section