



Citation: *IM v Canada Employment Insurance Commission*, 2024 SST 744

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: I. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (646611) dated March 4, 2024 (issued by Service Canada)

Tribunal member: Barbara Hicks

Type of hearing: Teleconference

Hearing date: May 3, 2024

Hearing participants: Appellant
Appellant's support person
Interpreter

Decision date: May 9, 2024

File number: GE-24-1111

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 claims can't be treated as though they were made earlier.

Overview

[3] In general, to receive EI benefits, you must 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 established a claim for benefits effective on October 8, 2023. He didn't make any attempt to file his bi-weekly reports until November 22, 2023. As this was past the deadline for filing the report for that period, the report couldn't be filed. The Appellant tried 3 more times to submit reports for the same period, without success.³

[5] On January 3, 2024, the Appellant called the Commission because he was unable to submit his reports and requested that his claims be backdated to October 8, 2023.

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

[7] 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

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

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

³ See GD4-1.

cause because he didn't contact the Commission for help or to understand his rights and obligations until January 3, 2024.

[8] The Appellant disagrees and says he made an innocent mistake. He thought he had to wait to receive confirmation from the Commission by mail that his initial claim had been received, but nothing like that ever arrived. He says he was patiently waiting for a letter. He says the first correspondence he received from the Commission by mail was the initial decision letter dated January 22, 2024.

[9] The Appellant says he doesn't have a computer and relies on his daughter for help with filing his bi-weekly reports. He also says he isn't familiar with the reporting requirements.

Issue

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

Analysis

[11] The Appellant wants his claims for EI benefits to be treated as though they were made earlier, on October 8, 2023. This is called antedating (or, backdating) the claims.

[12] To get a claim antedated, the Appellant must prove that he had good cause for the delay during the entire period of the delay.⁴ The Appellant must prove this on a balance of probabilities. This means that he must show that it is more likely than not that he had good cause for the delay.

[13] And, to show good cause, the Appellant must prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁵ In other words, he must show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

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.

[14] The Appellant also must show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁶ This means that the Appellant must 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

[15] The Appellant must 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 actually made the claim. So, for the Appellant, the period of the delay is from October 8, 2023 to December 23, 2023.⁹

[16] The Appellant says that he had good cause for the delay because he doesn't understand how the reporting system works and what his obligations are. He relies on his daughter for help with this. He says he doesn't have a computer and he isn't good with technology.

[17] The Appellant expected to receive something in the mail from the Commission confirming that it had received his initial application for benefits. He was waiting for that to arrive.

[18] The Appellant, or his daughter on his behalf, made several attempts to file his reports for the weeks of October 8, 2023 to October 21, 2023 using the internet reporting service. He also attempted to file reports using the automated telephone reporting service.¹⁰ These attempts were unsuccessful because the reports were already late.

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.

⁹ See GD3-20.

¹⁰ See GD4-1.

[19] He says he didn't call Service Canada for help until January because he was trying to be patient. But, it was hard to wait because he was unemployed from early October to early January with no EI benefits coming in.

[20] The Appellant has received EI benefits before. He says that, in the past, he received EI cheques along with a notice to submit a report for the next period. Since he didn't receive any EI cheques this time, he wasn't prompted to submit bi-weekly reports. He says he didn't know the process had changed.

[21] He also received EI benefits for the majority of 2020. His daughter helped him file his bi-weekly reports then as well.

[22] The Commission says that the Appellant hasn't shown good cause for the delay because he waited too long to contact Service Canada to understand his rights and obligations. He didn't contact Service Canada until January, 2024.

[23] The application for EI benefits says under the heading "What's Next?" that an access code would be mailed out with instructions about how to complete reports using either the internet reporting service or the telephone reporting service.¹¹

[24] It also says that after you apply for EI benefits, you must start completing bi-weekly reports. If you are eligible for benefits, no payments will be issued until the bi-weekly reports have been submitted.¹²

[25] Since the Appellant attempted to file bi-weekly reports on November 22, 2023, I find that he must have received the access code from Service Canada by that date.

[26] So, he shouldn't have been waiting to receive correspondence from Service Canada about his application after that, because he had already received it.

¹¹ See GD3-13.

¹² See GD3-14.

[27] When the Appellant was unable to successfully file the bi-weekly report on November 22, 2023, and again on November 27, 2023, that's when he should have reached out for assistance. Instead, he waited until January.

[28] Because he waited so long, he didn't act reasonably and promptly.

[29] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. He should have taken steps sooner to find out why he hadn't received the paperwork he was expecting in the mail, or to find out why he wasn't able to submit the bi-weekly reports.

[30] Given his statement that he had no money coming in during this time, a reasonable and careful person in those circumstances would have followed up much sooner to find out what was going on.

[31] Although he may not have been able to file the bi-weekly reports himself online, he should have asked his daughter for help sooner or called Service Canada himself before January 2024 to make inquiries.

[32] The Appellant didn't give any evidence of exceptional circumstances that prevented him from acting as a reasonable person in the circumstances would have done. As a result, I find that there are no exceptional circumstances that explain the Appellant's delay.

Conclusion

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

[34] The appeal is dismissed.

Barbara Hicks
Member, General Division – Employment Insurance Section