



Citation: *JS v Canada Employment Insurance Commission*, 2024 SST 727

**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 (624753) dated October 27, 2023 (issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Videoconference

Hearing date: January 12, 2024

Hearing participant: Appellant

Decision date: January 23, 2024

File number: GE-23-3342

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 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 no claims after the deadline. He wants the claims to be treated as though they were made earlier, starting on July 17, 2022, so that he could receive EI benefits.

[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 his focus was on his course and studies rather than on his EI claim. His concussion did not prevent him from filing reports because he was able to pursue his studies.

[7] The Appellant disagrees and says that his major concussion severely handicapped him for months. He did not file his reports due to his limited mental function and poor memory.

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 claims for EI benefits to be treated as though they were made earlier, starting on July 17, 2022. This is called antedating (or, backdating) the claims.

[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

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.

actually made the claim. So, for the Appellant, the period of the delay is from July 17, 2022, to the May 31, 2023, when he asked the Commission to backdate his claims.

[14] The Appellant says that he had good cause for the delay because his major concussion severely handicapped him for months. He did not file his reports due to his limited mental function and poor memory. He had forgotten that he had applied for EI, and only remembered when he finished his studies in April 2023 and started looking for work.

[15] The Commission says that the Appellant hasn't shown good cause for the delay for the period from July 17, 2022, until May 31, 2023, because his focus was on his course and studies rather than on his EI claim. His concussion did not prevent him from filing reports because he was able to pursue his studies during this period.

[16] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he did not show that he had good cause for the delay during the entire period of the delay, for the reasons set out below.

– **Background facts**

[17] The Appellant had been involved in sports for eleven years since high school, focused on personal training, especially in soccer. He had suffered knee and back injuries in high school from the sports activities. Over those years he acquired experience in treating sports injuries and in rehabilitation.

[18] In March 2022 he was playing goalie in a soccer match. During the game, he received three hits to the head from soccer balls kicked at the goal. Two of the hits were to the temple. He kept playing to the end of the game. There was no trainer or doctor available at the game. He did see his doctor within one month but was not sure of exactly when. He was attending school when this happened, pursuing a degree in kinesiology. He was in the second year of the three-year program at the time.

[19] The Appellant applied for regular EI benefits on July 19, 2022. On the application, he stated that he quit his previous job on August 27, 2021, to go to school.

He stated that he made the personal decision to go to school, and was attending the course, which was to start on September 9, 2021. He answered “no” to the question whether he was taking or will be taking a course. He did not want to add a medical certificate to the application. The application shows that a person assisted the Appellant in completing the application. That person was his mother.

[20] The Appellant did not file his biweekly reports at any time after making the application for EI benefits. He returned to school in September 2022, but did not graduate or obtain a degree when he finished in April 2023. On May 31, 2023, he made a request to antedate his claims to July 17, 2022. The Commission denied the antedate request and the Appellant’s subsequent reconsideration request because it said that he had not shown good cause for being late.

– **The Appellant’s explanation for the delay in filing reports**

[21] The Appellant told the Commission that due to the concussion, he was not able to focus, was forgetful and was unable to fill out forms. The only medical evidence presented was his family doctor’s note dated September 25, 2023, when the doctor saw him. The doctor had treated him since the injury in 2002. The doctor confirms the diagnosis of concussion. The Appellant had prolonged symptoms including depression, irritability, headaches, poor concentration and motivation, and poor memory. He was not able to work or to play soccer. Symptoms have continued into 2023 despite numerous attempts at treatments and therapy. The doctor concludes the note by saying that the Appellant “was not able to work since his concussion.” The Appellant confirmed the doctor’s statements at the hearing but did correct the date of his return to school. It was not September 2023 as the doctor stated, but September 2022. The Appellant did not return to school in September 2023.

[22] The symptoms really started in the summer of 2022. He still has all the symptoms, but he did improve somewhat. He totally forgot about EI after he applied. He did not contact the Commission after he applied until May 2023.

[23] He did continue with his kinesiology courses in September 2022. He was already enrolled so he did not have to apply. He needed to successfully complete eight

more courses by April 2023 to graduate. He signed up for eight courses. Because of his symptoms, he only passed two courses by April 2023, with very low grades. For the courses he did pass, he relied on knowledge gained from experience in personal training and treating injuries. In the fall of 2022, he initially could only spend one hour a day on course work. A one-hour lecture left him drained. By mid-November that had improved to spending four and one-half hours a day on course work.

[24] In December 2022, he was hit in the head once by a soccer ball while playing the game. This set him back and worsened the symptoms he had. After December until April 2023, he missed a lot of classes, had poor sleep and poor mental and physical health. By April 2023, he had not completed enough courses to obtain the degree. He did not return to school in September 2023. He may return later to complete the degree.

[25] After finishing school, the Appellant moved to another province to look for work. The person who helped him complete his application reminded him of his EI claim. He contacted the Commission, learned that he had the existing claim, and asked for an antedate on that claim. The Commission denied his request for lack of good cause for the delay in filing the biweekly reports.

– **Ruling on the antedate issue**

[26] The Appellant has to prove that he had good cause for the delay during the entire period of the delay. To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances. The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[27] The period of the delay is from July 17, 2022, to May 31, 2023. It is not disputed that the Appellant did not contact the Commission at any time during that period. Nor is it disputed that the Appellant did not file any biweekly reports during that period.

[28] The Appellant said that he did act as a reasonable and prudent person in similar circumstances. He could not make the reports due to his circumstances resulting from

the concussion. Those circumstances included depression, irritability, headaches, poor concentration and motivation, and poor memory. He had forgotten applying for EI until May 2023 when he was reminded on it. As he put it in testimony, his memory was not there for a long time. It was not a personal choice by him to focus on his studies and to ignore filing his reports. His ability to attend to his studies consumed all of his impaired mental abilities caused by the concussion.

[29] The difficulty for the Appellant's argument is that there was a gap between applying for EI benefits on July 19, 2022, and his return to studies on September 2, 2022. During that period, he was not engaged in studies. Not all of his impaired mental abilities were consumed by studies in that period. He had just applied for EI benefits on July 19, 2022. I do not accept that he (or a reasonable person in his circumstances) would totally forget about EI from then until starting back at school in September.

[30] The reasoning set out in the previous paragraph also affects the conclusion on the requirement that the Appellant (or a reasonable person in his circumstances) show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law. The Appellant did not take any steps to understand his entitlement and his obligations. I do not accept that he (or a reasonable person in his circumstances) would totally forget about EI when he had no income and had just applied for EI.

[31] The reasonable person test for assessing the duty to learn about rights and obligations may be relaxed if there are exceptional circumstances.⁸ The standard for meeting exceptional circumstances is quite high. For example, being busy with school, working and changing jobs, financial struggles, and moving are not exceptional circumstances even when considered cumulatively.⁹ I cannot decide an appeal on the basis of sympathetic circumstances or broad considerations of fairness, as commonly understood. I must decide the appeal on the basis of the proven facts and the EI legal

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336 at paragraph 11.

⁹ See *NO v Canada Employment Insurance Commission*, 2022 SST 987; leave to appeal denied, 2022 SST 986.

rules that apply.¹⁰ In this appeal, the Appellant had serious impairments caused by a concussion. Those impairments lasted with some minor changes during the whole period of the delay. But the impairments did not prevent him from contacting the Commission. The impairments had a major impact on his ability to attend to his studies starting in September 2022. But from the application for EI on July 19, 2022, to the start of his studies on September 2, 2022, he was not engaged in studies and was not working. His reduced capacity to study in September 2022 showed that he had a capacity to deal with EI over the summer of 2022. The Appellant therefore cannot show that his circumstances were exceptional to the point of preventing him from inquiring about his EI rights and obligations during the entire period of the delay.

Conclusion

[32] 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.

[33] The appeal is dismissed.

Paul Dusome
Member, General Division – Employment Insurance Section

¹⁰ See *Canada (Attorney General) v Shaw*, 2002 FCA 325; *Canada (Attorney General) v Knee*, 2011 FCA 301; and *Nadji v Canada (Attorney General)*, 2016 FC 885.