



Citation: *DG v Canada Employment Insurance Commission*, 2024 SST 1175

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

Decision

Appellant: D. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (642672) dated February 8, 2024 (issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Videoconference

Hearing date: April 9, 2024

Hearing participant: Appellant

Decision date: April 10, 2024

File number: GE-24-957

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 his claims after the deadline. He wants them to be treated as though they were made earlier, on November 6, 2022.

[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 act like a reasonable person would have in similar circumstances. It said he assumed that he didn't have to apply until after his severance ran out.

[7] The Appellant said that the Human Resources (HR) expert at his former job told him that he wouldn't be eligible for EI benefits until after his severance payments ended. He said he had paid into EI for many years, and it wasn't fair that he would lose that because of the delay. He also said it wasn't his legal obligation to know about EI.

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, on November 6, 2022. This is called antedating (or, backdating) the claims. His last day of work was November 5, 2022.

[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 November 7, 2022, to November 3, 2023.⁸

[14] The Appellant says that he had good cause for the delay because he thought his HR expert told him to apply after his severance ran out. At the hearing he clarified this and said the HR expert told him he wouldn't be eligible until after the severance ran out. He took this to mean that he didn't need to apply right away.

[15] He was facing personal difficulties at the time and decided it was best to focus on that since the EI wasn't pressing. He said he applied one year after his termination and learned that he should have applied sooner.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because he should have gone to the Service Canada website, or called Service Canada, to find out if he qualified for EI. He didn't do that. It said that paying into EI isn't a reason to pay benefits. A claimant has to qualify and be entitled to benefits, that's the law.

[17] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he didn't act like a reasonable person would have in the same circumstances for the entire period.

- The Appellant didn't ask HR to clarify what she meant by eligible for EI. So he waited. He said he thought that he didn't need to apply until after his severance ran out.
- The Appellant's employment payments would have been allocated for approximately 19 weeks from November 6, 2022, to the week ending March 25, 2023.⁹ But he didn't apply for EI until November 7, 2023.

⁸ See the Notice of Decision dated December 6, 2023 on GD3-20.

⁹ See GD3-25.

- He applied more than seven months after his severance ran out. So his testimony about being misguided by HR isn't credible.
- If the misunderstanding with HR was the reason for his delay, he would have applied after March 25, 2023, when his severance ran out. He provided no reason for the delay between March 25, 2023, and November 7, 2023.
- The Appellant didn't contact Service Canada or research how to apply. He didn't do this for one year. He should have taken the time to call and clarify his situation especially after his severance ran out.
- EI isn't paid to everyone who pays into it. It is a program for claimants who become unemployed for reasons beyond their control.
- The Appellant said that he isn't legally required to know about EI. I disagree. A reasonable person is expected to take prompt steps to determine their entitlement to benefits, and ignorance of the law is no excuse.¹⁰

Conclusion

[18] 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.

[19] The appeal is dismissed.

Katherine Parker
Member, General Division—Employment Insurance Section

¹⁰ *Kamgar v Canada (Attorney General)*, 2013 FCA 157