



Citation: *IK v Canada Employment Insurance Commission*, 2023 SST 2111

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: I. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (625741) dated October 23, 2023
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: In person

Hearing date: December 14, 2023

Hearing participant: Appellant

Decision date: December 21, 2023

File number: GE-23-3240

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 applied for Employment Insurance (EI) benefits on August 18, 2023. He is now asking that his application be treated as though an initial claim was made earlier, on March 12, 2023. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says the Appellant didn't have good cause because he didn't act like a reasonable person in his situation would have. It says a reasonable person would have verified his rights and obligations under the *Employment Insurance Act* (Act).

[6] The Appellant disagrees and says he was looking for work and his employer delayed issuing his record of employment (ROE).

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on March 12, 2023? This is called antedating (or, backdating) the application.

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

Analysis

[8] To get your application for benefits antedated, you have to prove these two things:²

- 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).

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

[10] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.³ 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.

[11] The Appellant has to show that he acted this way for the entire period of the delay.⁴ That period is from the day he wants his application antedated to until the day he actually applied. So, for the Appellant, the period of the delay is from March 12 to August 18, 2023.

[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

² See section 10(4) of the EI Act.

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

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.

[13] 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.

[14] The Appellant says he had good cause for the delay because he was looking for work and his employer delayed issuing his ROE.

[15] The Commission says the Appellant hasn't shown good cause for the delay because he had an obligation to verify his rights and obligations under the Act.

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

[17] The Appellant's employer issued a ROE and listed the reason for issuing it as "dismissal or suspension". It shows that the last day the employer paid the Appellant for is January 1, 2023. The employer issued the ROE on September 8, 2023.

[18] The Appellant applied for EI benefits on August 18, 2023. He asked the Commission to backdate his application to March 12, 2023. The Commission's notes show that the Appellant said he had been making efforts to find a job and thought he would get one. A later note shows he said he was trying to get shifts with his former employer, but the employer was slow communicating with him.

[19] The Appellant clarified at the hearing that when he said he was trying to find a job, he was not applying for jobs with other employers; he was trying to get work at another site or some other shifts with his former employer. I accept this as fact.

[20] After the Appellant asked the Commission to reconsider its initial decision, the Appellant said he thought he needed his ROE to apply for benefits. In his notice of appeal, the Appellant said the reason for the delay in applying for benefits is that his employer delayed issuing the ROE.

[21] The Appellant testified that he was trying to get shifts from his former employer. He said he asked his employer to issue a ROE in an email he sent on April 26. But he said he didn't realize that he could get EI benefits without the ROE. He said once his former employer confirmed it would issue the ROE, he applied for benefits.

[22] The Commission said the main reason the Appellant didn't apply for EI benefits right away is that he was looking for work and thought he would get a job. It said a reasonable person would have applied for benefits right away and continued their job search while collecting benefits.

[23] I asked the Appellant about the Commission's submission noted above. He said he never thought of going to EI since he thought he would get shifts from his former employer. He explained that the reason that he's asking for EI benefits from March 12, 2023, is that he was outside Canada from February 3 to March 12, 2023. He said after that he was again hoping to get some shifts to work with his former employer.

[24] I find that the Appellant delayed applying for benefits first because he was trying to get shifts from his former employer, and then because of the employer's delay issuing the ROE. But I find that the Appellant didn't take reasonably prompt steps to understand his rights and obligations under the law.

[25] The Appellant wants his application for benefits backdated to March 12, 2023. But from his testimony, he continued from this date to try to get work with his former employer. It wasn't until April 24, 2023, that he asked his employer to issue a ROE.

[26] Delaying applying for EI benefits because you're looking for work doesn't constitute good cause.⁷ Because of this, I agree with the Commission and find that a reasonable person in the Appellant's situation would have applied for benefits at the earliest opportunity and continued to look for work, whether with his former employer or another one.

[27] The Appellant testified that he had applied for EI benefits in the past after a friend told him he could do so. He said he called Service Canada and was told to apply online. So, I find that a reasonable person in a similar situation as the Appellant would have called Service Canada about the delayed ROE. This is especially since it was

⁷ See *Howard v Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v Ouimet*, 2010 FCA 83.

almost four months from the time that the Appellant asked his employer for a ROE until the employer confirmed it would issue one.

[28] The Appellant referred to a decision of the Tribunal that he says is like his situation.⁸ In that case, the claimant delayed applying for EI benefits because his employer delayed issuing a ROE. The Tribunal found that the claimant was excused from taking reasonably prompt steps to understand his rights and obligations under the Act due to exceptional circumstances, namely a mental health illness.

[29] I find that the Appellant's case is different from the one he referred to above. Both experienced a delay in getting ROEs from their employers. But it was the exceptional circumstances that led to decision that the claimant in the other case had good cause for the delay in applying for benefits. And I don't find that there are exceptional circumstances in the Appellant's case.

[30] The Appellant testified that it is now December, and he is without any income and that financially, he's virtually broke. He sent the Tribunal copies of bank statements that show this. He asked for leniency given his innocent mistake.

[31] I sympathize with the Appellant given his financial situation. I accept his testimony that he made an innocent mistake and that he is now broke. But I don't find that this is an exceptional circumstance that excuses the Appellant from doing what he needed to do to get the EI benefits.

[32] Based on the above, I don't find that the Appellant has shown good cause for the entire period of the delay in applying for EI benefits.

[33] 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.

⁸ See *MZ v Canada Employment Insurance Commission*, 2022 SST 172.

Conclusion

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

[35] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section