Citation: *HK v Canada Employment Insurance Commission*, 2024 SST 1648

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	H. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (686637) dated October 17, 2024 (issued by Service Canada)

Tribunal member:	Edward Houlihan
Type of hearing:	Videoconference
Hearing date:	December 2, 2024
Hearing participant:	Appellant
Decision date:	December 16, 2024
File number:	GE-24-3736

Decision

[1] The appeals are dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant appealed two decisions.

[3] The first decision was that he didn't have enough insurable hours of work to establish a claim for Employment Insurance (EI) benefits.

[4] The second decision was the Commission's denial of his request to antedate (which means back date) his claim for benefits.

[5] I find that the Appellant hasn't shown that he has worked enough hours to qualify for benefits.

[6] I also find that 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

[7] The Appellant applied for Employment Insurance (EI) benefits on July 11, 2024.

[8] The Canada Employment Insurance Commission (Commission) decided that the Appellant hadn't worked enough hours to qualify. The Appellant disagrees.

[9] The Appellant is also asking that the application be treated as though it was made earlier, on July 16, 2023. The Canada Employment Insurance Commission (Commission) has already refused this request.

[10] I have to decide two issues.

- Did the Appellant work enough hours to qualify for EI benefits?

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

- Can the Appellant's application for benefits be treated as though it was made on July 16, 2023?

Issue 1 - Has the Appellant worked enough hours to qualify for benefits?

[11] The Commission says that the Appellant doesn't have enough hours because he needs 630 hours and only has 41 hours.

[12] The Appellant disagrees and says that the Commission should have considered all the hours he had worked at his previous job.

Analysis

How to qualify for benefits

[13] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[2] The Claimant 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 qualifies for benefits.

[14] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."[3]

[15] The number of hours depends on the unemployment rate in your region.[4]

The Appellant's region and regional rate of unemployment

[16] The Commission decided that the Claimant's region was Toronto and that the regional rate of unemployment at the time was 7.7%.[5]

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[2] See section 48 of the EI Act.
[3] See section 7 of the EI Act.
[4] See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.
[5] See GD3-19

[17] This means that the Claimant would need to have worked at least 630 hours in his qualifying period to qualify for EI benefits.[6]

The Appellant agrees with the Commission

[18] The Claimant agrees with the Commission's decisions about which region and regional rate of unemployment apply to him.

[19] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Claimant needs to have worked 630 hours to qualify for benefits.

The Appellant's qualifying period

[20] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.[7]

[21] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[22] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from July 9, 2023, to July 6, 2024.

The hours the Appellant worked

[23] The Commission decided that the Claimant had worked 41 hours during his qualifying period.

[24] The Claimant doesn't dispute this. In his evidence the Appellant confirmed that he hadn't worked since losing his job on July 9, 2023.

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[6] Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.
[7] See section 8 of the EI Act.

[25] However, the Appellant says they should have considered the hours he had worked at his previous job before July 9, 2023.

[26] Unfortunately, those hours worked were outside of his qualifying period.

[27] There is no evidence that makes me doubt the amount of hours worked in his qualifying period. So, I accept it as fact.

Has the Appellant worked enough hours to qualify for EI benefits?

[28] I find that the Claimant hasn't proven that he has enough hours to qualify for benefits because he needs 630 hours but has worked 41 hours. The hours that the Appellant had worked at his previous job, other than the 41 hours mentioned above, were outside of his qualifying period.

Issue 2 – Can the Appellant's application for benefits be treated as though it was made on July 16, 2023?

[29] The Commission says that the Appellant didn't have good cause for the delay in applying for benefits because he didn't act like a reasonable person in his situation.

[30] They say that he didn't take any steps to learn about his rights and obligations under the Employment Insurance Act (Act) for almost a year.

[31] The Appellant disagrees and says that he acted as a reasonable person in the circumstances.

[32] He says that he had little or no experience in claiming EI benefits.

[33] He says that he thought benefits were only available for people who had been laid-off from their jobs.

Analysis

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

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).

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

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

[37] The Appellant has to show that he acted this way for the entire period of the delay.[10] 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 July 16, 2023, to July 9, 2024.

[38] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[11] 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.[12]

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[8] See section 10(4) of the EI Act.
[9] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[10] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[11] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[12] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[39] 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.

[40] The Appellant says that he had good cause for the delay because he wasn't familiar with claiming EI benefits. He thought that benefits were only available for people who had been laid-off from their jobs. He says that he wasn't laid-off from his job, he was dismissed.

[41] He says that the only time he had claimed EI benefits before was during the COVID-19 pandemic. His employer told him then that benefits were available and he should for them. ….

[42] The Commission says that the Appellant hasn't shown good cause for the delay because he hadn't acted as a reasonable person in his situation. He didn't try to verify his rights and obligations under the Act for almost a year.

[43] They say that he had filed for benefits in the past and was aware of the Service Canada website. He had used the website in 2019 when he had filed for benefits. He should have been aware that there were time frames to file for benefits.

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

[45] He says that he thought EI benefits were only available for people who had been laid-off. His evidence was that he thought it was insurance for people who were laid -off. He didn't think he could apply for benefits because he had been dismissed for performance issues.

[46] He says that he wasn't told by his employer that he could apply for benefits. A friend mentioned that he might be eligible for benefits even if he was dismissed. He applied immediately after that.[13]

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[13] See GD3-29

[47] The Appellant says that there was no other reason that prevented him from applying for benefits. He wasn't sick, in jail or in training in the previous 2 years. [14]

[48] The cases say that ignorance of the law doesn't constitute good cause unless the Appellant can show what they did was reasonable in the circumstances.[15]

[49] Here, the Appellant's conduct wasn't reasonable in the circumstances. When he lost his job, he didn't take any steps to find out if he was eligible for benefits for almost a year.

[50] He was aware of EI benefits and had claimed them previously. There was nothing preventing him from finding out if he was eligible for benefits. He only took steps to verify his rights and obligations under the Act after speaking to a friend.

[51] The cases say that the Appellant has to take reasonably prompt steps to understand their entitlement to benefits and their obligations under the Act.[16] The Appellant didn't take reasonably prompt steps to find out about benefits.

[52] There is no question about the good faith of the Appellant. However, the case law also says that ignorance of the law and good faith don't constitute good cause for delay in applying for benefits.[17]

[53] 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.

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[14] See GD3-29 and GD3-30
[15] See *Quadir v. Canada (Attorney General),* 2018 FCA 21
[16] See *Canada (Attorney General) v Kaler*, 2011 FCA 266
[17] See *Canada (Attorney General) v Carry*, 2005 FCA 367

Conclusion

[54] The Appellant doesn't have enough hours to qualify for benefits.

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

[56] This means that the appeals are dismissed.

Edward Houlihan
Member, General Division – Employment Insurance Section