



Citation: *TM v Canada Employment Insurance Commission*, 2025 SST 353

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: T. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (695661) dated December 19,
2024 (issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Videoconference

Hearing date: February 6, 2025

Hearing participant: Appellant

Decision date: February 7, 2025

File number: GE-25-177

Decision

[1] The appeal is dismissed. The Tribunal's General Division disagrees with the Appellant.

[2] The Appellant hasn't shown that she 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 20, 2024. She is now asking that the application be treated as though it was made earlier, on January 7, 2024. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause for the delay. It says that she was given the online link to apply for EI benefits in March 2024, but didn't seek out additional help when she had questions about the application until August 2024.

[6] The Appellant disagrees. She says that she didn't understand the process, as this was her first time applying for EI benefits and she is new to Canada. She says that she didn't want to make mistakes, or receive a penalty, so she stopped the application she started in March 2024. She thought she had 52 weeks to apply for EI benefits.

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

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on January 7, 2024? This is called antedating (or, backdating) the 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 she acted as a reasonable and prudent person would have acted in similar circumstances.³ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[11] The Appellant has to show that she acted this way for the entire period of the delay.⁴ That period is from the day she wants her application antedated to until the day she actually applied. So, for the Appellant, the period of the delay is from January 7, 2024, to August 20, 2024.

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁵ This means that

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.

the Appellant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Appellant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.⁶

[13] The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she had good cause for the delay.

[14] The Appellant says that she had good cause for the delay. She says that she didn't understand the process, as this was her first time applying for EI benefits and she is new to Canada. She says that she didn't want to make mistakes, or receive a penalty, so she stopped the application she started in March 2024. She thought she had 52 weeks to apply for EI benefits.

[15] The Commission says that the Appellant hasn't shown good cause for the delay. It says that she was given the online link to apply for EI benefits in March 2024, but didn't seek out additional help when she had questions about the application until August 2024. It says that she received the Record of Employment (ROE), which gives information about filing a claim, along with the contact information for Service Canada.

[16] The ROE was issued by the former employer on January 16, 2024. It says that the Appellant was employed from May 4, 2023, to January 8, 2024. The second page of the ROE says:⁷

You can apply for EI benefits online at www.servicecanada.ca or by visiting your nearest Service Canada Centre. To find the location of your nearest Centre, click on "Contact Us" on the Web site or call 1 800 O-Canada (1-800-622-6232).

⁶ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁷ See GD3-17 to 18.

[17] The Appellant says that she received the ROE from her former employer soon after it was issued. But she says that she didn't read the second page of the ROE until August 2024.

[18] The Appellant says that she did some online research, after receiving the ROE. She thought she had 52 weeks to apply for EI benefits.

[19] The Appellant says that she went to a community legal clinic for information about being dismissed from her job. The lawyer recommended that she apply for EI benefits, as she appeared to be eligible. The lawyer provided her with an online link to apply for EI regular benefits on the www.canada.ca website, on March 18, 2024.⁸

[20] The Appellant says that she tried to apply online in March 2024, but she didn't understand the process. She says that she didn't want to make mistakes, or receive a penalty, so she stopped the application.

[21] The Appellant says that this was her first time applying for EI benefits. She is new to Canada.

[22] The Appellant says that she didn't contact the community legal clinic about her questions about the EI application, because they sent her an email saying they aren't retained, on March 25, 2024. They referred her to the Law Society Referral Service for further legal advice.⁹

[23] The Appellant says that, in August 2024, she went to a paralegal for more information about being dismissed from her job. She was advised by the paralegal that she could apply for EI benefits in person at a Service Canada Centre. So, she went to the Service Canada Centre and applied for benefits.

[24] The Appellant says that she knew where the Service Canada Centre was located, as she got her social insurance number there. But she says that she didn't

⁸ See GD5-2.

⁹ See GD5-3.

know that she could go there to apply for EI benefits until she was advised to do so by the paralegal.

[25] The Appellant says that she acted on new information as it came to her.

[26] The Appellant says that she should have been given documentation about her rights and obligations under the law. She relies on an article from the *Canadian Bar Review* from 1948, which says that people receive an insurance book and an insurance number, upon entering the EI program.¹⁰

[27] The Commission argues that the second page of the ROE provides sufficient information about the EI program and is equivalent to an insurance book.

[28] The Federal Court of Appeal (Court) says that ignorance of the law, even if coupled with good faith, isn't sufficient to establish good cause.¹¹ It also says that an appellant's incorrect and unverified assumption about their eligibility for EI benefits isn't good cause for delay.¹² I'm bound by these decisions and I'm following them.

[29] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because, although she took initial steps to understand her entitlement to benefits and obligations under the law, she didn't act like a reasonable and prudent person would have to gather the information she required to apply for EI benefits.

[30] I find that a reasonable and prudent person would have contacted the community legal clinic to see if they could answer her questions, or the Law Society Referral Service, which she was referred to by the community legal clinic. As well, a reasonable and prudent person would have reviewed the ROE or EI website in detail to either find the information she required or the contact information to speak with an agent.

¹⁰ H. S. Relph, Quasi-Judicial Powers under the Unemployment Insurance Act, 1948 26-3 *Canadian Bar Review* 500, 1948 CanLII Docs 90.

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 Innes*, 2010 FCA 341.

[31] I don't find that the Appellant has exceptional circumstances that would excuse her from not taking prompt steps to understand her entitlement to benefits and obligations under the law. Although she is new to Canada and hadn't applied for EI benefits before, these aren't exceptional circumstances, as she testified that she was able to access the application online, did initial research, and has been to the Service Canada Centre before.

[32] I don't need to consider whether the Appellant qualified for benefits on the earlier day. If the Appellant doesn't have good cause, her application can't be treated as though it was made earlier.

Conclusion

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

[34] The appeal is dismissed.

Kristen Thompson

Member, General Division – Employment Insurance Section