



Citation: *IJ v Canada Employment Insurance Commission*, 2025 SST 475

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: I. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (700615) dated January 8, 2025
(issued by Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Videoconference

Hearing date: March 4, 2025

Hearing participant: Appellant

Decision date: March 10, 2025

File number: GE-25-290

Decision

[1] The appeal is dismissed. I disagree with the Appellant.

[2] The Appellant hasn't shown that she had good cause for the delay in applying for Employment Insurance (EI) 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.

Overview

[3] The Appellant made her initial claim for regular benefits on September 29, 2024. She is now asking that the application be treated as though it was made earlier, on May 9, 2022. The Canada Employment Insurance Commission (Commission) refused her request.

[4] I have to decide whether the Appellant has proven that she had good cause for the delay.

[5] The Commission decided that the Appellant didn't have good cause because she didn't act like a reasonable and prudent person would have acted and identified her rights and obligations under the *Employment Insurance Act* (EI Act).

[6] The Appellant disagrees and says that she didn't know she could apply for EI benefits. She also said the Commission didn't take her mental health into consideration. Considering her mental health and the circumstances it was reasonable that she wasn't able to pursue EI benefits or learn about her rights and obligations.

[7] The Appellant argues she should be given the benefit of the doubt to prove that she had good cause. The Commission should have considered the cumulative effect of her circumstances and health. She believes ignorance of the law is good cause for a delay. She was misinformed and that is good cause that endures until she had the correct information.

Matters I have to consider first

The Appellant does not want to pursue a constitutional challenge

[8] The Appellant filed written submissions and said she felt the Commission discriminated against her. She said she believed they violated her rights under the *Canadian Charter of Rights and Freedoms* (Charter). Before starting the hearing I asked the Appellant if she intended to pursue a Charter challenge.

[9] She said she felt the Commission and her employer were unfair. She believed she was treated unfairly because she is a Black woman who has a mental health condition. We discussed the procedure an appellant must take to challenge the law under the Charter.

[10] The Appellant said she did not want to pursue a Charter challenge. She prefers to argue her appeal under the EI Act and Regulations. She said she understood that meant she could not raise Charter issues in the appeal. Further, my decision will not assess any section of the EI Act or Regulations under the Charter.

Issue

[11] Can the Appellant's application be treated as though it was made on May 9, 2022? This is called antedating (or, backdating) the application.

Analysis

[12] To get your application for benefits antedated, you have to prove these two things:¹

- 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).

¹ See section 10(4) of the EI Act.

[13] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.² 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.

[14] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.³ This means that 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.⁴

[15] The Appellant has to show that she acted this way for the entire period of the delay.⁵ That period is from the day she wants her claim antedated to until the day she actually made the claim. So, for the Appellant, the period of the delay is from May 9, 2022, to September 29, 2024.

[16] 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.

[17] The Appellant says that she had good cause for the delay because she didn't know she could be eligible for EI benefits when she left her job in May 2022.

[18] The Commission says that the Appellant hasn't shown good cause for the delay because she didn't act like a reasonable and prudent person would have acted and identified her rights and obligations.

² See *Canada (Attorney General) v Burke*, 2012 FCA 139.

³ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁴ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[19] After she left her job the Appellant pursued workers' compensation benefits and a grievance at a labour board. In February 2024 she learned she may have been eligible for EI benefits. Before September 2024 she was focused on her job and on her application to the labour board. She was not aware of the rules about EI. She didn't talk to anyone about the rules until February 2024 and later. That was when she learned she might qualify and could make her claim late. By September she felt she was in a position to follow her friend's advice, and she applied for EI benefits.

[20] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she didn't do what a reasonable and prudent person would do in the circumstances to find out her rights and obligations. I don't find there are any exceptional circumstances that would excuse the Appellant from taking reasonably prompt steps to find out her rights and obligations. There are no rules to give her the benefit of the doubt because she was mistaken about EI rules or because she felt she should pursue other legal rights and not EI.

[21] The Appellant said she didn't know about the rules that applied to EI benefits. A reasonable person would have contacted the Commission to ask about the rules. She said she didn't contact anyone to ask about her rights under the EI Act. She didn't ask her lawyer or contact the Commission. She said she was pursuing her rights under other rules including workers' compensation and labour laws. Her employer and workers' compensation mentioned EI benefits, but she assumed she would not be eligible. She said she had no information to support that belief. But she relied on it and decided not to apply for EI. That is not reasonable.

[22] The Appellant said her employer tried to persuade her to apply for EI benefits in 2022. She felt they were trying to force her out of the workplace. She wanted to stay at work. So she pursued litigation and did not inquire about EI benefits. Again, it wasn't reasonable for the Appellant to make that decision without learning about other rights and obligations.

[23] In her written submissions and during the hearing the Appellant talked about having limited ability to deal with an EI claim between 2022 and 2024. She said she had to deal with insomnia and anxiety since 2022. She didn't submit any medical evidence to show she was unable to file a claim because of her health. She said she began working part time in May 2022. She worked about 25 hours a week until April 2024. She also said she focused on the other legal cases during that time, so she didn't take any steps to learn about EI benefits. She talked about feeling overwhelmed by all of the legal cases she had to pursue. She felt she did everything she could given her circumstances. It was too much to expect her to also pursue EI benefits at the same time.

[24] The Appellant didn't describe any exceptional circumstances that would have prevented her from taking steps to apply for EI benefits or learn about her rights and obligations. From her testimony she was able to work 25 hours a week. She could pursue other rights related to her separation. Her decision to not apply for EI benefits was a choice. It may have been based on incomplete or incorrect information, but she knew about EI when she first left her job. She simply decided to pursue other potential legal cases and not EI.

[25] She said she didn't take any steps to learn about her rights and obligations under the EI Act. She said that is because she didn't know (assumed) she was not eligible. She decided to focus on work and getting her job back. She didn't think she was eligible for EI and, later, thought she had waited too long.

[26] The Appellant's choices were not those of a reasonably prudent person. I appreciate that she feels she was justified in the delay because she couldn't do everything and had to choose which legal cases she could pursue. But it isn't reasonable that she would pursue other legal options and decide not to learn about EI benefits without at least trying to learn about those rules.

[27] I don't have to consider whether the Appellant qualified for benefits on the earlier day. Since she didn't have good cause for the delay, her application can't be treated as though it was made earlier.

Conclusion

[28] The Appellant hasn't proven that she had good cause for the delay in making her claim for benefits throughout the entire period of the delay.

[29] The appeal is dismissed.

Anne S. Clark

Member, General Division – Employment Insurance Section