



Citation: *SM v Canada Employment Insurance Commission*, 2025 SST 416

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (701218) dated December 27,
2024 (issued by Service Canada)

Tribunal member: Connie Dyck

Type of hearing: Teleconference

Hearing date: March 13, 2025

Hearing participant: Appellant

Decision date: March 17, 2025

File number: GE-25-486

Decision

[1] The appeal is dismissed. The General Division 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 July 8, 2024. He is now asking that the application be treated as though it was made earlier, on March 3, 2024.² The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause because the evidence shows the Appellant failed to contact Service Canada with questions or concerns about the application process, nor was he truly prevented from applying at an earlier date. The Commission submits the Appellant failed to demonstrate good cause for his delay as required by the Act.

[6] The Appellant acknowledges that there was a delay in submitting the application for benefits. He says the delay was unintentional and he was waiting for confirmation from his employer that he could apply for EI benefits.³

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

² GD3-20.

³ GD3-30 and testimony at the hearing.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on March 3, 2024?

Analysis

[8] The Appellant wants his claim for EI benefits to be treated as though it was made earlier, on March 3, 2024. This is called antedating (or, backdating) the application.

[9] To get your application for benefits antedated, you have to prove these two things:⁴

- 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).

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

[11] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁵ 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 has to show that he acted this way for the entire period of the delay.⁶ 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 3, 2024, to July 8, 2024.

⁴ See section 10(4) of the EI Act.

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

⁶ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[13] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁷ 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.⁸

[14] 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.

[15] The Appellant says that he had good cause for the delay because he was waiting for confirmation from his employer that he could apply for EI benefits.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because the Appellant was informed by his employer on April 6, 2024, that his short-term disability benefit application (STD) was denied. The Appellant didn't apply for EI benefits then or inquire about his rights with Service Canada. He was waiting until he had written confirmation from his employer that he could apply for EI benefits.

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

[18] However, I find the Appellant had good cause for the delay from March 3, 2024, to April 6, 2024. He had surgery on March 1, 2024, and was waiting to see if his application for STD benefits was approved. During this time, he was at home recovering and periodically emailed his employer for an update on the status of his application. He returned to work on April 6, 2024. The Appellant confirmed at the hearing that on this day, he was told that his application for STD was denied due to his age.

[19] But I find the Appellant didn't have good cause for the **entire** time from March 3, 2024, to July 8, 2024. The Appellant was advised on April 6, 2024, that his STD

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

application was denied. A reasonable and prudent person would have inquired with Service Canada at this time, when they were made aware their STD application was denied.

[20] The Appellant said he was also waiting for his Record of Employment (ROE). He testified that he didn't speak with Service Canada until July 2024, when he made his application for benefits. But he was familiar with EI benefits as he had been in receipt of EI benefits in about 2022, when he had been laid off work and before he started working with Air Canada. He would have known that he didn't need an ROE to apply for benefits. Even if he didn't, he didn't take steps to inquire with Service Canada if he needed an ROE. In fact, his employer had already submitted the ROE.

[21] The Appellant testified that he was scared to apply for EI benefits without his employer's consent, because he didn't want to lose his job. This was a new company, and he wanted to wait until the company gave him confirmation. However, taking reasonably prompt steps to understand his entitlement to benefits and obligations under the law, would not jeopardize his job. His employer is not privy to his inquiries or conversations with Service Canada.

[22] The Appellant didn't give any other reasons for the delay in applying for EI benefits, so I don't find that there are exceptional circumstances in his case that excuse him from taking reasonably prompt steps to find out about his rights and obligations.

[23] 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.

Conclusion

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

[25] The appeal is dismissed.

Connie Dyck

Member, General Division – Employment Insurance Section