Citation: *BG v Canada Employment Insurance Commission*, 2022 SST 1807

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	B. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (402192) dated May 26, 2020 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Questions and answers
Decision date:	July 14, 2022
File number:	GE-20-1648

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he had good cause for the delay in applying for benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's application can't be treated as though it was made earlier.[1].

Overview

[3] The Claimant applied for regular Employment Insurance (EI) benefits on February 27, 2020.[2] He is now asking that the application be treated as though it was made earlier, on August 17, 2012.[3] The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] The Commission says the Claimant does not have good cause as he was able to work full-time from June 2018 to July 2019, and was making multiple petitions to various judicial bodies, so his situation during the period of the delay was not so exceptional it prevented him inquiring about his rights and obligations under the law.[4]

[5] The Claimant says that he had good cause for delay. He says his decision to not apply for benefits in August 2012 was based on his reasonable efforts to determine his eligibility showing him he did not qualify at that time, and because he did not find any information to suggest otherwise.[5]

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

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[1] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.
[2] GD3B-17
[3] GD3B-22
[4] GD4B-3
[5] GD35-4

Matters I have to consider first

[7] In the Claimant's submissions he raised several concerns with aspects of the hearing process. I will address those concerns here.

Not enough time for submissions

[8] The Claimant says that he had a lack of time to prepare his submissions and was denied an accommodation request due to mental health disabilities.[6]

[9] The Questions and Answers document was sent to the Claimant on June 7, 2022, and he was given a deadline of June 21, 2022, to make his submissions.

[10] On June 9, 2022, only two days after receiving the Questions and Answers document, he had prepared and sent me 80 pages of documentation to support his adjournment request.

[11] This demonstrates that if the Claimant was capable of preparing 80 pages of materials in only two days, then two weeks allowed him ample time in which to provide his submissions/responses.

[12] This also demonstrated to me that his functioning was not so impaired as to prevent him from sending in his submissions to the Questions and Answers document, so no accommodation was needed for his mental health in order to allow him to provide submissions.

[13] Further, the submissions I received on June 21, 2022, in response to the Question and Answers document total 41 pages and the Claimant has previously submitted over 400 pages in support of his antedate request. Clearly, he has not been unduly restricted in being able to provide information to the Tribunal.

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[6] GD35-2

Limited submissions

[14] The Claimant has said that the Questions and Answers document prevents him submitting all of the information he would like, as the letter says he must only answer those questions being asked of him.[7]

[15] I disagree with the Claimant's interpretation of the Questions and Answers document.

[16] As can be seen from the quote the Claimant has provided from the Questions and Answers document[8] the word "only" is there to ensure the Claimant is aware that he should not answer any questions that may be directed to another party. It in no way limits him from providing any information he feels is relevant.

His other antedate request

[17] The Claimant says that he has another file for which he requested an antedate and that it overlaps with this antedate, so this file should be delayed until he has exhausted his appeal options with his other antedate request.[9]

[18] I would note that it was the Claimant's express desire that his two files remain separate[10] and he even appealed the fact a Tribunal member had decided to join his two files.

[19] I find it to be contradictory that the Claimant is now trying to claim the two files are linked in such a way that one must delay the other, since he argued so strenuously against combining the files.

[20] Since the two files are separate, and will remain separate, whatever happens in the other file has no impact on this matter.

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[7] GD35-2
[8] The Claimant's quote from the Questions and Answers document is as follows: "You must answer only those questions that you are being asked (e.g., if you are the Appellant, you only respond to the questions under the heading "Question(s) for Appellant")"
[9] GD35-3
[10] GD25-1

Type of benefit

[21] The Claimant has said that if he had applied for benefits in August 2012, he would have applied for sickness benefits that is why the information he references from the EI website relates to sickness benefits.

[22] I understand the Claimant may have been looking at applying for a different benefit type in August 2012, but, when he made this claim in February 2020, he made it for regular benefits, so that is what I will consider, an antedate for regular benefits.

Reasonable person standard

[23] The Claimant argues that the "reasonable person" standard is a discriminatory concept as it makes no allowance for the mental health struggles he has and how they may impact his ability to think clearly or make a decision.[11]

[24] I disagree with the Claimant. The statement put forward by the Federal Court of Appeal (FCA) regarding a reasonable person in relation to an antedate is to look at how [12] "…a reasonable and prudent person would have acted in **similar circumstances**." [emphasis added].

[25] This means I am not looking at a reasonable and prudent person with different circumstances than the Claimant, such as imaging the actions of a person with no mental health issues, but instead someone in **similar circumstances** to the Claimant, thus someone with his struggles.

[26] So, when I make a determination on whether the Claimant's actions fit a reasonable and prudent person in similar circumstances I am using a lens of someone with the Claimant's stated high education, high intelligence, research skills,[13] and the impacts his mental health issues have on him.[14]

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[11] GD35-4
[12] See *Canada (Attorney General) v Burke*, 2012 FCA 139
[13] GD3B-59
[14] GD3B-59-61

Issue

[27] Can the Claimant's application for benefits be treated as though it was made on August 17, 2012?

Analysis

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

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).[15]

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

[30] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[16] 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.

[31] The Claimant has to show he acted this way for the entire period of the delay.[17] That period is from the day he wants his application antedated to, August 17, 2012,[18] until the day he actually applied February 27, 2020.[19]

[32] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[20] This means that

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[15] Section 10(4) of the EI Act
[16] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[17] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[18] GD3B-22
[19] GD3B-17
[20] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

the Claimant has to show he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Claimant didn't take these steps, then he must show there were exceptional circumstances that explain why he didn't do so.[21]

[33] 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 had good cause for the delay.

[34] The Claimant says he is aware of his rights and obligations as he has had extensive experience with EI starting since 1977 and a more recent claim in 2002 and 2003. He was told in all his pervious experiences that he needed at least 420 hours, and possibly as high as 700, in the last 52 weeks in order to qualify for benefits.[22]

[35] He checked this was still the case by looking at the EI website in April 2011 and March or April 2012 and possibly in August 2012 and the website said that something such as sickness benefits required at least 600 hours.[23]

[36] The Claimant says that when he got his Record of Employment (ROE) and it showed he only 67.5 hours, and his last period of work prior to that job was almost sixty-six weeks in the past, it was self evident to him that he did not have enough hours for an EI claim.[24]

[37] The Claimant says his conclusion was reasonable based on his experience and the information on the EI website.

[38] The Claimant says the Commission's argument that looking at the EI website is not good enough, and that he should have called them, is based on a faulty interpretation of the information given by the FCA in the decision *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

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[21] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[22] GD35-6
[23] GD35-6
[24] GD35-6

[39] The Claimant says *Mauchel* does not address a situation where the EI website itself is to blame due to a lack of information that would alert someone to make further inquiries.[25]

[40] The Claimant submits that it is unreasonable to say that people always have to call the Commission as they cannot rely solely on the information on the EI website.[26]

[41] The Claimant submits that the FCA never says in *Mauchel* that relying on the website alone is never reasonable, instead *Mauchel* laid the blame on the claimant in that case for his inadequate efforts to find information on the EI website.[27]

[42] The Claimant submits that in his situation, as someone with extensive experience dealing with EI, but always filing a claim with adequate hours so as to not require an antedate or extended qualifying period, the EI website itself was inadequate to alert him (or any reasonable person similar to him) to contact EI asking about provisions that violate the general rule of needing at least 600 hours within the immediate 52 weeks of losing a job.[28]

[43] The Claimant says that in reviewing the information he sent to the Tribunal from the EI website[29] around the time of when he wants his claim antedated to, there is no information about antedating, or backdating, or extending a qualifying period.[30]

[44] The Claimant also says that the Commission has failed to take into account his mental health struggles and how they would impact his decision making ability.[31]

[45] I find the Claimant did not act as a reasonable and prudent person would have in his situation, as he did not take reasonably prompt steps to verify his rights and obligations under the law.

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[25] GD35-10
[26] GD35-10
[27] GD35-11
[28] GD35-12
[29] He says this is the information contained in GD27 and while it relates to sickness benefits, that is because that is what the Claimant says he was looking at applying for back in August 2012
[30] GD35-13
[31] GD35-13

[46] The Claimant has said he is not sure if he checked the Commission's website regarding his entitlement to benefits in August 2012.

[47] I find that it is more likely than not that the Claimant did check the Commission's website to enquire about his rights and obligations in August 2012 when he was considering making a claim. I say this because the Claimant says he is extremely well educated and an excellent researcher, so it is reasonable to assume that when he was looking at the possibility of a claim in 2012, and the last time he checked the website was many months prior, he would, being an excellent researcher, recheck the website to enquire about his rights and obligations.

[48] The Claimant has said that the information in GD27, is what he would have been looking at on the EI website when he was doing his research.[32] He says there is nothing in this information that would make him think he was eligible, so there would be no point in calling the Commission as there would be nothing to talk about.

[49] He says this is why his case is different than *Mauchel*, as there is nothing on the website that would alert him he might be eligible for benefits.

[50] It is true that the information the Claimant has sent me, while related to sickness benefits since that it what he says he was looking at applying for back in 2012, says you need 600 hours in the last 52 weeks to be eligible for EI sickness benefits.

[51] I also do not see anything in the information the Claimant says is from the EI website that speaks about an antedate or a way to extend a qualifying period.

[52] However, there is a section that is titled "A special situation". This section states: "You may qualify for sickness benefits with less than 600 hours of insurable employment." It then goes on to give an example of a situation where this could occur and then says to call for more information.[33]

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[32] GD35-13
[33] See GD27-39 and also GD27-11

[53] This section of the website should have immediately alerted the Claimant that it was possible to obtain benefits with less than the required amount of hours stated previously on the website.[34]

[54] I find a reasonable and prudent person in the Claimant's circumstances would have called the Commission for more information, as the website says to, to find out if they were in a situation that would allow them to get benefits without having the 600 hours the website had previously mentioned, or if there was any way they could get benefits with less than 600 hours.

[55] Unfortunately, the Claimant failed to take reasonably prompt steps to understand his entitlement to benefits and obligations under the law[35] and instead continued on for nearly eight years under the assumption he did not qualify for benefits and that there were no options that might allow him to qualify.

[56] I further find there were no exceptional circumstances that would exempt the Claimant from taking these reasonable prompt steps for the entire period of the delay.

[57] The Claimant has written at length about his mental health conditions, and their impact on him. I have no doubts his mental health issues caused some impact on his day-to-day functioning during the period of the delay.

[58] However, I do not accept they are exceptional circumstances that would have prevented him from taking reasonably prompt steps to understand his rights and obligations under the law, or have prevented him from thinking clearly about his need to do so, for the **entire period of the delay**, as opposed to possibly just some parts of it.

[59] I find his ability to undertake complex legal proceedings, such as moving forward on a human rights complaint against a former employer, and continuing to work on claims against his insurance provider, and looking at the EI website about benefit

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[34] Again, while this relates to sickness benefits, and this claim is for regular benefits, that is because the Claimant says that back in August 2012 he was looking at applying for sickness benefits.
[35] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

information, shows his mental health conditions were not so debilitating that they would have prevented him from taking reasonably prompt steps to understand his rights and obligations under the law for the **entire period of the delay**.[36]

[60] Since the Claimant does not have good cause for the entire period of the delay, I don't need to consider whether the Claimant qualified for benefits on the earlier day, as if the Claimant doesn't have good cause, his application can't be treated as though it was made earlier.

Conclusion

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

[62] The appeal is dismissed.

Gary Conrad
Member, General Division – Employment Insurance Section

[36] GD35-41