



Citation: *RM v Canada Employment Insurance Commission*, 2024 SST 1751

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: R. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (674147) dated July 26, 2024
(issued by Service Canada)

Tribunal member: Rena Ramkay

Type of hearing: In person

Hearing date: September 6, 2024

Hearing participant: Appellant

Decision date: September 24, 2024

File number: GE-24-2882

Decision

[1] The law requires me to dismiss this appeal. This means I disagree with the Appellant.¹

[2] The Appellant hasn't shown good cause for the delay in filing his reports to claim Employment Insurance (EI) regular benefits. He hasn't given an explanation the law accepts. This means the Appellant's reports can't be treated as though they were submitted earlier.

Overview

[3] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.² You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online.

[4] There are specific deadlines for making claims.³ If you don't submit your report on time to claim benefits for a particular week of unemployment, you may be disentitled to EI benefits for that week.

[5] The Appellant, R. M., drives a bus for a school board. When the school closed for December holidays, he applied for EI benefits on December 31, 2023. He indicated that his last day of work was December 20, 2023, and that he would return to work on January 9, 2024.⁴

[6] Since the Appellant had started a claim on December 25, 2022, he still had entitlement weeks under that benefit period. The last renewable week of his entitlement claim was the week of December 17, 2023. As his last day of work on December 20, 2023, was a Wednesday, the earnings from that week didn't prevent the payment of

¹ The *Employment Insurance Act* (EI Act) calls a person who applies for EI benefits a "claimant." A person who appeals a decision of the Canada Employment Insurance Commission (Commission) to the Tribunal is called an "Appellant."

² See section 49 of the EI Act.

³ See section 26 of the *Employment Insurance Regulations* (EI Regulations).

⁴ The Appellant wrote his last day worked and date of return in his application for benefits at GD6-9.

benefits for the full week. So, the Commission renewed his claim as of December 17, 2023.⁵

[7] The Appellant didn't file his claim report for that week, and he didn't attempt to file any claim reports until he realized his March 11, 2024, application was a new claim. This means his benefit period started on March 3, 2024, instead of December 24, 2023, when he thought his new claim had begun. The Appellant requested an antedate for his claim reports on April 25, 2024.⁶

[8] The Appellant asked that his claim reports on his renewal application be treated as though they were made for the week of December 17, 2023, and that a new claim be started the week of December 24, 2023, with his claim reports from December 24, 2023, to January 6, 2024, treated as though they were made on time.

[9] For this to happen, the Appellant has to prove that he had good cause for the delay.

[10] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request. The Commission says that the Appellant didn't act as a reasonable person would have in his situation to validate and confirm that his claim reports were processed. Since the Appellant has experience with EI, the Commission says he should have contacted it when his claimant reports weren't processed. And it says there is no evidence the Appellant acted promptly to ensure his claim reports were processed.

[11] The Appellant says he simply made a mistake and forgot to complete his claim reports for the period of December 17, 2023, to January 6, 2024. He says he acted quickly once he discovered his error. The Appellant says the EI website makes

⁵ The Commission provided an explanation for why the Appellant's claim was renewed, instead of starting a new claim at GD6-1. It said the Appellant was entitled to benefits beginning the week of December 17, 2023, because his interruption of earnings occurred during a week which was not fully worked, as described at section 10(3) of the EI Act.

⁶ See GD3-15.

statements that his request is reasonable and that the Commission recognizes people make mistakes. He believes the Commission should apply the principle of leniency.

Matter I have to consider first

This appeal considers whether the Appellant's claim reports can be antedated to December 17, 2023

[12] The Appellant is asking that his claim reports beginning the week of December 17, 2023, be backdated, or antedated, on the renewal claim, and that his new benefit claim begin immediately afterward, the week of December 24, 2023, instead of on March 3, 2024.

[13] Had the Appellant completed his claimant reports for the week of December 17, 2023, an automated new claim would have been processed for the next week, as of December 24, 2023. Since the Appellant didn't complete his claim reports, a new claim wasn't started until he applied again in March 2024.

[14] I haven't considered this appeal to be an antedate request to begin a claim at an earlier date. Instead, I have considered whether the Appellant's claim reports for December 17, 2023, can be backdated, or antedated. This is because the Appellant's application for benefits on December 31, 2023 wasn't actually late. But because he didn't submit his claim reports on time, the Commission decided he wasn't entitled to benefits from December 17, 2023, until March 3, 2024, when he established a new benefit period.

Issue

[15] Did the Appellant have good cause for the delay in claiming EI benefits?

Analysis

[16] The Appellant wants his claim reports for EI benefits to be treated as though they were made earlier, on December 17, 2023. This is called antedating (or, backdating) the claims.

[17] To get his claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.⁷ The Appellant has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that he had good cause for the delay.

[18] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁸ 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.

[19] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁹ This means 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.¹⁰

[20] The Appellant has to show that he acted this way for the entire period of the delay.¹¹ That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Appellant, the period of the delay is from December 17, 2023, to March 11, 2024.

– **What the Appellant says**

[21] The Appellant says he has acted as a reasonable person in his situation would have done by making an honest mistake and trying to fix it as soon as he became aware of it. He says he has filed EI claims every Christmas, March, and summer school break over the last six years and has never been late.

⁷ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

⁸ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁰ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹¹ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[22] The Appellant testified that he didn't fail to file multiple reports, just one for the period beginning December 17, 2023. He says he made a mistake and either thought he had completed his claim reports, or he forgot to file them. He didn't notice until March 2024 that he hadn't been paid benefits from December 2023. He is adamant that as soon as he learned he hadn't filed the two-week report, he immediately began to try to correct the situation.

[23] The Appellant says the Commission's online resources indicated that his request was reasonable and that the Commission recognizes that mistakes happen. He doesn't think he should be penalized for an honest, reasonable mistake. The Appellant says he would appreciate some understanding and a sense of fairness. He thinks the Commission should take into consideration that he has been contributing to EI for more than 40 years.

[24] The Appellant points out that the Commission's decision to deny a backdating of his December claims has resulted in him being doubly penalized, since he has lost two weeks of benefits, one for December 2023, and his waiting period week in March 2024. He says he qualified for the benefits, so doesn't understand why the Commission can't be lenient. If his claim were allowed, he would lose only one week of benefits for the waiting period of the new claim start in December 2023.

[25] The Appellant also says the Commission failed to successfully communicate with him for further clarification of his reconsideration request. He acknowledges he didn't respond to Commission attempts to contact him. But he says he wasn't sure the email sent was legitimate, and the phone number of origin was blocked when the Commission called so he didn't know who was trying to contact him. He believes he should have been able to make his statements about why he requested a reconsideration.

– **What the Commission says**

[26] The Commission says that the Appellant hasn't shown good cause for the delay because he failed to show he acted reasonably and prudently as someone in a similar situation would have. It says the Appellant has submitted timely claim reports in the past, but he made no attempts to verify that his claim reports had been processed this

time. Had he done his due diligence or fulfilled his duty to inquire about his benefits, the Commission says he would have known of the mistake much earlier and corrected the situation.

[27] The Commission says the Appellant hasn't provided any evidence that he attempted to contact it before the discovery of the late claimant report. It thinks it is reasonable to expect the Appellant to verify and validate that his report was properly processed.

[28] And the Commission says that having a benefit period established doesn't give the Appellant the right to receive benefits because other conditions must be met. Nor does paying EI premiums in and of itself give the Appellant the right to receive benefits. Rather, it is an insurance policy where eligibility requires that he meet the various conditions established by law.

– **My findings**

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

[30] The Appellant is an experienced claimant who knew he had to submit biweekly claim reports to be paid benefits. For the past six years, he used the online reporting system to make his claim reports every Christmas, March, and summer school break. He says he didn't notice he hadn't been paid benefits for his December claim until he checked in March 2024.

[31] In my view, a reasonable person in the Appellant's circumstances would have taken steps to verify that benefits had been paid and that the claim reports had been processed. Especially since it was his normal practice to request EI benefits every school break. The Appellant has a My Service Canada account (MSCA) and he could have verified the status of his claim at any point. A reasonable and prudent person would not have simply forgot to file their reports to be paid EI benefits. And I think a reasonable and cautious person would have verified that they received payment of December 2023 benefits sooner than the Appellant did.

[32] Had the Appellant checked to see that he received benefits and that the claim reports were processed, he would have kept his claim active the week of December 17, 2023, been able to start a new benefit period as of December 24, 2023, and received benefits for the weeks he was laid off during March break in 2024. His failure to do so means he didn't act as a reasonable person in his situation would have done during the period of his delay.

[33] The courts have said that a claimant must take reasonably prompt steps to learn about their entitlement rights and obligations as a requirement for an antedate.¹² The Appellant says he made an honest mistake and should not be penalized for a first mistake. He also says he acted quickly when he learned about the mistake. The Appellant mentions that he had already qualified for benefits so there should be some leniency in looking at his delay.

[34] Unfortunately, these arguments don't excuse the Appellant from taking reasonably prompt steps to find out about his rights and responsibilities when making reports to claim EI benefits. It wasn't until the Appellant thought he was renewing his claim in March 2024 that he realized he hadn't been paid any benefits in December 2023, and that his claim reports were never made for that period. I can't find that this shows the Appellant tried to learn about his rights promptly.

[35] The Appellant could easily have logged into his MSCA to verify that his December claim reports were being processed much sooner than March 2024. He could have checked his bank account to see if his benefits had been received in January, when his payment would have been made. Had he done so, he would have

¹² For examples where the courts have decided this principle, see *Mauchel v Canada (Attorney General)*, 2012 FCA 202; *Bradford v Canada Employment Insurance Commission*, 2012 FCA 120; *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Canada (Attorney General) v Scott*, 2008 FCA 145; *Canada (Attorney General) v Brace*, 2008 FCA 118; and *Canada (Attorney General) v Beaudin*, 2005 FCA 123. The courts have also held that reliance on unverified information or assumptions is not good cause for a delay at *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Trinh*, 2010 FCA 335; and *Canada (Attorney General) v Rouleau*, A-4-95.

learned that he hadn't been paid and his claim reports hadn't been processed. And he could have acted then to submit his claim reports for December 2023.

[36] There is no automatic entitlement to EI, no matter how many years someone has paid into it. And establishing a benefit period doesn't automatically entitle someone to benefits either. Benefits are available only to people who qualify under the law.¹³

[37] The lack of communication with the Commission on the Appellant's reconsideration request is unfortunate. But I find that the Appellant shares the responsibility for this by not verifying if the email and phone calls came from the Commission. A quick call to the Commission could have sorted this out. In addition, I have considered the Appellant's arguments from his reconsideration request in making this decision, so I find his appeal process has been procedurally fair.

[38] I am sympathetic to the Appellant's argument that everyone makes mistakes and I note the Commission made a mistake in its initial decision letter to the Appellant.¹⁴ But only the Commission can waive or vary the conditions and requirements for making claims.¹⁵ I don't have the authority to do this myself. I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹⁶

[39] I find that, on a balance of probabilities, the reasons the Appellant provided for delaying his claim reports for EI benefits don't demonstrate good cause as defined by law. He didn't act reasonably, prudently, and promptly to complete his claim reports. The Appellant is requesting an antedate to December 17, 2023. This means the period of delay in filing reports is from December 17, 2023, to March 11, 2024, and the Appellant hasn't shown there were exceptional circumstances during this time.

¹³ *Pannu v. Canada (Attorney General)*, 2004 FCA 90, at paragraph 3.

¹⁴ The Commission says it made a clerical error in its initial decision notice when it indicated the renewal claim could not start earlier than December 31, 2023, whereas it should have stated that the Commission is unable to pay Employment Insurance benefits from December 17, 2023, because the claimant did not complete his reports within the allowed time and he did not show good cause for being late at GD4-2.

¹⁵ This is set out under section 50(10) of the EI Act.

¹⁶ *Canada (Attorney General) v. Knee*, 2011 FCA 301.

Conclusion

[40] The Appellant hasn't proven that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims can't be treated as though they were made earlier.

[41] The appeal is dismissed.

Rena Ramkay

Member, General Division – Employment Insurance Section