



Citation: *SS v Canada Employment Insurance Commission*, 2024 SST 778

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: S. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (599832) dated August 2, 2023
(issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Teleconference

Hearing date: June 13, 2024

Hearing participant: Appellant

Decision date: July 2, 2024

File number: GE-24-1225

Decision

[1] The appeal is dismissed. The Tribunal 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 April 12, 2023. She is now asking that the application be treated as though it was made earlier, on December 11, 2023. 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 because she did not act like a reasonable person in her situation. She assumed that she could not apply for benefits because she had been dismissed. She did not make any efforts to verify if this was true. She had filed a claim for EI benefits in 2020, so she was aware of EI and how to apply for benefits.

[6] The Appellant disagrees and says that she was not aware of EI benefits when her job ended. This was her first time leaving work. If she had known, she would have applied then. She applied after a friend told her she could apply for EI benefits.

[7] This appeal has been returned to the General Division after the Appellant appealed an earlier General Division decision denying an extension of time to file the appeal. At the Appeal Division, three of four issues in the Appellant's appeal were resolved, and only the remaining issue of antedate was sent back to the General

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

Division. This decision only deals with the issue of whether the Appellant can have her application for EI benefits antedated (treated as if it had been made at an earlier date).

Issue

[8] Can the Appellant's application for benefits be treated as though it was made on December 11, 2023? This is called antedating (or, backdating) the application.

Analysis

[9] 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).

[10] The 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 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.

[12] 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 December 11, 2022, to April 12, 2023.

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.

[13] 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 the Appellant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best as 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

[14] 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.

[15] The Appellant says that she had good cause for the delay because she never knew that she could apply for EI. She had not been dismissed before. A friend told her she could apply, so she did apply right away. This was in April.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because she did not contact the Commission (through Service Canada) to ask about her rights and obligations, or about her situation. She did not check any resources on the Service Canada website to check about applying for benefits. The only thing that prevented the Appellant from applying for benefits was her lack of knowledge. If she had known, she would have applied.

[17] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she did not act as a reasonable person in her situation would have acted during the entire period of the delay, from December 11, 2022, to April 12, 2023. The reasons for this finding follow.

Review of the evidence

[18] The Appellant had worked at four different jobs in 2022. One was from June 28 to September 1, 2022. Another was from April 1 to November 23, 2022. A third was from September 18 to December 13, 2022. The fourth was from December 14, 2022, to

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

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

January 3, 2023. The first job ended for a shortage of work. The other three were for dismissal. The first two of those employers gave no reason for the dismissal. The last one gave the reason of her dismissal within the probationary period.

[19] In her conversations with the Commission, the Appellant said that she was not aware that she could apply for EI benefits. She had not been dismissed before. If she had known, she would have applied. She only applied after a friend told her she could apply. That was in April 2023.

[20] In her testimony at the hearing, the Appellant said that this was the first time she had been dismissed from a job. She was confused over the layoff, the dismissal and any entitlement. She had never applied for EI benefits before. Her friend told her she could apply and how to apply. She did not recall when the friend told her this. She did apply for benefits with the assistance of the Commission staff.

[21] The Appellant testified that the Commission was wrong when it recorded her as saying that she had not contacted Service Canada to ask about her rights and obligations or her situation. She testified that she called Service Canada shortly after she was laid off. She could not recall the date she did call. She was not sure whether she spoke to her friend at that time.

[22] The Appellant testified that the Commission was wrong when it recorded her as saying that she had not checked any Service Canada resources on its website to get information on how to apply for benefits. She testified that she contacted Service Canada earlier, but that it took some time to complete the application for EI with the assistance of Commission staff. She did not know how many days or weeks there were between her first contact with Service Canada and the completion of her application. She later said that she started the application on April 4th. A later conversation with the Commission recorded that she went to a Service Canada Centre for help in April when she applied. In her testimony, the Appellant agreed with that statement, but then was not sure of the date.

[23] The Appellant confirmed the correctness of the Commission's note that there was nothing that prevented her from applying. If she had known, she would have applied.

[24] The Appellant said that she had never applied for EI benefits before. The Commission filed an Attestation Certificate to show that she had applied for benefits in October 2020, and had received benefits until September 2021. She testified that she had not received EI benefits, but she did receive CERB (Canada Emergency Relief Benefits) in 2020. She had no recollection of filing reports. She said she did receive a one-time payment of \$3,000.00 for sickness benefits.

[25] The difficulty for the Appellant is that the CERB program made payments for up to 16 weeks in the period from March 15, 2020, to September 26, 2020. Applications for CERB could be made until December 2, 2020. But CERB was not paid after September 26, 2020. It was replaced by the EI Emergency Response Benefit. It is possible that the Appellant did receive CERB for up to 16 weeks. But those weeks ended on September 26, 2020. The Attestation Certificate shows that the last week in which benefits were paid was September 12, 2021. So, that Certificate shows the Appellant receiving EI benefits even if she did receive CERB benefits.

Findings of fact

[26] Based on the above review of the evidence, I make the following findings of fact.

[27] The Tribunal in making findings of fact may be entitled to discount an appellant's later statements as compared to his earlier statements, particularly where the later statements raise new matters not mentioned in the earlier statements.⁷

[28] The Appellant's initial statements were the following:

- she did not know that she could apply for EI benefits
- if she had known she would have applied

⁷ *Cundle v Human Resources and Skills Development Canada*, 2007 FCA 364.

- she had not been dismissed before
- She had not contacted Service Canada to get information on EI, and
- she only applied after a friend told her in April 2023 that she could apply.

[29] The Appellant was consistent between her early statements and her testimony on the first three bullets above. But she was inconsistent on the last two bullets.

[30] It was only in her testimony that the Appellant said that she had contacted Service Canada shortly after losing her job. I do not accept that testimony. If she had made that contact, she would have learned that she needed to apply. And once she learned that she would have applied because she said from the beginning that she would have applied.

[31] Related to that point is the last bullet, that she only applied for EI benefits after a friend told her to apply in April 2023. In her testimony, she was not sure exactly when the friend had told her this. Further, she said that she contacted Service Canada shortly after she was laid off. She testified that she had started her application some time before the application was finalized. She also testified that she applied on April 4, 2023. The inconsistency between these statements does not help the Appellant.

[32] The Appellant testified that she had never applied for EI benefits before. That is inconsistent with her testimony that she received about \$3,000.00 for sick benefits, which are EI benefits. Those are benefits that you must apply for. Finally, there is the Commission's record showing that the Appellant had an active EI claim from October 2020 to September 2021. This confusion makes the Appellant's claim that she never applied for EI benefits before doubtful.

[33] For these reasons, I discount the Appellant's later statements about when she contacted Service Canada to get information about EI benefits, and about talking to her friend earlier than April 2023 and finding out that she could apply for EI. Based on that review, I make the following findings.

[34] The Appellant applied for EI benefits on April 12, 2023. She sought to antedate her application to December 11, 2022.

[35] The Appellant did not contact Service Canada about applying for EI benefits until April 4, 2023. She did not contact Service Canada before then to ask about whether she could get benefits. She just assumed she was not entitled to the benefits and did nothing to check if that was true until her friend told her on April 4th that she could apply. That was the Appellant's situation during the entire period of the delay, from December 11, 2022, to April 12, 2023.

[36] There is no evidence to show that the Appellant had extraordinary circumstances to explain the delay. As she told the Commission, the only thing preventing her from applying was that she did not know that she could have applied. That could have been fixed by contacting Service Canada and asking about applying. The Appellant testified that she was focused on finding work, and the need to find a new job overrode applying. That is not an extraordinary circumstance. All persons applying for EI benefits are focused on finding work as a condition of receiving benefits.

Ruling

[37] I find that the Appellant has not proven that she acted as a reasonable and prudent person would have acted in similar circumstances. She has not shown that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law. This means that she has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. She has not shown that.

[38] A reasonable and prudent person would have checked if she could receive EI benefits. This is especially important when the person has lost their source of income to live on. The Appellant did not do that. She assumed she could not apply for benefits because she had been dismissed. She simply did nothing about applying for EI benefits until a friend told her in April 2023 that she could apply.

[39] The Appellant did not take reasonable prompt steps to understand whether she could receive EI benefits, and what she had to do to receive them. She did nothing to learn about her rights and responsibilities from December 11, 2022, to April 4, 2023, when she first contacted Service Canada after talking to a friend.

[40] 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

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

[42] The appeal is dismissed.

Paul Dusome

Member, General Division – Employment Insurance Section