



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DF v Canada Employment Insurance Commission*, 2020 SST 1156

Tribunal File Number: GE-20-1564

BETWEEN:

**D. F.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Katherine Wallocha

HEARD ON: September 1, 2020

DATE OF DECISION: September 8, 2020

## **DECISION**

[1] The appeal is dismissed. The Claimant has not shown that he had good cause for the delay in applying for employment insurance (EI) benefits. This means that the Claimant's application cannot be treated as though it was made on an earlier date.

## **OVERVIEW**

[2] The Claimant became unemployed in June 2018. He received a severance package and thought he was not eligible for EI benefits, so he did not apply.

[3] The Claimant found contract employment in November 2018. His contract ended in February 2019. He was told there was a potential permanent job coming, so he did not apply for EI benefits. When he found out he did not get the permanent position in April 2019, he applied for benefits. His claim was established on April 14, 2019.

[4] The evidence shows the Claimant initially requested that the application be treated as if it was made earlier, on February 24, 2019. However, he contacted the Commission the next day to correct the record that he intended to request his application be treated as if it was made on June 24, 2018. The Commission refused to backdate his claim for EI benefits to June 2018, because he did not prove that he had good cause to apply late. However, the Commission did start his claim on the earlier date of February 24, 2019, when he became unemployed from his contract position.

[5] The Claimant appealed the Commission's decision. He says that the Commission is using the wrong start date. The date used is February 24, 2019, but it should be June 25, 2018, as requested. The Commission failed to consider that he received a severance package, and was therefore not eligible for EI benefits. The Commission did not provide its rationale for their decision to allow an antedate to February 24, 2019, and not June 25, 2018.

## **WHAT I MUST DECIDE**

[6] Can the Claimant's application for EI benefits be treated as if it had been made on June 25, 2018?

## **REASONS FOR MY DECISION**

[7] When your application for EI benefits is later than your last day of work, the Commission usually starts your benefit period in the week you applied<sup>1</sup>. You can ask the Commission to start your benefit period earlier. This is called an antedate.

[8] The Claimant has to prove two things to have an application for benefits antedated<sup>2</sup>:

1. He qualified for benefits on the earlier day.
2. He had good cause for the delay during the whole period of the delay.

### **Does the Claimant qualify for EI benefits on the earlier date?**

[9] Yes, the Claimant qualified for EI benefits on June 24, 2018.

[10] The record of employment dated July 10, 2018, shows that the Claimant accumulated 2124 hours of insurable employment. This is more than enough hours to qualify for EI benefits under any circumstance.

[11] From this, I find the Claimant would have qualified for EI benefits on the earlier day. Now, I must decide whether he has shown he had good cause for the delay.

### **Has the Claimant proven he had good cause for the delay in applying for EI benefits?**

[12] No, I find the Claimant has not proven, on the balance of probabilities<sup>3</sup>, that he had good cause for the entire duration of the delay.

[13] Good cause is not the same as having a good reason, or a justification for the delay. In order to establish good cause, the Claimant must show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the law<sup>4</sup>. He has to show good cause for the entire period of the delay<sup>5</sup>. If the Claimant did not take these

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<sup>1</sup> This is set out in s 10(1)(b) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> This is set out in s 10(4) of the EI Act.

<sup>3</sup> On the balance of probabilities means, it is more likely than not.

<sup>4</sup> This is explained in the Federal Court of Appeal (FCA) decision *Canada (Attorney General) v. Albrecht*, A-172-85.

<sup>5</sup> This is explained in the FCA decision *Canada (Attorney General) v. Burke*, 2012 FCA 139.

steps, he must show that there were exceptional circumstances that explain why he did not do so<sup>6</sup>.

[14] The Claimant argued that the Commission allowed his antedate request to February 24, 2019, but did not explain why. He told me at the hearing that it appears that the Commission arbitrarily makes decisions. As the antedate to February 24, 2019, is within my jurisdiction to hear the appeal, I asked the Claimant if he was appealing the Commission's decision to allow the antedate to his last day of work at his contract job. The Claimant confirmed that he was not appealing the period from when his contract ended on February 24, 2019, and when he applied for EI benefits on April 14, 2019. Since the Commission has already determined he has proven good cause for the delay from February 24, 2019, the period of delay under appeal is from June 25, 2018, to February 23, 2019.

[15] The Claimant says that he had good cause for the delay for the following reasons:

- The Commission failed to consider that he received a severance package and he was working. He was not eligible for EI benefits and it is not a rational act to apply for EI when you are not eligible;
- He anticipated that he would not be unemployed for an extended period. He thought he would find employment before his severance ran out. This is demonstrated by his employment with his subsequent employer;
- He suffers from depression and he was under tremendous pressure with his first employer. During his tenure, he was diagnosed with depression. He is on medications to treat this illness. He took time off work twice due to this illness, with the last period being when he received his notice that his employment was terminated. The trauma of losing his job exasperated these illnesses and contributed to his lack of foresight and judgment between June 25, and November 28, 2018;
- He worked for 13 consecutive years and this is not factored into the Commission's determination of benefits. He did not know that a delay in his application would result in receiving 24 weeks of coverage even though he earned 45 weeks;

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<sup>6</sup> This is explained in the FCA *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.

- His lack of knowledge of the Commission's requirements and his inability to communicate with the Commission. On many occasions his phone calls went unanswered and there is no callback option. His lack of knowledge is unfairly penalized by the Commission and the Commission makes no effort to communicate with claimants.

[16] The Commission says that that the Claimant did not show good cause for the delay for the following reasons:

- He did not act like a reasonable person in his situation would have done to verify his rights and obligations under the law;
- Specifically, the Claimant stated in his appeal and throughout his discussions with the Commission, that he did not apply for EI benefits initially, because he believed that he would not be eligible for benefits due to the allocation of his severance pay, and because he had found full-time employment;
- The Claimant initially stated that he had not contacted Service Canada or the Commission to determine his eligibility for EI benefits during the period of unemployment because he was certain that he would not qualify;
- The Claimant did not mention his illnesses during the verbal conversations with Commission, nor in writing with his request for reconsideration.

[17] The evidence shows the Claimant told the Commission when he requested the antedate that he received a severance package from his employer and he did not think he would be eligible for EI benefits. He did not understand the process.

[18] The Claimant told the Commission in another phone call that he did not apply earlier because of the severance package. His understanding was he would not qualify for EI benefits so there was no point in applying. At no point during this time of unemployment did he reach out to Service Canada to clarify his rights or responsibilities. In a further conversation with the Commission, he stated that he believed he was being punished for not knowing the rules around when to apply.

[19] I find that the Claimant has not proven that there was good cause for the delay in applying for benefits because he did not take reasonably prompt steps to understand his

entitlement to benefits and his obligations under the law. At the hearing, the Claimant said he knows he contacted the Commission several times about his antedate request. Those conversations were documented in the appeal docket. However, the Claimant did not recall if he called during the period of unemployment that started in June 2018. He does not know for sure because he called so often and he waits in the queue and the call gets abandoned.

[20] I recognize that it can be difficult and frustrating to contact the Commission. However, he requested the antedate in November 2019, after he received his full entitlement of EI benefits. The evidence shows that he did get through to the Commission on six occasions and those calls were documented. There is no documented calls before February 2019, during the period for the delay. From this, I find the Claimant did not make efforts to learn of his rights and obligations and assumed he would not qualify for EI benefits because he received a severance package.

[21] While it is true that the Claimant would not have received EI benefits until after he exhausted his severance package, this does not remove the Claimant's responsibility to take prompt steps to learn of his rights and obligations. And it does not remove the Claimant's responsibility to apply for EI benefits as soon as he becomes unemployed.

[22] The Claimant argued that after his severance package ran out, he found employment and was working full-time. He told me that he considers working full-time to be good cause to not apply for EI benefits because he was not eligible. While I respect this argument, being employed did not prevent him from applying for EI benefits for the previous period of unemployment, nor did it remove his responsibility to take steps to learn of his rights and obligations.

[23] The Claimant argued in his notice of appeal that he suffers from depression because of the stressful nature of his employment. He told me at the hearing that his focus was to get back to work and he knew it would help him with his mental state. He was not thinking clearly and while he does not claim that his mental illness was the reason for the delay, it was a contributing factor. He was not in a rational state.

[24] I have no doubt that the loss of his employment was a shock and it aggravated his medical condition. However, the Claimant was able to look for work during the period of delay. If he was capable of looking for and finding work, he was capable of contacting Service Canada

or the Commission. From this, I cannot conclude that the Claimant's medical condition provided him with exceptional circumstances that prevented him from applying for EI benefits at the earlier date.

[25] The Claimant further argued that his 13 years of consecutive work is not being recognized and he is being punished for not knowing the rules. Unfortunately, the law does not allow his 13 years of consecutive work to be used in the calculation of his benefits. I recognize that the Claimant acted in good faith, and with the best of intentions. He received a severance package, he was intent on finding employment and he did not know the process. However, ignorance of the law and good faith have been held to be insufficient to amount to good cause<sup>7</sup>.

### CONCLUSION

[26] The Claimant has not proven that he had good cause for the delay in applying for EI benefits throughout the entire period of the delay. This means the appeal is dismissed.

*K. Wallocha*

Member, General Division - Employment Insurance Section

HEARD ON:	September 1, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	D. F., Appellant

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<sup>7</sup> This is explained in the FCA decision *Canada (Attorney General) v. Trinh*, 2010 FCA 335.