



Citation: *AA v Canada Employment Insurance Commission*, 2021 SST 329

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant:	A. A.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (420282) dated April 7, 2021 (issued by Service Canada)
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Tribunal member:	Amanda Pezzutto
Type of hearing:	Teleconference
Hearing date:	June 8, 2021
Hearing participant:	Appellant
Decision date:	June 9, 2021
File number:	GE-21-843

Decision

[1] A. A. is the Claimant. The Canada Employment Insurance Commission (Commission) refused to antedate her application for Employment Insurance (EI) benefits. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am allowing the Claimant's appeal. I find that she had good cause for her delay in making her application. I find that she had exceptional circumstances and she acted like any other person in the same situation would have acted. This means that the Commission should start her benefits from her last day of work.

Overview

[3] The Claimant collected some EI parental benefits. Then, she went back to work. She worked for a few months and then she stopped working again because of a lay-off. After about two months after her last day of work, she made a renewal application for EI benefits. The Claimant wants the Commission to treat her renewal application as if she applied right away after she stopped working. For this to happen, the Claimant has to prove that she had good cause for the delay. The Commission decided that the Claimant didn't have good cause and refused the Claimant's request.

[4] The Commission says that the Claimant doesn't have good cause for applying late because she didn't try to phone the Commission to ask for help with her application.

[5] The Claimant disagrees with the Commission. She says she had good cause for her delay because she lives in a remote northern community. She says she needed help from the Government Liaison Officer (GLO) to make her application. But the GLO was away on medical leave for two months and so no one could help the Claimant with her application.

Issue

[6] Does the Claimant have good cause for her delay in applying for EI benefits?

Analysis

[7] The Claimant wants her renewal application for EI benefits to be treated as though she made it earlier, on November 3, 2020. This is called antedating (or, backdating) the application.

[8] If you don't make regular claims for EI, your account goes dormant. You have to make a renewal application for EI benefits to start collecting benefits again. There is a deadline for making a renewal application.¹

[9] The Claimant's last day of work was November 3, 2020. The Commission says that the Claimant was supposed to make her application by December 5, 2020. She made her renewal application on January 4, 2021.

[10] The Claimant hasn't given me any evidence to doubt the Commission's dates. I agree that her renewal application was late. This means that I have to decide if she can antedate her application.

[11] To get her renewal application antedated, the Claimant has to prove that she had good cause for the delay during the entire period of her delay.² The Claimant 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.

[12] And, to show good cause, the Claimant 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 just as reasonably and carefully as anyone else would have acted if they were in a similar situation.

[13] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁴ This means that

¹ See section 26 of the *Employment Insurance Regulations*.

² See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

the Claimant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.⁵

[14] The Claimant has to show that she acted this way for the entire period of the delay.⁶ That period is from the day she wants her claim antedated to until the day she actually made the claim. So, for the Claimant, the period of the delay is from November 3, 2020 to January 4, 2021.

[15] The Claimant says that she had good cause for the delay because she needed help from the GLO to make her application. She says that the GLO was away on medical leave for two months.

[16] The Commission says that the Claimant hasn't shown good cause for the delay. The Commission says that the Claimant should have called Service Canada for help with her application.

[17] I agree with the Claimant. I find that she has proven that she had good cause for her delay in applying for benefits. I find that she acted like any other reasonable person would have acted if they were in the same situation. I also think that the Claimant's circumstances were unusual and exceptional.

[18] The Claimant has always given the same explanation for her delay. She stopped work on November 3, 2020. She lives in a small, northern community. There is a GLO in her community, but no Service Canada office. She has applied for EI before, but she always asks for help from the GLO. The GLO was away for two months and so the Claimant didn't have anyone to help with her application. She eventually applied for EI on January 4, 2021.

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 Burke*, 2012 FCA 139.

[19] At the hearing, the Claimant said that she isn't comfortable using a computer or the internet by herself. Whenever she needs to use a computer, she goes to the GLO office or the Social Services office. She doesn't have any friends or family who are experienced with EI. There aren't many people with computers or internet access in her community.

[20] I believe the Claimant. I believe that she lives in a small community. It is difficult to use the internet in her community because there aren't many people with internet access. I believe that she usually goes to the GLO for help applying for government programs and services.

[21] The Commission agrees that the Claimant gets help from the GLO when she applies for EI. But the Commission argues that the Claimant should have called Service Canada for help instead of waiting for the GLO to come back to work.

[22] At the hearing, the Claimant agreed that she could have called Service Canada for help. But she said that you can't apply for EI over the phone. She said it takes a long time to mail a paper application for EI.

[23] I agree with the Claimant. I understand that she didn't call Service Canada for help. But the Commission hasn't explained how an agent on the phone could have helped the Claimant. I don't think calling Service Canada would have changed anything. Even if the Claimant called Service Canada for help, she still needed to use a computer and get the GLO's help to apply for EI. I don't see how a call centre agent could have helped the Claimant, given her situation.

[24] I think the Claimant's situation is exceptional. She lives in a small community. There aren't many people with internet access in her community. The GLO was away for a long time and the Claimant didn't have anyone to help her with her EI application. Even if she had called Service Canada's call centre, she still would have needed to find a computer with internet access.

[25] I think anyone in the same situation as the Claimant would have acted in the same way. I think it was reasonable for her to wait for help with her EI application. I think the Claimant has good cause for her delay in applying for EI benefits.

Conclusion

[26] I am allowing the Claimant's appeal. She has good cause for her delay. This means that the Commission should start her EI benefits right after her last day of work in November 2020.

Amanda Pezzutto
Member, General Division – Employment Insurance Section