



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MC v Canada Employment Insurance Commission*, 2021 SST 313

Tribunal File Number: GE-21-314

BETWEEN:

**M. C.**

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: Teresa M. Day

HEARD ON: March 5, 2021

DATE OF DECISION: March 16, 2021

## Decision

[1] The appeal is dismissed.

[2] The Claimant (who is the Appellant in this appeal) has not shown that he had good cause for his delay in applying for employment insurance (EI) benefits. This means that his application cannot be treated as though it was made on an earlier date<sup>1</sup>.

## Overview

[3] The Claimant's last day of work was in late-October, 2020, but he did not apply for EI benefits until November 30, 2020, approximately 5 weeks after his contract ended. On December 1, 2020, he asked to have his claim antedated to October 25, 2020 to coincide with his last day of work (GD3-12 to GD3-14). The Claimant was asked about the reason for his delay and stated that he was looking for work and trying to avoid going on EI benefits, and did not know if he would qualify for benefits. The Respondent, the Canada Employment Insurance Commission (Commission), concluded he did not have good cause for his delay and denied his antedate request.

[4] The Claimant asked the Commission to reconsider. He explained that he did not apply for EI benefits right away because he intended to work rather than be on EI benefits. However, his employment opportunities were limited due to the COVID-19 pandemic (pandemic), and he didn't know if he would qualify for EI benefits with the limited work he had been able to find. He also didn't know there was a timeframe for applying. He argued that the Commission's decision was discretionary and they should not penalize him by losing 5 weeks of EI benefits when things are so uncertain due to the pandemic and he is in need of financial assistance.

[5] The Commission maintained that he did not have good cause for his delay and denied his antedate request. The Claimant appealed to the Social Security Tribunal (Tribunal).

## Issue

[6] I must decide whether the Claimant's application for EI benefits can be treated as if it had been made on October 25, 2020 (this is called antedating the application).

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

## Analysis

[7] A claimant must prove two things to have their application for EI benefits antedated:

- a) that they had good cause for the delay during the whole period of the delay; and
- b) that they qualified for benefits on the earlier day.<sup>2</sup>

[8] Since there is no dispute about whether the Claimant in this case had sufficient hours of insurable employment to qualify for EI benefits as of October 25, 2020, I will start my analysis with whether there was good cause throughout the period of the delay.

[9] To show good cause, the Claimant must prove that he acted as a reasonable and prudent person would have in similar circumstances.<sup>3</sup> He has to show this for the entire period of the delay.<sup>4</sup> For this claimant, the period of delay is the 5 weeks from **October 25, 2020** (the day he wants his claim for EI benefits to start) to **November 30, 2020** (the day he applied for EI benefits).

[10] The Claimant must also show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>5</sup> If he did not take these steps, then he needs to prove that there were exceptional circumstances that explain why he did not do so.<sup>6</sup>

[11] The Claimant must prove it is more likely than not<sup>7</sup> that he had good cause for his delay.

[12] In his Notice of Appeal, the Claimant said he only worked 20 days and did not know if he would qualify for EI benefits. There were other government programs available due to the pandemic, so he was not thinking of EI benefits and, in fact, did not intend to be on EI benefits because he was hoping to find other work. He argued that it's unfair to deny him EI benefits from the date he became unemployed (October 25, 2020) because he did not intentionally apply late, there were extenuating circumstances due to the pandemic, and the Commission has the discretion to make an exception in his case.

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<sup>2</sup> Subsection 10(4) of the *Employment Insurance Act*.

<sup>3</sup> *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>4</sup> *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>5</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>6</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>7</sup> The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

[13] The Claimant testified at the hearing that:

- The Service Canada agent he spoke with when he made his antedate request told him that, because of the pandemic, his request would not be denied.
- But, to his surprise, his request was denied.
- The pandemic needs to be taken into account when looking at his situation.
- He was on a claim for regular EI benefits from December 22, 2019 to April 25, 2020.
- He then applied for the Canada Emergency Response Benefit (CERB), and he was on CERB from May 11, 2020 to the end of September 2020.
- At that point, he found work as a freelance hairstylist with a film & TV production crew.
- He worked 4 days in September, and 16 days in October 2020.
- When his contract ended, he looked into the Canada Recovery Benefit (CRB), because “the government was supporting the people of Canada” and there were other ways to receive financial assistance apart from EI benefits.
- He had “barely” worked in the previous year, so it was “reasonable” for him to assume he would not qualify for EI benefits.
- He has been on EI before and knows the type of hours it takes to qualify. Under “normal EI rules”, he would never have qualified with only 20 days of work.
- He was not aware of the changes to the EI program due to the pandemic.
- He was not aware of the 300 hours “the government was gifting to Canadians to help them qualify”.
- It was “not reasonable” for him to think there was any point in applying for EI benefits.
- The “exceptional circumstances” caused by the pandemic changed the rules, but he didn’t “anticipate” this.
- The government was “always changing things” and it was very confusing. How was he expected to keep up?
- He had zero income after he finished working in October.
- He was actively looking for work and didn’t want to collect EI.
- But when his “money ran out”, he was “back to looking for income support”.
- He thought he would be able to be on CRB after CERB, so he didn’t have to look to EI benefits.

- It was reasonable for him to look into “Covid support” like CRB. But that didn’t work out.
- After 5 weeks, he phoned Service Canada and spoke to an agent who told him about “the 300 hours” and said he should apply for EI benefits.
- He did not delay after that. He applied online that very day.
- His delay in applying for EI benefits was “marginal”, less than 10 days beyond “the 30 days on the website”.
- He doesn’t understand how his desire “not to use the system” can be used against him.
- He made an unintentional mistake.
- The pandemic “turned everything upside down” and people “aren’t the same”. They are stressed out and cannot be rational.
- He’s fighting to be treated fairly.
- The government’s mandate is to help Canadians. The decision to deny his antedate goes against this mandate.

[14] I asked the Claimant what method he used to look into CRB after his employment ended in October. He said he looked online. He also said that he didn’t even bother to look at EI online because, with his prior experience and only 20 days of work, he assumed he would not qualify for EI benefits.

[15] The Claimant submits that he had good cause for his delay because he acted reasonably in his circumstances. Based on his prior experience with EI, it was reasonable for him to assume he did not have sufficient hours of insurable employment to qualify for EI benefits with only 20 days of work. It was therefore reasonable for him to continue searching for work and look into CRB as opposed to EI Benefits. The pandemic created extenuating circumstances that led to “exceptional” rule changes and he could not be expected to anticipate or know about them.

[16] The Commission submits that the Claimant has not shown good cause for the delay because he did not demonstrate any intention to apply for EI benefits or enquire about his eligibility for benefits during the period of the delay. He also made assumptions rather than take steps to verify his rights and obligations under the *Employment Insurance Act* (EI Act).

[17] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.<sup>8</sup> To do this, he must show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation, and that he acted reasonably and carefully *throughout the entire period of the delay* between October 25, 2020 and November 30, 2020.

[18] The Claimant's delay is relatively short: 36 days.

[19] I nonetheless find that he did not act reasonably or carefully throughout the period of the delay because:

- a) His plan to find work after his contract ended on October 25, 2020 and avoid going on EI was unrealistic and unreasonable given the worsening of the pandemic at that time.

The Appellant resides in the Greater Toronto Area (GTA), in the province of Ontario. By early October, Ontario was fully in the second wave of the pandemic. By mid-October, the City of Toronto, Peel Region and York Region were considered hotspots, with spiking numbers of cases and deaths due to the Covid-19 virus. By late-October, these regions were returned to the public health restrictions from the first wave, which would quickly ramp up to include closing many businesses and suspending in-person learning at schools. By mid-November, Toronto was under lock-down. The rising numbers of cases and deaths in the GTA throughout the fall of 2020, coupled with the renewed restrictions and lockdown measures in the GTA, would have caused a reasonable and prudent person to immediately make enquiries about their entitlement to EI benefits upon becoming unemployed. This is especially the case for the Claimant because, as a freelance hairstylist in the film and TV industry, he was not in a profession where he could work from home. If he were planning to look for work as a hairstylist outside of the film and television industry, he would have known from the first wave of the pandemic that personal services such as hair salons and barbershops would be amongst the first businesses to be shut down for public health reasons. And, indeed, they were shut down across the GTA on November 23, 2020.

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<sup>8</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

Even if the Claimant was hoping the second lockdown would not last very long and he could return to work rather than collect EI benefits, the province's prior experience with re-opening after lockdown was graduated and involved limits on capacity and indoor activities. There was no reason to think this time would be any different. A reasonable and prudent person would have immediately looked into EI benefits because the trend in cases and deaths throughout the fall of 2020 was clearly going the wrong way and raised obvious questions around how long the escalating public health restrictions would be in effect. This is especially the case for the Claimant given the severe impact of the public health restrictions on his industry (as evidenced in the letter from his Union at GD2-13) and on personal service workers such as hairstylists in particular.

- b) The CERB program ended on September 25, 2020.

The winding down of CERB was widely publicized by the federal government in advance, as was the plan to transition CERB recipients to EI benefits *under expanded eligibility rules* if they were still jobless. There were also announcements about the creation of new benefits programs for people who still wouldn't qualify for EI benefits, including the CRB. A reasonable and prudent person would have immediately made enquiries of Service Canada to find out if they could receive EI benefits or other income support after CERB ended. This is especially the case for the Claimant given that he had just returned to work in September 2020 (he worked 4 days), after a lengthy period of unemployment (dating back to December 2019).

- c) It was not enough to look into CRB online after his contract ended on October 25, 2020.

The Claimant was aware that the CERB program had ended and he was now out of work. He could easily have double-checked his assumption about qualifying for EI benefits by looking into EI online, but he did not bother to do so. A reasonable person and prudent person would not have limited their online research to CRB given the state of the pandemic at that time.

According to his testimony, he was also confused by the government “always changing things”. A reasonable and prudent person in that situation would have telephoned Service Canada and spoken to an agent regarding his eligibility for financial support immediately following his last day of work. Indeed, it is noteworthy that when the Claimant finally did call Service Canada on November 30, 2020, he was immediately advised of his eligibility for EI benefits and completed an application right away.

[20] I find that the Claimant has not shown good cause for delaying until November 30, 2020 to apply for EI benefits because he did not act as a reasonable and prudent person in his situation would have to satisfy themselves of their rights and obligations under the EI Act.

[21] For the reasons set out in paragraph 19 above, I find that a reasonable and prudent person in the Claimant’s situation would not have waited to November 30, 2020 to apply for EI benefits. A reasonable and prudent person would have been in contact with Service Canada by mid-October 2020 – or at least immediately after his contract ended on October 25, 2020 – to figure out whether they were entitled to EI benefits and what the timeframe was for applying for EI benefits. It was not reasonable for the Claimant to consciously delay from October 25, 2020 to November 30, 2020 to look into EI benefits and make his claim.

[22] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>9</sup> This means he has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If he didn’t take these steps, then he must show that there were exceptional circumstances to explain why he didn’t do so.<sup>10</sup>

[23] The Claimant argued that, based on his prior experience qualifying for EI benefits, it is not reasonable to expect him to have made enquiries about EI with only 20 days of work. He assumed he would not qualify because he did not have the insurable hours necessary to establish a claim. Instead, it was reasonable to do what he did, namely to search for work and look into

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

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



the “Covid support” from CRB. There was nothing physically preventing him from calling Service Canada between October 25, 2020 and November 30, 2020. But he did not make any attempt to do so. He made no enquiries prior to filing his application on November 30, 2020. He merely looked online about CRB and, finding no option there, continued looking for work until his savings ran out - before finally calling Service Canada and applying for EI benefits.

[24] At paragraph 19 above, I explain why it was incumbent on the Claimant to quickly verify his rights with Service Canada. He nonetheless failed to take any steps to contact Service Canada to investigate the potential for EI benefits between October 25, 2020 and November 30, 2020. For the reasons set out in paragraph 20 above, his assumption that he would not qualify does not excuse his failure to take any steps to verify this assumption during the period of his delay. I therefore find the Claimant has not proven he took reasonably prompt steps to understand his rights and obligations to claim EI benefits.

[25] The Claimant testified that he did not know about the changes to the rules around eligibility and, in particular, the 300-hour qualifying credit available as part of the government’s emergency pandemic response. But the courts have repeatedly held that ignorance of the law is not good cause for a delay<sup>11</sup>, nor is reliance on unverified information or assumptions<sup>12</sup>. The Claimant’s duty to take reasonably prompt steps to inform himself about his right to apply for EI benefits was not satisfied by relying on his own unverified assumptions. This is especially the case in light of the fact that he had received CERB – itself a brand new emergency response, and was aware that other emergency measures, such as CRB, were being put in place.

[26] The courts have also held that good cause is not found where a claimant had no initial intention to claim benefits because they were waiting to start another employment<sup>13</sup>. The Claimant was hoping to find work so he could avoid collecting EI benefits. His personal decision to wait and see if he found employment comes squarely within the case law and does not support a finding of good cause.

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<sup>11</sup> See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>12</sup> See *Canada (Attorney General) v Trinh*, 2010 FCA 335; and *Canada (Attorney General) v Rouleau*, A-4-95

<sup>13</sup> See *Howard v. Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v. Ouimet*, 2010 FCA 83; and *Shebib v. Canada (Attorney General)*, 2003 FCA 88.

[27] I see no evidence of any exceptional circumstances that excuse or explain why the Claimant failed to take reasonably prompt steps to understand his entitlement to EI benefits and the timeframe for applying for benefits. While I agree that the pandemic has had an extraordinary impact on the lives of all Canadians, it cannot be said that it prevented the Claimant from reaching out to Service Canada to make the enquiries to confirm his eligibility prior to November 30, 2020.

[28] The Appellant stated that he didn't know he was supposed to apply for EI benefits within 30 days of becoming unemployed. He argued that he applied "a few days past the 30 days" and that his delay was "marginal". He submits it is unfair to penalize him for applying just outside the 30-day guideline when the government says it wants to help Canadians during the pandemic. and his mistake in delaying was unintentional.

[29] While the length of the delay is a relevant factor, the more important consideration is the reason for the delay<sup>14</sup>. The delay in this case is the period between when the Claimant wants his claim to start (October 25, 2020) and when he applied for EI benefits (November 30, 2020). As set out above, I have found that the Appellant's reasons for delaying throughout the period October 25, 2020 to November 30, 2020 do not constitute good cause. I give greater weight to this consideration than to the relatively short period of the delay and, therefore, cannot antedate his claim.

[30] The test for good cause requires the Claimant to show that his actions were ***both*** reasonable ***and*** prudent. He believes he acted reasonably based on his assumption about the number of hours required to qualify for EI benefits and his laudable intention to look for work rather than collect EI. But it cannot be said that he acted prudently to secure and preserve his entitlement to EI benefits from the date his contract of employment ended on October 25, 2020. I must consider what a reasonable ***and*** prudent person would have done in the same situation to satisfy themselves of their rights and obligations under the EI Act. I find that a reasonable and prudent person in the Claimant's situation would not have waited 36 days to apply for EI benefits. Such a person would have acted as I have set out in paragraphs 19 to 21 above. This is especially the case where the Claimant had no other source of income for the entire period of the

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<sup>14</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

delay and the prospect of returning to work as a hair stylist – in the film industry or otherwise – was extremely uncertain given the impact of the pandemic on personal services.

[31] I understand the Claimant's disappointment at not being able to receive the extra weeks of EI benefits that would come with an antedate. I am also sympathetic to his financial circumstances and acknowledge his need for financial support at this time. But I cannot decide this appeal based on the Claimant's submissions about fairness or financial need. I must apply the legal test for antedating a claim. And, in doing so, I find that delaying his application for EI benefits because of his mistaken belief about not qualifying and because he hoped to find work and/or qualify for some other pandemic relief program was not good cause for the Claimant's delay.

[32] I therefore find that the Claimant has failed to meet the onus on him to demonstrate good cause for the entire period of the delay in applying for EI benefits, as required by subsection 10(4) of the EI Act.

[33] As a result, his claim cannot be antedated to be considered as having been made as of the earlier date he requested.

**CONCLUSION**

[34] I find that the Claimant did not act as a reasonable and prudent person in his situation would have acted to satisfy themselves of their rights and obligations under the EI Act. Therefore, the Claimant has not shown good cause for the entire period of his delay in making his application for EI benefits and his claim cannot be antedated to October 25, 2020 as he requested.

[35] The appeal is dismissed.

**Teresa M. Day**  
**Member, General Division - Employment Insurance Section**

HEARD ON:	March 5, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	M. C., Appellant