



Citation: *CV v Canada Employment Insurance Commission*, 2022 SST 99

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

**Decision**

**Appellant:** C. V.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (438529) dated November 18,  
2021 (issued by Service Canada)

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**Tribunal member:** Paul Dusome

**Type of hearing:** Videoconference

**Hearing date:** January 12, 2022

**Hearing participant:** Appellant

**Decision date:** January 17, 2022

**File number:** GE-21-2481

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that he had good cause for the delay in applying for benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's application can't be treated as though it was made earlier.<sup>1</sup>

[3] The Claimant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits at the time he applied.

## Overview

[4] The Claimant applied for Employment Insurance (EI) benefits on October 12, 2021. He is now asking that the application be treated as though it was made earlier, on November 15, 2020. The Canada Employment Insurance Commission (Commission) has already refused this request.

[5] I have to decide whether the Claimant has proven that he had good cause for not applying for benefits earlier.

[6] The Commission says that the Claimant didn't have good cause because he did not take steps to ask about EI benefits until September 2021, despite being able to deal with a lawsuit against his former employer, search for work, and obtain a job in April 2021.

[7] The Claimant disagrees and says that he was dealing with a great deal of anxiety and stress over being forced out of his job by his former employer, having no income, and dealing with the lawsuit. He did not consider EI until his lawyer mentioned it in September 2021.

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

[8] The Claimant applied for EI benefits, but the Commission decided that the Claimant hadn't worked enough hours to qualify at the time he applied on October 12, 2021.<sup>2</sup>

[9] I have to decide whether the Claimant has worked enough hours to qualify for EI benefits.

[10] The Commission says that the Claimant doesn't have enough hours because he needs 420 hours, but has only 194 hours.

[11] The Claimant disagrees and says that he had 1468 hours from March 1 to November 13, 2020. That and his 12 years of consecutive employment should be sufficient hours to qualify for benefits. At the hearing, he stated that he did not contest this issue.

## Issues

[12] Can the Claimant's application for benefits be treated as though it was made on November 15, 2020? This is called antedating (or, backdating) the application.

[13] Did the Claimant work enough hours to qualify for EI benefits?

## Analysis

### Antedate

[14] To get your application for benefits antedated, you have to prove these two things:<sup>3</sup>

- 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.

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<sup>2</sup> Section 7 of the *Employment Insurance Act* (EI Act) says that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

<sup>3</sup> See section 10(4) of the EI Act.

- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

[15] The main arguments in this case are about whether the Claimant had good cause. So, I will start with that.

[16] 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>4</sup> 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.

[17] The Claimant has to show that he acted this way for the entire period of the delay.<sup>5</sup> That period is from the day he wants his application antedated to until the day he actually applied. So, for the Claimant, the period of the delay is from November 15, 2020, to October 12, 2021.

[18] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>6</sup> This means that the Claimant has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Claimant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.<sup>7</sup>

[19] The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he had good cause for the delay.

[20] The Claimant says that he had good cause for the delay because he was suffering a great deal of anxiety and stress, he was focused on the lawsuit and on finding a new job. In his circumstances, he could not be considered to be a reasonable person the law mentions.

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

<sup>5</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

<sup>7</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[21] The Commission says that the Claimant hasn't shown good cause for the delay because neither his medical condition nor his lawsuit prevented him from asking about and applying for EI benefits. His ability to work on the lawsuit and his looking for work, then starting a new job in April 2021, show that he did have the capacity to ask about his rights and responsibilities respecting EI.

[22] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits because he took no steps until October 2021 to ask about or deal with EI benefits. A reasonable person who had lost his source of income for his family would have asked about and applied for EI benefits. The Claimant suffered from anxiety and stress from the former employment. The medical letter he gave to the Commission was not sufficient to show that his condition was so severe that he could not contact the Commission to ask about and apply for EI benefits.

[23] The Claimant testified about his former employment. He had worked for 12 years with the employer. He had contributed to the success of the employer, and had a very good reputation in his field. There was a change of management. His new boss was aggressive, and harassed him. The new boss promoted the Claimant's junior colleagues (who reported to him) to positions above the Claimant. He now had to report to them. The boss had demoted the Claimant, but would not say why. The demotion and the work atmosphere caused a great deal of stress and anxiety to the Claimant. It was insulting, and damaging to his reputation. He resigned. Initially he stayed in bed all day because of the stress and anxiety. In November and December 2020, he gave EI a quick thought, but did not contact the Commission because he was not in the right frame of mind. At some point, though uncertain when, he thought that he would not get EI benefits because he had quit his job.

[24] His need to provide for his family, and the way he had been treated by the employer, motivated the Claimant to hire a lawyer and sue for constructive dismissal. He was solely focused on the legal battle. The entire legal process was stressful and nerve racking. On the advice of his lawyer, he began looking for work. This would support his lawsuit. He began looking in about early January 2021. That too was

stressful, and discouraging as there were reduced opportunities due to COVID. In February 2021 he started getting responses to his applications. He began a new job on April 18, 2021.

[25] Between November 13, 2020 and late April 2021, the Claimant had no income. His wife worked part-time, but that income was not enough. They had to use a line of credit to pay their expenses for that period. That has left them with a large debt.

[26] When the Claimant started at his new job in April 2021, he said that he did not apply for EI for a number of reasons. That was not on his radar, and he didn't know if he was eligible for benefits. He now had a job and income to support his family. He focused all his energies on the lawsuit and on the new job. He was working 10 to 12 hours a day Monday to Friday, to impress the new employer and secure his continuing employment.

[27] In September 2021, the lawsuit with the former employer was settled. At that point, the Claimant's lawyer told him that he could apply for EI, but did not tell him to apply immediately. He searched the web, and applied three weeks later. The delay was due to being very busy at work.

[28] The Claimant said that he was consulting his family physician before, during and after his resignation from the former employer. He did obtain one prescription for Ativan in September-October 2020, for his stress and anxiety. He did not renew it, and stopped to avoid any possible addiction. He testified that the medical condition did not prevent him from applying for EI. He was solely focused on the lawsuit, and the new job. The Claimant's doctor's letter is dated November 18, 2021. It notes that the Claimant has been under his care since 2015. The Claimant resigned his previous job on November 13, 2020 due to stress and anxiety related to his workplace. The doctor concludes "Please note that he was not able to apply for EI at appropriate time due to overwhelming stress and mental instability."

[29] I must now apply the legal test for antedate to the above facts.

[30] Did the Claimant do what a reasonable and prudent person would have done in the circumstances to find out their rights and obligations? No, for the following reasons.

[31] The Claimant had lost his only source of income. This put his family in a difficult financial position. A reasonable and prudent person would have tried to find out about other sources of income, including EI. The Claimant had not applied for EI before. But he did have an awareness of EI. In November and December 2020, he gave EI a quick thought, but did not contact the Commission because he was not in the right frame of mind. At some point, though uncertain when, he thought that he would not get EI benefits because he quit his job. A reasonable person would have made efforts to find out more about EI in those circumstances. A web search would have told the Claimant about his rights and obligations.

[32] The obligation to act as a reasonable person lasts throughout the entire period of delay. On the evidence, the Claimant did not act as a reasonable and prudent person until after his lawyer told him to apply for EI. It was only at that point that he searched on the web for information about EI.

[33] Did the Claimant take reasonably prompt steps to find out his/her rights and obligations? No, for the following reasons.

[34] The delay in applying for EI benefits was almost a year, from November 13, 2020 to October 12, 2021. He was aware of EI from early on, but put it out of mind or was not in the right state of mind to deal with it. He did nothing about EI until his lawyer told him in September 2021 to apply for benefits. It was only at that point that the Claimant began looking into EI by searching on the web, then applying. Taking no steps until September 2021 cannot be considered to be “reasonably prompt steps”.

[35] If the Claimant did not take reasonably prompt steps, are there any exceptional circumstances that would excuse him or her from doing so? No, for the following reasons.

[36] The possible exceptional circumstances are: the medical condition; the law suit; and the new job.

[37] The medical condition was stress and anxiety. The doctor's letter is very brief. It mentions stress, anxiety and mental instability. It does not say how the doctor diagnosed those conditions, or if he just relied on the Claimant's statements to him. The opinion about the Claimant's not being able to apply for EI does not specify what "the appropriate time" was. Nor does it provide a basis for the "overwhelming" nature of the conditions. The letter does not provide strong support for a finding of exceptional circumstances to excuse the delay. In addition, the doctor's opinion is undercut by the fact that the Claimant was able to participate in the lawsuit against his former employer, was able to search for work, and was able to obtain and keep a new job. That fact also undercuts the lawsuit and the new job as factors that might be exceptional enough to prevent a reasonable person from inquiring about EI rights and obligations. The evidence does not allow me to find that there were exceptional circumstances that excuse the delay.

[38] I don't need to consider whether the Claimant qualified for benefits on the earlier day. If the Claimant doesn't have good cause, his application can't be treated as though it was made earlier. I do however, have to decide if the Claimant had enough hours to qualify for benefits on October 12, 2021.

### **Sufficient hours to qualify for benefits**

[39] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>8</sup> The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that she qualifies for benefits.

[40] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."<sup>9</sup>

[41] The number of hours depends on the unemployment rate in your region.<sup>10</sup>

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<sup>8</sup> See section 48 of the EI Act.

<sup>9</sup> See section 7 of the EI Act.

<sup>10</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.



[42] At the hearing, the Claimant stated that he did not contest the Commission's decision that he did not qualify for EI benefits when he applied on October 12, 2021.

[43] I have reviewed the Commission's evidence respecting this issue. The Commission correctly set the usual 52 week qualifying period as October 11, 2020 to October 9, 2021. It also correctly determined the unemployment rate for the Claimant as 8.9%, and the number of hours needed as 420. The Commission estimated the number of hours in the five weeks from October 11 to November 13, 2020 at 194, based on averaging hours on the Record of Employment. That estimate is reasonable. In the five-week period, a 37.5 hour week yields 187.5 hours, a 40 hour week yields 200 hours.

[44] As the Claimant is not contesting this issue, and as the evidence supports the Commission's position, I find that the Claimant did not qualify for EI benefits based on his October 12, 2020 application. EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits. While I sympathize with the Claimant's situation, I can't change the law.<sup>11</sup>

## **Conclusion**

[45] The Claimant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay. He also has not proven that he qualified for EI benefits under this application dated October 12, 2020.

[46] The appeal is dismissed.

Paul Dusome  
Member, General Division – Employment Insurance Section

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<sup>11</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.