



Citation: *QY v Canada Employment Insurance Commission*, 2021 SST 922

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

**Decision**

**Appellant:** Q. Y.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (430207) dated August 10, 2021 (issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** Videoconference

**Hearing date:** September 27, 2021

**Hearing participants:** Appellant (Claimant)  
R. M., Appellant's Witness

**Decision date:** September 28, 2021

**File number:** GE-21-1672

## Decision

[1] I am dismissing the appeal.

[2] The Claimant has not shown that she 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>

## Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on February 11, 2021. She is now asking that the application be treated as though it was made earlier, on August 30, 2020. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission said the Claimant has not proven she had good cause for the delay in applying for EI benefits. It maintained this decision upon reconsideration.

[6] The Claimant appeals to the Social Security Tribunal. She said she did not apply sooner because she assumed she did not qualify for EI benefits when working part-time.

## Issue

[7] Can the Claimant's application for benefits be treated as though it was made on August 30, 2020? This is called antedating (or, backdating) the application.

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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.

## Analysis

[8] To get your application for benefits antedated, you have to prove these two things:<sup>2</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.
- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[10] To show good cause, the Claimant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.<sup>3</sup> 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.

[11] The Claimant has to show that she acted this way for the entire period of the delay.<sup>4</sup> That period is from the day she wants her application antedated to until the day she actually applied. So, for the Claimant, the period of the delay is from August 30, 2020, to February 11, 2021.

[12] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.<sup>5</sup> This means that 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

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<sup>2</sup> See section 10(4) of the EI Act.

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

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

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

she must show that there were exceptional circumstances that explain why she didn't do so.<sup>6</sup>

[13] 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.

[14] The Claimant says that she had good cause for the entire period of delay because she didn't know she could collect EI benefits while working. She says she has never collected EI benefits before.

[15] The Claimant says she stopped working at her 3 part-time jobs in March 2020. That was when the stores temporarily closed due to the global COVID-19 pandemic. She received the Canada Emergency Response Benefit (CERB) from March 2020 to July 2020.

[16] At the end of July 2020, the Claimant returned to work at one store. She says her employer reduced her hours of work because the store was not busy. She was laid off on December 14, 2020. This is when her manager told her to apply for EI benefits.

[17] The Claimant says she decided to ask for the CERB instead of EI benefits. She waited until the week after Christmas before calling the Canada Revenue Agency (CRA). This is when she learned that the CERB had ended and was told to contact Service Canada to apply for EI benefits. She says she tried calling Service Canada but it took several days before she spoke with an agent.

[18] The Claimant waited another 6 weeks before submitting her application for EI benefits on February 11, 2021. She says that from December 2020 to February 2021, she was busy taking an income tax course and looking for work. She had financial assistance from family members during this time.

[19] The witness says that English is the Claimant's second language. She can read and write English but does not fully understand it. She often asks him for help when

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

completing forms. He says he helped her apply for the CERB. He assumed that she was still receiving benefits after she returned to work. He did not know she stopped collecting CERB until she asked him to review her application for EI benefits.

[20] The Commission says that the Claimant has not shown good cause for the delay because she didn't act like a 'reasonable person' in her situation would have done to verify her rights and obligations under the Act. Specifically, her first attempt to find out her rights was when she made contact with Service Canada in January 2021.<sup>7</sup>

[21] I find that the Claimant has not proven she had good cause for the delay in applying for benefits. This is because she relied on her own assumptions that she did not qualify for EI benefits while working. The law states that choosing to rely upon rumours, unverified information, or on unfounded and blind assumptions, does not constitute good cause.<sup>8</sup> Good cause for delay is not the same as having a good reason, or a justification for the delay.

[22] I am not convinced that the Claimant's understanding of English prevented her from applying for EI benefits sooner. She says she learned English while growing up in Pakistan but it is a different English. At the hearing, she said she understands enough English to ask for clarification when needed. She explained how she completed her application for EI benefits by herself, on her home computer, then asked her nephew to review it before submitting it.

[23] Also, I find that the Claimant has not presented evidence of an exceptional circumstance preventing her from applying sooner. I commend her for trying to improve her skills and for looking for work. But being busy taking an unapproved training course and looking for work are not exceptional circumstances preventing her from determining her rights and obligations under the Act.

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<sup>7</sup> See page GD3-21 and GD4-.

<sup>8</sup> *Canada (Attorney General) v Trinh*, 2010 FCA 335; and *Canada (Attorney General) v Beaudin*, A-341-04.

[24] I don't need to consider whether the Claimant qualified for benefits on the earlier day. If the Claimant doesn't have good cause, her application can't be treated as though it was made earlier.

## **Conclusion**

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

[26] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section