



Citation: *PK v Canada Employment Insurance Commission*, 2022 SST 131

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

**Decision**

**Appellant:** P. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (444431) dated December 20,  
2021 (issued by Service Canada)

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**Tribunal member:** Paul Dusome

**Type of hearing:** Teleconference

**Hearing date:** February 16, 2022

**Hearing participant:** Appellant

**Decision date:** February 18, 2022

**File number:** GE-22-120

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant on the two issues in this appeal.

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

[3] 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>

## Overview

### Hours needed to qualify for benefits

[4] The Claimant applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't worked enough hours to qualify.<sup>2</sup>

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

[6] The Commission says that the Claimant doesn't have enough hours because he needs 420 hours, but has zero hours in the normal 52-week qualifying period immediately before the date he made his application for EI benefits. He did not meet the criteria to increase the qualifying period to 104 weeks.

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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.

<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."

[7] The Claimant disagrees and says that he meets the criteria for the 104-week qualifying period. He has enough hours of employment in that period to qualify for benefits.

### **Antedate**

[8] The Claimant applied for Employment Insurance (EI) benefits on November 4, 2021. He 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.

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

[10] The Commission says that the Claimant didn't have good cause because he not act as a reasonable person in his situation would have. He did not make sufficient inquiries about his right to EI benefits, did not speak to anyone at the Commission, and did not apply for benefits until 14 months after his job ended

[11] The Claimant disagrees and says that he did act as a reasonable person in his situation would have. He is a recent immigrant to Canada, dealing with an unfamiliar system. He is in the process of obtaining permanent residence status. He consulted the Commission's website many times, but did not find the information transparent. He was unable to reach the Commission by phone.

### **Issues**

[12] Has the Claimant worked enough hours to qualify for EI benefits?

[13] 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.

## Analysis

### Hours needed to qualify for benefits

#### How to qualify for benefits

[14] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>3</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 he qualifies for benefits.

[15] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>4</sup>

[16] The number of hours depends on the unemployment rate in your region.<sup>5</sup>

#### The Claimant’s region and regional rate of unemployment

[17] The Commission decided that the Claimant’s region was Vancouver, and that the regional rate of unemployment at the time his job ended (August 30, 2020) was 13.1%.

[18] This means that the Claimant would need to have worked at least 420 hours in his qualifying period to qualify for EI benefits.<sup>6</sup>

[19] The Claimant agrees with the Commission’s decisions about which region and regional rate of unemployment apply to him.

[20] There is no evidence that makes me doubt the Commission’s decision. So, I accept as fact that the Claimant needs to have worked 420 hours to qualify for benefits.

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<sup>3</sup> See section 48 of the EI Act.

<sup>4</sup> See section 7 of the EI Act.

<sup>5</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

<sup>6</sup> Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

### **The Claimant's qualifying period**

[21] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.<sup>7</sup> The qualifying period can be increased to a maximum of 104 weeks before the benefit period would start.<sup>8</sup>

[22] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[23] The Claimant applied for EI benefits on November 4, 2021. The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from November 1, 2020, to October 31, 2021.

[24] The Commission also noted that if the Claimant had applied for benefits in late August 2020, his qualifying period would have been from September 1, 2019, to August 29, 2020.

- **The Claimant doesn't agree with the Commission**

[25] The Claimant disagrees with the Commission about his qualifying period. The Claimant says that his qualifying period should be longer because he relied on a statement in the Commission's website. The statement was part of a section dealing with the normal qualifying period. It continued, "**Exception:** In some cases, the qualifying period may be extended to a maximum of 104 weeks if you weren't employed in insurable employment or if you weren't receiving EI (Employment Insurance) benefits." He says that because he was not employed in insurable employment, and was not receiving EI benefits from August 30, 2020, to November 4, 2021, he qualifies to have the 104-week qualifying period.

[26] I find that the Claimant did not meet any of the conditions to obtain any extra weeks in his 52-week qualifying period.

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<sup>7</sup> See section 8(1)(a) of the EI Act.

<sup>8</sup> See section 8(2), (4) and (7) of the EI Act.

[27] A claimant can have their qualifying period increased from 52 weeks if he meets one or more of four conditions. The increase is for each week that the claimant meets those conditions. The maximum number of weeks in any qualifying period is 104. The first condition is being incapable of working because of a recognized illness, injury, quarantine or pregnancy. The second condition is being in jail and not found guilty of the offence he is charged with. The third is receiving assistance under employment benefits. The fourth is for women receiving payments under a provincial law when they have stopped working because of a danger from the work to her, her unborn child or a child she is breast-feeding. Those are the only conditions that permit an increase to the number of weeks in the qualifying period.

[28] The Commission reviewed those four conditions with the Claimant. He testified about the four conditions. His evidence was consistent on both occasions. He did not meet any of the four conditions. In testimony, he referred to being in a kind of jail while it took six months to renew his work permit. That does not meet the condition of being in an actual jail because he was charged with a criminal offence. On the evidence, he did not meet any of the four conditions at any time from August 30, 2020, to November 4, 2021. He therefore was not entitled to have more than 52 weeks in his qualifying period.

[29] The Claimant said that the website statement noted above entitled him to receive EI benefits. That is not correct. The Commission and its agents have no power to amend the law. Their interpretation of law does not have the force of law. Their commitments to act in a way other than written in law is absolutely void.<sup>9</sup> The statement on the website does not grant any rights to the Claimant. Those rights are found in the EI Act and EI Regulations, and in the interpretations of those laws by the Tribunal and the courts. The Commission, Tribunal and courts are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.<sup>10</sup>

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<sup>9</sup> *Granger v Employment and Immigration Commission*, A-684-85, affd [1989] 1 S.C.R. 141.

<sup>10</sup> *Canada (Attorney General) v. Kneé*, 2011 FCA 301.

[30] The Claimant also misunderstood the website statement about the exception. It said “In some cases”. It did not say “in all cases”. It said “may be extended”. It did not say “must be extended”. The website statement, and the Claimant’s misunderstanding, do not give him any rights. His rights must be based on the EI Act, the EI Regulations and Tribunal and court interpretations. As set out in earlier paragraphs, the Claimant does not meet the requirements to be given an extension of his qualifying period.

### **The hours the Claimant worked**

- **The Claimant agrees with the Commission**

[31] The Commission decided that the Claimant had worked zero hours during his qualifying period, from November 1, 2020, to October 31, 2021.

[32] The Claimant doesn’t dispute this, and there is no evidence that makes me doubt it. So, I accept it as fact.

[33] The Claimant’s argument was that he had 104 weeks in his qualifying period, and that he had enough hours in that 104 weeks to qualify for EI benefits. He did not have enough hours in the 104-week period. The Commission noted in its Representations that the Claimant had 461 hours in the period from September 1, 2019, to his last day of insurable employment on April 30, 2020. His job from then to August 30, 2020, was not insurable employment. The Claimant agrees with this. The Claimant does not dispute the number of those hours. Even if the Claimant had a 104-week qualifying period, he would not have enough hours. The 104-week qualifying period would start on November 1, 2019, and end on October 31, 2021. The loss of the hours in September and October 2019 reduces the number of hours below the 420 hours needed to qualify for EI benefits.

### **So, has the Claimant worked enough hours to qualify for EI benefits?**

[34] I find that the Claimant hasn’t proven that he has enough hours to qualify for benefits because he needs 420 hours in his 52-week qualifying period, but has worked zero hours in those 52 weeks.

[35] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[36] In this case, the Claimant doesn't meet the requirements, so he doesn't qualify for benefits. While I sympathize with the Claimant's situation, I can't change the law.<sup>11</sup>

### **Antedate**

[37] To get your application for benefits antedated, you have to prove these two things:<sup>12</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).

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

[39] 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>13</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.

[40] The Claimant has to show that he acted this way for the entire period of the delay.<sup>14</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 August 30, 2020, to November 4, 2021.

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

<sup>12</sup> See section 10(4) of the EI Act.

<sup>13</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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



[41] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>15</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>16</sup>

[42] 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.

[43] The Claimant says that he had good cause for the delay because he did act as a reasonable person in his situation. He says that the reasonable person standard had to be interpreted in light of his situation, his life circumstances. The reasonable person is a citizen, not an immigrant like him. It is not reasonable to apply the reasonable person standard to immigrants, when the EI program is there for all. He is a recent immigrant to Canada, with a family to support. He is dealing with an unfamiliar system. From experience in his home country, he had to be careful in dealing with the government. He was in the process of obtaining permanent residence status and renewing a work permit in the fall of 2020. He did not want to jeopardize that. He consulted the Commission's website many times, but did not find the information transparent. It made no mention of students, but did talk about farmers and fishers and other groups. He was unable to reach the Commission by phone. It was unreasonable for the Commission to ask everyone to call it or to apply for benefits. 20 million people calling was too many. He tried to get through on the phone to the Commission many times, but was unsuccessful. The Commission should have clarified everything on its website. It did not do that. The website was not transparent.

[44] The Commission says that the Claimant hasn't shown good cause for the delay because he assumed that he was not eligible for EI benefits, because he could not find any information specific to university graduates on the website. He did not contact the

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<sup>15</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>16</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

Commission to ask about his rights. He did not apply so that the Commission could decide if he qualified for benefits. He did not show exceptional circumstances that would have prevented him from applying for benefits earlier.

[45] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits because he has not shown that he acted as a reasonable and prudent person would have acted in similar circumstances for the entire period of the delay from his job ending on August 30, 2020, to applying for EI on November 4, 2021. He has not shown exceptional circumstances that would have explained why he did not apply earlier.

[46] The Claimant was a graduate student at university. While there, he worked as a teaching assistant until April 30, 2020, then as a research assistant until August 30, 2020. He agreed that the latter position was not insurable employment for EI purposes. He then graduated from the university. He holds two masters degrees. He has been looking for work since graduating, but has found no employment. He was under a great deal of stress with his sick young family, as he lost his student housing when he graduated. It took two months to find new housing. His parents in his home country were near death, but he could not travel to be with them.

[47] The Claimant checked the Commission's website a number of times before applying for benefits. He continued to check because the website was being updated. He said he was late applying for benefits because he was not properly informed by the website about what he had to do. He interpreted the sentence about benefits being for persons out work as meaning that he did not qualify for benefits, because he understood that graduation was different from the end of employment. There was no reference to students on the website, but there should have been. Had he seen the words student or university, he would have known he could apply for benefits. The website did say to apply for benefits so that the Commission could decide if he did qualify for benefits. He did not apply because he did not see any reference to student or university, and because he thought applying would affect his permanent residence application.

[48] He tried calling the Commission, but could not get through. He called less often as time went by, because the website was being updated. He did not ask anyone else about EI benefits until November 2021. That was when a friend referred him to another person in the Claimant's situation. That person had applied eight months late, and had received benefits. That person told the Claimant to apply. He did apply the next day.

[49] With that factual background, I must assess whether the Claimant has shown good cause for the delay.

[50] The Claimant's argument that the reasonable person standard has to be adapted to deal with the circumstances of immigrants, rather than citizens, does not succeed. The standard requires a claimant to show that he or she acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of the delay.<sup>17</sup> The test is in part subjective, based on an appreciation of the facts of each case.<sup>18</sup> The test is one of reasonability, informed by the applicant's subjective appreciation of the circumstances, assessed on an objective standard.<sup>19</sup> The reasonable person standard is the same for all claimants, rather than having different standards for different groups. That is the objective part of the standard. The standard is broad enough to accommodate differences between claimants, whether citizens or immigrants, by taking into account their individual circumstances. That is the subjective part of the standard. That part of the standard allows for an assessment of the Claimant's own situation, and a decision whether he meets both parts of the standard.

[51] The objective part of the standard imposes the following obligations on claimants. A claimant has an obligation to take reasonably prompt steps to determine his entitlement to benefits and to ensure his rights and obligations under the Act.<sup>20</sup> Ignorance of the law and good faith have been held not to amount to good cause.<sup>21</sup> A reasonable person's obligation to determine their rights and obligations is not satisfied

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<sup>17</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>18</sup> See *Bradford v Canada Employment Insurance Commission*, 2012 FCA 120.

<sup>19</sup> See *Quadir v Canada (Attorney General)*, 2018 FCA 21.

<sup>20</sup> See *Canada (Attorney General) v Carry*, 2005 FCA 367.

<sup>21</sup> See *Kamgar v Canada (Attorney General)*, 2003 FCA 157.

by looking only at the Commission's website.<sup>22</sup> 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>23</sup>

[52] The Claimant's emphasis that the reasonable person standard must focus on his individual situation would have the effect of changing the reasonable person standard. It would mean that the law set out in the previous paragraph did not apply to him in his situation. It would mean that because the Claimant misunderstood the content of the website, and did not think it reasonable to require everyone to call the Commission or apply for benefits, the obligations set out in the previous paragraph do not apply to him. That would eliminate the objective part of the standard. It would make the standard entirely subjective. It would change the law, as interpreted many times by the Federal Court of Appeal. I do not have the authority to make such a change.

[53] The Claimant failed to meet the reasonable person standard because he took no steps to learn his rights and obligations beyond consulting the Commission's website. He assumed that he was not entitled to EI benefits based on his misunderstanding of the information on the website. He took no steps to verify his understanding. He did not contact the Commission or apply, despite seeing the website statement that he should apply so that the Commission could determine if he was entitled to benefits. The delay lasted from August 30, 2020, until November 3, 2021, when he spoke to another person about applying. He applied promptly the next day.

[54] Since the Claimant did not take the steps required to meet the reasonable person standard, I must consider if there were exceptional circumstances that explain why he did not do so. Failing to verify information about a claimant's entitlement, rights and obligations does not amount to exceptional circumstances.<sup>24</sup> The Claimant's personal situation does not support a finding of exceptional circumstances. His family situation was stressful in the fall of 2020. He referred to depression. That did not prevent the

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<sup>22</sup> See *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

<sup>23</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>24</sup> See *Canada (Attorney General) v Trinh*, 2010 FCA 335.

Claimant from checking the Commission's website often, or from looking for work. The Claimant has two masters degrees, indicating a high level of education. He was concerned about applying for EI benefits having an impact on his permanent residence application and his work permit renewal. He took no steps to find out if his concern was realistic.

[55] 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.

## **Conclusion**

[56] The Claimant doesn't have enough hours to qualify for benefits.

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

[58] The appeal is dismissed.

Paul Dusome

Member, General Division – Employment Insurance Section