



Citation: *CS v Canada Employment Insurance Commission*, 2022 SST 237

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

**Decision**

**Appellant:** C. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (443765) dated December 17, 2021 (issued by Service Canada)

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**Tribunal member:** Amanda Pezzutto

**Type of hearing:** Teleconference

**Hearing date:** February 23, 2022

**Hearing participants:** None

**Decision date:** February 28, 2022

**File number:** GE-22-230

## Decision

[1] C. S. is the Claimant. The Canada Employment Insurance Commission (Commission) is refusing to start his Employment Insurance (EI) benefits on an earlier date. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. He hasn't proven that he has good cause for his delay in applying for EI benefits. So, the Commission shouldn't treat his application as if he made it earlier.<sup>1</sup>

## Overview

[3] The Claimant applied for EI benefits on September 10, 2021. But he actually wanted EI benefits for a period after he stopped working in 2020. So, he asked the Commission to treat this application as if he made it on November 1, 2020.

[4] The Commission says it can't treat the Claimant's application as if he made it on an earlier date because he doesn't have good cause for his delay in applying for EI benefits. The Commission says he hasn't proven that he took steps to learn more about EI. The Commission also says he hasn't shown that his situation was exceptional.

[5] The Claimant disagrees. He says that he has good cause for his delay. He says he didn't know he could apply for EI because he is an international worker. He also says that his situation was exceptional because he went through a break-up and his cultural background meant that he was ashamed of being unemployed.

## Matter I have to consider first

### The Claimant wasn't at the hearing

[6] The Claimant wasn't at the hearing. A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.<sup>2</sup> I think that the Claimant got the notice of hearing because Tribunal staff emailed the notice to him on February 9, 2022. Tribunal

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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 12 of the *Social Security Tribunal Regulations* sets out this rule.

staff also reminded him of the upcoming hearing by leaving him a voicemail message on February 18, 2022 and sending an email reminder on February 22, 2022. Finally, Tribunal staff also phoned him on February 23, 2022 when he didn't appear at the hearing. For these reasons, I believe that the Claimant got notice of the hearing. So, I held the hearing at the scheduled time, but without the Claimant.

## Issue

[7] Can the Claimant's application for benefits be treated as though it was made on November 1, 2020? This is called antedating (or, backdating) the application.

## Analysis

[8] 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.
- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

[9] The Commission says that the Claimant qualifies on the earlier date. The Claimant hasn't given me any reason to doubt the Commission's calculations. Nothing in the file makes me doubt that the Claimant qualifies on the earlier date. So, I agree that the Claimant qualifies on the earlier date.

[10] This means that the only arguments in this case are about whether the Claimant had good cause for his delay in applying for EI benefits.

[11] 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

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

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

to show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[12] 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 1, 2020 to September 4, 2021.

[13] 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>

[14] 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.

[15] The Claimant says that he has good cause for his delay. He says he is an international worker, so he didn't know that he was entitled to EI benefits. He also says that he was in a poor mental state during his delay because of a relationship break-up and because of the stress of unemployment. He says that his cultural and educational background made him ashamed of being unemployed, so he focused his energy on finding a new job instead of finding out about EI.

[16] The Commission says he doesn't have good cause for his delay because he didn't do enough to learn about his rights and obligations under the law. The Commission says the Claimant spoke to a Commission agent about EI benefits in May 2021, but he still waited several months to apply for EI benefits. The Commission also says that he hasn't proven that his circumstances were exceptional.

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<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.

[17] I agree with the Commission. I find that the Claimant hasn't shown good cause for his delay in applying for EI benefits.

[18] Focusing on finding a job instead of learning about EI benefits isn't good cause for a delay.<sup>8</sup> It would have been reasonable for the Claimant to do both. He hasn't shown me that anything about his job search efforts prevented him from also taking steps to learn more about EI benefits.

[19] Even if the Claimant didn't know much about EI benefits, this doesn't mean that he has good cause for his delay. Ignorance of the law, even if the Claimant acted in good faith, isn't good cause for a delay in applying for EI benefits.<sup>9</sup> The Claimant agrees that he knew a bit about the EI program, and so it would have been reasonable for him to look for more information about EI benefits.

[20] I understand that the Claimant says that he was in a poor mental state because of his break-up and because of the stress of unemployment. I also understand that he says that his cultural and educational background made him feel ashamed of being unemployed. But I am not convinced that these are exceptional circumstances that excuse his delay in applying for EI benefits. The Claimant hasn't shown that any of these factors prevented him from applying for EI benefits or asking for more information about the EI program.

[21] The Claimant hasn't proven that he took reasonably prompt steps to learn more about the EI program. Even after he spoke to a Commission agent in May 2021, he still waited until September 2021 before he applied for EI benefits.

[22] So, I find that the Claimant hasn't shown good cause for his delay in applying for EI benefits.

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<sup>8</sup> See *Howard v Canada (Attorney General)*, 2011 FCA 116, at paragraphs 7 and 8.

<sup>9</sup> *Canada (Attorney General) v Carry*, 2005 FCA 367, at paragraph 5.

## **Conclusion**

[23] I am dismissing the Claimant's appeal. He hasn't shown that he has good cause for his delay in applying for EI benefits for the entire period of delay. This means the Commission can't treat his application as if he made it on an earlier date.

Amanda Pezzutto  
Member, General Division – Employment Insurance Section