



Citation: *ZL v Canada Employment Insurance Commission*, 2021 SST 958

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

# **Decision**

**Claimant:** Z. L.

**Commission:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (425963) dated June 30, 2021  
(issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference  
**Hearing date:** August 12, 2021  
**Hearing participant:** Claimant  
**Decision date:** August 20, 2021  
**File number:** GE-21-1250

## 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>

## Overview

[3] The Claimant applied for Employment Insurance (EI) benefits on April 6, 2021. He is now asking that the application be treated as though it was made earlier, on January 31, 2021. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Claimant didn't have good cause because he did not inquire about his rights to EI benefits or what he had to do to get them.

[6] The Claimant disagrees and says that he was confused about the process. He said that his employer told him that they had submitted his record of employment (ROE) and he should wait a few weeks for a payment to come.

## Issue

[7] Can the Claimant's application for benefits be treated as though it was made on January 31, 2021? 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 he acted as a reasonable and prudent person would have acted in similar circumstances.<sup>3</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.

[11] The Claimant has to show that he acted this way for the entire period of the delay.<sup>4</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 January 31, 2021 to April 6, 2021.

[12] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>5</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>6</sup>

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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.

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

[13] 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.

[14] The Claimant says that he had good cause for the delay because he tried to get information from the Commission's website, but it was confusing. He said that he contacted his employer, and they told him to wait.

[15] The Commission says that the Claimant hasn't shown good cause for the delay because he did not inquire about his rights to EI benefits or what he had to do to get them.

[16] I find that the Claimant hasn't proven that he had good cause for the delay in applying for benefits for reasons that follow.

[17] The Claimant first told the Commission that his employer told him that they had submitted his ROE. He said they told him that he should wait a few weeks and then he should get benefits.

[18] I asked the Claimant what, if anything his employer told him about EI benefits on his last day of work. The Claimant replied that they told him they would upload documents to the Service Canada website and he should go to the website. He said that he did so three days after he was laid off, and saw lots of information about COVID-19.

[19] I asked the Claimant if he searched the Service Canada website for information about applying for EI benefits. The Claimant said that the first week he checked the website, there was a system virus. He said that on the second week, he inquired with his employer and they told him to wait and they would load documents by the end of February 2021.

[20] In his request for reconsideration, the Claimant said that his employer submitted his ROE about four weeks late. He sent the Commission a copy of the letter his employer gave him when they laid him off. It says that they will file a copy of his ROE

electronically with Service Canada and he can access it through his My Service Canada account. The employer issued an ROE on February 12, 2021.

[21] I find from the employer's letter that they properly directed the Claimant to the Service Canada website so he could start the process of getting EI benefits. I find the Claimant's attempt to do so on February 1, 2021 supports this. I do not doubt the Claimant's evidence that there was a lot of information related to COVID-19. However, I do not find that he did what a reasonable person would do in a similar situation. I find that a reasonable person would have continued to search the website to find out how to apply for benefits.

[22] I asked the Claimant if he ever called Service Canada to find out what he needed to do to get benefits. He testified that he tried to call them around the end of February or sometime in March. Again, I don't find it reasonable that he would not have called Service Canada much sooner after he tried to get information from their website.

[23] The Commission submits that the Claimant is not ignorant of the law since this not the first time he has applied for benefits. The Claimant said that when he applied for benefits the first time, the process was easy. He said you apply, and you receive benefits.

[24] I pointed out to the Claimant that according to the application for benefits that he completed in April 2021, it looks like claimants apply for benefits, get an access code, complete bi-weekly reports, and then get benefits. I asked if that is what he did the first time he applied. The Claimant said that the form and process is totally different, and that when he applied before, the process was clear and simple.

[25] Again, I find that a reasonable person in a similar situation would have tried to do the same thing he had done the first time, namely to apply, get an access code and complete bi-weekly reports to get benefits. Since the employer issued the ROE on February 12, 2021, I find the Claimant could have used it to apply for benefits within or shortly after two weeks of his lay-off.

[26] The Claimant also spoke of his language barrier as a reason for the delay in applying for benefits. I don't doubt this since he used the services of an interpreter at the hearing. However, his language barrier didn't prevent him from applying for benefits the first time. He was also able to get to the Service Canada website and understand that there was a lot of information related to the pandemic. I find that a reasonable person in a similar situation would have asked for help with anything he didn't understand because of language.

[27] For reasons detailed above, I don't find that the Claimant took reasonably prompt steps to find out his rights and obligations about getting EI benefits. I also don't find that he presented any exceptional circumstances that would excuse him from doing so.

[28] 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**

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

[30] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section