



Citation: *SH v Canada Employment Insurance Commission*, 2022 SST 250

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

**Decision**

**Appellant:** S. H.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (445702) dated December 14, 2021 (issued by Service Canada)

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**Tribunal member:** Teresa M. Day

**Type of hearing:** Teleconference

**Hearing date:** March 1, 2022

**Hearing participant:** Appellant

**Decision date:** March 2, 2022

**File number:** GE-22-176

## Decision

[1] The appeal is dismissed.

[2] The Claimant (who is the Appellant in this appeal) has not shown good cause for the entire period of her delay in renewing her claim for employment insurance (EI) benefits. This means that her application cannot be treated as though it was made on an earlier date.

## Overview

[3] The Claimant was paid 15 weeks of EI sickness benefits, covering the period from November 15, 2020 to February 27, 2021.

[4] On October 1, 2021, she applied for regular EI benefits. As the benefit period for her prior claim was not exhausted, her claim was renewed effective September 19, 2021 (the renewal claim). The Claimant asked the Commission to have her renewal claim antedated (which means backdated) so it could start as of March 21, 2021.

[5] The law says that if a renewal claim is filed late<sup>1</sup>, it can only be regarded as having been made on an earlier date if the claimant shows there was good cause for the delay throughout the period of the delay<sup>2</sup>.

[6] To have her renewal claim antedated to start the week of March 21, 2021, the Claimant must prove that she had good cause for delaying until October 1, 2021 to renew her claim, and she must prove that good cause existed for the entire 28-week period of the delay.

[7] The Claimant said she had good cause throughout the period of her delay because she was waiting for her former employer to correct an error on her Record of

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<sup>1</sup> Subsection 26(2) of the *Employment Regulations* says that if there have been 4 or more weeks of no payments on an initial claim for benefits, a renewal claim must be made within 1 week after the week for which benefits are sought. The Appellant's initial claim was her claim for sickness benefits. The last week she claimed benefits on that claim was the week ending February 27, 2021. She did not take any steps to renew her claim until October 1, 2021, but is nonetheless asking for her renewal claim to start as of March 21, 2021. This is why her renewal application is considered late.

<sup>2</sup> Subsection 10(5) of the *Employment Insurance Act*

Employment (ROE) and she lost everything in a catastrophic house fire that occurred on June 8, 2021. The Commission decided the Appellant did not have good cause for filing her renewal application late because she failed to verify her assumption that the ROE had to be submitted at the same time as her renewal application. The Commission therefore denied her antedate request.

[8] The Claimant asked the Commission to reconsider its decision, but the Commission was not persuaded. The Commission maintained the decision to deny her antedate request, and she appealed to the Social Security Tribunal (Tribunal).

## Issue

[9] Did the Claimant have good cause for her delay in renewing her claim for EI benefits?

## Analysis

[10] A claim for EI benefits must be made within the time prescribed by the *Employment Insurance Regulations* (EI Regulations)<sup>3</sup>.

[11] A claimant has 3 weeks to make a claim for EI benefits for any given week of unemployment<sup>4</sup>, unless they have not made a claim for 4 or more consecutive weeks – at which point they have only 1 week to make their claim<sup>5</sup>.

[12] To have the renewal week of her claim antedated, the Claimant must prove that she had good cause for her delay in applying to renew throughout the entire period of the delay<sup>6</sup>.

[13] To show good cause, the Claimant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances to verify their rights and obligations under the *Employment Insurance Act* (EI Act).<sup>7</sup> In other words, she has to

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<sup>3</sup> Section 50(4) of the *Employment Insurance Act*.

<sup>4</sup> Subsection 26(1) of the *Employment Insurance Regulations*

<sup>5</sup> Subsection 26(2) of the *Employment Insurance Regulations*

<sup>6</sup> Subsection 10(5) of the *Employment Insurance Act*

<sup>7</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation. And she has to show this for ***the entire period of the delay***<sup>8</sup>.

[14] For the renewal claim, this means the Claimant must prove she had good cause throughout her 28-week delay, from March 21, 2021 (the renewal date requested<sup>9</sup>) to October 1, 2021 (the date she filed her application for EI benefits).

[15] The Claimant must also show that she took reasonably prompt steps to understand her rights obligations under the law<sup>10</sup>. This means she 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 she must show that there were exceptional circumstances that explain why she didn't do so<sup>11</sup>.

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

[17] The Claimant testified as follows:

- She had a claim in 2017 where something similar to this happened and she had to ask for an antedate<sup>12</sup>. But “that was 5 years ago”.
- She applied for sickness benefits in November 2020, but didn't get any money.

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<sup>8</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>9</sup> At the hearing, the Claimant testified that when she called Service Canada to ask about an antedate, she didn't have a particular date in mind. She asked the agent she was speaking with to help her with getting her claim backdated. After discussing the matter, the agent suggested March 21, 2021 as the earlier renewal date, and the Appellant agreed. It wasn't clear to me if the Claimant was trying to argue for a different renewal date at the hearing, so I explained that the Commission's reconsideration decision (at GD3-28) was a reconsideration of the original decision to deny her March 21, 2021 antedate request. My jurisdiction is limited to the reconsideration decision (pursuant to sections 112 and 113 of the *Employment Insurance Act*). Therefore, I can only consider whether the renewal claim can be antedated to March 21, 2021.

<sup>10</sup> *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>11</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>12</sup> See GD3-27. In 2017, the Claimant went on medical benefits and subsequently asked for regular EI benefits without getting the employer to change the reason for separation from illness. She also made an antedate request in 2017.

- In December 2020, she received a lump sum payment for the short-term disability (STD) benefits she was entitled to “through work” up to that date. She then received small, weekly STD payments until February 22, 2021.
- In mid-February 2021, shortly before she was to return to work, she was laid off.
- She did not apply for regular EI benefits then because she was living off the STD money and “waiting for a proper ROE” to replace the ROE that was issued for her sick leave<sup>13</sup>. She was also still waiting for her sickness benefits.
- She didn’t get her sickness benefits until the end of April 2021, at which point she received a lump sum payment for the whole 15 weeks.
- Prior to that, she was living off the STD payments.
- With the lump sum from the sickness benefits, she had money to live on and wanted to “have everything proper”.
- She believed that because the new ROE still said illness or injury, there would have been problems and EI would have had to sort it out with the employer. So she decided she would deal with the employer about this and then go forward “when everything was correct”.
- She didn’t want to add any more pressure and stress to the people working at EI because they were already working so hard and under so much stress during the pandemic.
- She also “despises” people who “abuse the system”, so she thought she was “being nice” by getting the employer to fix the ROE *and* that she was doing things “correctly”.

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<sup>13</sup> The amended ROE issued after the lay-off (at GD3-13) still gave the reason for issuing the ROE as “Illness or injury”, code “D”.

- She contacted the employer repeatedly and kept following up for a corrected ROE. The employer didn't even get around to amending the ROE until September 15, 2021<sup>14</sup>.
- It was "my fault" for "just waiting and waiting" for the employer to respond to her and to fix the ROE.
- In the meantime, she lost everything she had in a catastrophic house fire on June 8, 2021<sup>15</sup>. She lost her "whole life", including all of the personal effects she had accumulated over the previous 40 years and her beloved pet. She didn't even have clothes to wear. She was left with nothing.
- After the fire, she was devastated and couldn't focus on anything.
- Eventually, in mid-July, she decided to check in her Service Canada account to see if there was a new ROE on file. But she couldn't access her account.
- So she went back to e-mailing the employer and asking for the corrected ROE that said she was laid off. They had e-mail exchanges on July 29<sup>th</sup> and again on September 14<sup>th</sup>.
- On September 30, 2021, the employer finally responded and told her that a corrected ROE had been filed.
- She was still unable to access her Service Canada account, so she went online to the main EI benefits website and applied for regular EI benefits there.
- Her application was filed on October 1, 2021.

[18] I asked the Claimant why she didn't contact Service Canada when the employer was taking so long to correct the ROE or when she discovered she couldn't access her

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<sup>14</sup> See GD3-14.

<sup>15</sup> The Appellant gave compelling and emotional testimony about the fire, what she lost, and the devastating impact it has had on her life. These tragic details can be found in the recording from the hearing.

Service Canada account? The Claimant said she just had it in her mind that she would go through the stress of dealing with the employer about the problem with the ROE – instead of putting that on the Commission. She also said that when she couldn't get into her Service Canada account after the fire, she just decided to follow-up with the employer directly to see if they had finally filed an updated ROE. She just didn't think of doing anything else.

[19] The Commission says the Claimant delayed filing her application for 28 weeks and did not act like a reasonable person in her situation would have. The Commission points out that she took no steps to contact Service Canada or search their website to learn about her rights and obligations prior to filing her renewal application. They say she could easily have done so<sup>16</sup>, and that nothing – including the fire – prevented her from doing so throughout the period of her delay (see GD4-2 to GD4-3).

[20] I agree with the Commission. A reasonable and prudent person would have attempted to contact Service Canada prior to October 1, 2021 to find out whether they needed to wait for the ROE to be corrected before applying for regular EI benefits – and what the implications of waiting for the employer to fix the ROE might be.

[21] I have great sympathy for the Claimant, and I acknowledge she is still suffering profoundly as a result of the fire. I wish I could help her. But I find that she did not act as a reasonable and prudent person in her circumstances would have acted to verify their rights and obligations between March 21, 2021 and October 1, 2021. This is because:

- a) There was obvious uncertainty around when the Claimant might get the corrected ROE she was after.

The Claimant had a tense relationship with the employer by March 21, 2021.

She testified that she was laid off while she was off on sick leave. She later

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<sup>16</sup> At GD4-2, the Commission points out that the Claimant did not call the toll-free telephone line for Service Canada (which is easily found online and in the Claimant's My Service Canada account), go on-line and reapply for a new claim, or visit her local Service Canada office (which is only a short distance away) at any point during the 28-week delay.

found out that the employer had simply replaced her, which was upsetting. She voiced this during her e-mail communications with the Human Resources (HR) person she was dealing with about the ROE. There were lots of times when the HR person didn't respond to her. And when the HR person did respond, it was always about how the process was not simple and how her request had been sent to various managers and the legal department. This back-and-forth ended up taking nearly 28 weeks and, for most of that time, the Claimant had no income coming in and was living on her savings.

All of this was cause for concern about when the Claimant might get the document she felt she needed to apply for regular EI benefits.

The Claimant was able to maintain regular contact with the employer to follow-up about the ROE. Yet she never took any steps to contact the Commission to ask about whether this was a good idea or whether she could just go ahead and apply.

A reasonable and prudent person in such circumstances would have taken steps to reach a Service Canada agent by telephone to review their options within two weeks or receiving the lump sum sickness benefits payment in April 2021. Especially since that the Claimant's disability payments had stopped and she knew she wasn't going to get anything further for sickness benefits<sup>17</sup>. However, by the Claimant's own admission, as weeks (and then months) passed and she went through the money she had received and hadn't found a job, it didn't even cross her mind to contact Service Canada or simply apply online.

- b) She was relying on her own personal assumptions rather than verifying her understanding. The courts have repeatedly said this is not good cause for delay<sup>18</sup>.

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<sup>17</sup> She had received the 15-week maximum entitlement for sickness benefits.

<sup>18</sup> The courts have repeatedly held that ignorance of the law is not good cause for a delay, nor is reliance on unverified information or assumptions: see *Canada (Attorney General) v Kaler*, 2011 FCA 266, *Canada (Attorney General) v Trinh*, 2010 FCA 335, and *Canada (Attorney General) v. Rouleau*, A-4-95.



A reasonable and prudent person would have tried to contact Service Canada to make sure they were not prejudicing their entitlement to regular EI benefits by delaying their application for weeks (which turned into months) after being laid off

- c) She did not take reasonably prompt steps to understand her entitlement to benefits and her obligations under the law. The courts have said this is a requirement for an antedate<sup>19</sup>.

It was incumbent on the Claimant to verify her rights with Service Canada as soon as possible and as best she could. Yet she waited 28 weeks for an amended ROE – mostly without any income coming in – without once contacting Service Canada **to see if she even needed** the amended ROE to renew her claim for regular EI benefits – and what the implications of continuing to wait for it were.

A reasonable and prudent person would have contacted Service Canada upon receipt of the lump sum for sickness benefits to learn the answers to these questions. Especially in the face of on-going delays by the employer in providing a corrected ROE. By failing to do so, the Claimant was not trying to learn about her rights as best she could. This means she has not proven that she took reasonably prompt steps to understand her rights and obligations to claim EI benefits, which is a requirement for an antedate.

- d) There was nothing preventing the Claimant from contacting Service Canada **throughout the period of her delay.**

I see no evidence that the Claimant was prevented by anything other than her own assumptions and a deliberate choice to do things as she saw fit, **between**

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<sup>19</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

**March 21, 2021 and the fire on June 8, 2021.** The courts have said this is not good cause for delay<sup>20</sup>.

A reasonable and prudent person would have been in touch with Service Canada upon finding out about the lay-off or at least upon receiving the lump sum for sickness benefits, especially since there was no more money coming in after that without either a job or regular EI benefits (and she was not having any luck finding a job).

But the fire on June 8, 2021 is certainly a special circumstance that explains why the Claimant was not in contact with Service Canada. I find this to be the case for the period **from June 8, 2021 to mid-July 2021**, at which point the Claimant re-engaged with the employer about the corrected ROE she was still waiting for.

But **from mid-July 2021 to September 30, 2021**, I see no evidence that the Claimant was prevented by anything other than her own assumptions and a deliberate choice to do things as she saw fit. I have already explained that this is not good cause. A reasonable and prudent person, as soon as they were able to start attending to their own affairs after such a fire (as the Appellant did in mid-July when she resumed e-mail exchanges with the employer), would have immediately been in contact with Service Canada to verify if they should wait any longer before renewing their claim for regular EI benefits. The Claimant made a deliberate choice not to do so. Even after she could no longer access her My Service Canada account, which should have immediately prompted her to contact Service Canada for assistance.

This means the Claimant has failed to meet the onus on her for the entire period of the delay in renewing her claim for EI benefits, as required by subsection 10(5) of the EI Act.

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<sup>20</sup> The courts have repeatedly held that ignorance of the law is not good cause for a delay, nor is reliance on unverified information or assumptions: see *Canada (Attorney General) v Kaler*, 2011 FCA 266, *Canada (Attorney General) v. Trinh*, 2010 FCA 335, and *Canada (Attorney General) v. Rouleau*, A-4-95.

[22] I therefore find that the Claimant has not shown good cause for delaying until October 1, 2021 to renew her claim for EI benefits because she did not act as a reasonable and prudent person in her situation would have to satisfy themselves of their rights and obligations under the EI Act.

[23] For the reasons set out in paragraph 21 above, I find that a reasonable and prudent person in the Claimant's situation would not have waited until October 1, 2021 to apply for EI benefits dating back to March 21, 2021. A reasonable and prudent person would have been in contact with Service Canada or applied online within no more than 2 weeks after receiving the lump sum payment of their sickness benefits (in late April 2021) to figure out if they should still wait for a corrected ROE and what the timeframe was for renewing their claim for regular EI benefits. Had the Claimant done so, she would have had accurate information about the implications of delaying her regular EI benefits to wait for an amended ROE that was not required to renew her claim. Instead, she carried on with an unverified course of action, which led to a 28-week delay in applying to renew her claim. This was not reasonable.

[24] The Claimant submits it is unfair to penalize her for renewing her claim late in an especially difficult year. First she lost her job while off sick, and then she lost "everything" in a catastrophic house fire. She has suffered financially as a result of both losses.

[25] Unfortunately for the Claimant, the fairness of the outcome is not relevant to what I must consider. I acknowledge her disappointment at not being able to antedate her claim. But she must comply with the timeframes in the EI Act or prove she had good cause for her delay. As set out above, I have found that the Claimant's reasons for delaying throughout the period from March 21, 2021 to October 1, 2021 do not constitute good cause.

[26] This means her claim cannot be antedated to be considered as having been made as of the earlier date she asked for.

## **Conclusion**

[27] The Claimant did not act as a reasonable and prudent person in her situation would have acted to satisfy themselves of their rights and obligations under the EI Act. As a result, the Claimant has not shown good cause for the entire period of her delay in renewing her claim for regular EI benefits. This means that her renewal claim cannot be antedated to March 21, 2021, as she requested.

[28] The appeal is dismissed.

**Teresa M. Day**  
**Member, General Division – Employment Insurance Section**