



Citation: *AK v Canada Employment Insurance Commission*, 2022 SST 545

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

**Decision**

**Appellant:** A. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (446210) dated January 17, 2022  
(issued by Service Canada)

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**Tribunal member:** Leanne Bourassa

**Type of hearing:** Teleconference

**Hearing date:** February 22, 2022

**Hearing participants:** Appellant

**Decision date:** March 3, 2022

**File number:** GE-22-293

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't 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 December 19, 2019. She is now asking that the application be treated as though it was made earlier, on July 14, 2019. 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 says that the Claimant didn't have good cause because for the whole period of the delay, the Claimant did not make any effort to communicate with Service Canada in order to satisfy herself as to her right and obligations under the Employment Insurance Act (Act).

[6] The Claimant disagrees and says that the delay was because she was following Service Canada's instructions to contact the Commission des normes, d'équité, de la santé de la sécurité du travail (CNESST) before filing her claim. Once she had a decision from the CNESST showing she was constructively dismissed, she filed her claim for benefits.

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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.

## Issue

[7] Can the Claimant's application for benefits be treated as though it was made on July 14, 2019? 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>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 July 14 to December 19, 2019.

[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

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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.

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 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 delay because she was doing what Service Canada had told her to do before applying for benefits. Precisely, she was raising a claim for unjust dismissal before the CNESST.

[15] The Commission says that the Claimant hasn't shown good cause for the delay because she did not respond to the Commission's messages or submit a reasonable explanation for the delay. They argue that she didn't make any efforts to communicate with them in order to satisfy herself of her right and obligations under the act.

[16] I find that the Claimant hasn't proven that she had good cause for the whole period of delay in applying for benefits for two reasons: first, because proceeding before the CNESST would not have prevented her from filing a claim or communicating with Service Canada. Second, once her claim with the CNESST was settled, she still waited over a month before contacting Service Canada and filing her claim for benefits.

[17] The Claimant testified that on the day that she stopped working, she contacted Service Canada to find out about applying for EI benefits. She says that the agent told her that her situation was complicated and she should talk to the CNESST to prove she didn't just quit.

[18] From that conversation, the Claimant says that she understood that she could not apply for benefits until she had a decision from the CNESST. When I challenged her on that statement, she confirmed that from her discussion with Service Canada it was clear to her that she could not get anything until a decision was rendered by the

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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.

CNESST. She thought that was the procedure. She made her application to the CNESST that same day.

[19] I do believe that the Claimant genuinely thought that she would not get benefits if she couldn't prove that she had been constructively dismissed. She has explained that she was planning on filing for benefits until she spoke to the Service Canada representative, and then took steps with the CNESST immediately. Her actions seem to be consistent with her testimony.

[20] However, after she made her claim with the CNESST, the Claimant did not talk to Service Canada for several months. She did not contact them to say she had made a claim with CNESST, that a hearing date was approaching or that she was looking for other benefit options while she waited. All of those steps would have been reasonable and would have demonstrated that she still intended to make a claim for benefits. They also could have permitted Service Canada to explain she might still be able to file for benefits while she awaited the outcome of her CNESST claim.

[21] More critically, I find that the Claimant has not shown that there was a good cause for the delay in making her application for benefits once she had reached a final settlement in her claim with the CNESST.

[22] The Claimant submitted a copy of the settlement agreement she signed with her employer before the CNESST. I note that this agreement was signed on November 12, 2019.

[23] The benefit application form on record shows that the Claimant made an application for benefits on December 19, 2019.

[24] I asked the Claimant why she waited one month after the agreement was signed to apply for benefits. She says she was going back and forth with the CNESST and there was a new inspector with her file who was not getting back to her.

[25] Following the hearing, the Claimant sent the Tribunal email exchanges with the CNESST. These exchanges, which do show conversations about a change in inspector,

are dated before the Claimant signed the settlement agreement with her employer. I find that they are not relevant for explaining the delay in applying for benefits between November 12 and December 19, 2019.

[26] The Claimant also says that at that time, her father was battling cancer and ultimately passed away in December 2019. I can understand that this would have been difficult for the Claimant, however I do not find that it explains why the Claimant did not file her claim for benefits.

[27] Finally, I note that the Commission says that they tried to contact the Claimant in February 2020 to get an explanation for the Claimant's delay in applying for benefits, in order to decide whether to grant the request for antedate.

[28] The record shows that before denying her request for antedate, the Commission tried twice to contact the Claimant by telephone. They note they had left voicemail messages and had also tried to reach her by email.

[29] The Claimant says she did not get these messages, or may not have responded because they were from a private number.

[30] I see from the records that the phone number and email address on the Commission's file for the Claimant are the same as they are now. She confirmed that that was her contact information at the time. It seems unlikely that the Claimant would not have received those message. Since she did not contact the Commission to explain the delay in making her claim for benefits, it was reasonable for the Commission to say that she had not provided an explanation for the delay in applying for benefits.

[31] The Claimant based her decisions on an initial call with Service Canada and doesn't show that she followed up with them until she made an application for benefits. In not confirming that there were no benefits available to her, or that she had applied to the CNESST, and by delaying her application for benefits after the settlement was reached with her employer, the Claimant did not act as a reasonable person in her situation would have done to inform herself of her rights and obligations under the Act.

[32] 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**

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

[34] The appeal is dismissed.

Leanne Bourassa  
Member, General Division – Employment Insurance Section