Citation: *BG v Canada Employment Insurance Commission*, 2022 SST 511

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	B. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (402189) dated May 26, 2020 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Questions and answers
Decision date:	June 7, 2022
File number:	GE-20-1646

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he had good cause for the entire period of 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.[1]

Overview

[3] The Claimant applied for Employment Insurance (EI) sickness benefits on February 27, 2020. He is now asking that the application be treated as though it was made earlier, on April 26, 2011.[2] 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 has not proven that through the entire period of the delay he was unable to inquire about his rights and obligations under the law and/or make an application for benefits.[3]

[6] The Commission says that as an example of the Claimant's lack of good cause he was able to work full-time from June 2018 to July 2019, yet is trying to argue that his situation during this time was so exceptional it prevented him inquiring about his rights and obligations under the law.[4]

[7] The Claimant says that he had good cause and listed a vast array of reasons for why this is the case.

---

[1] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.
[2] GD3A-24
[3] GD04-3
[4] GD04-3

Matters I have to consider first

[8] I chose to do a written Questions and Answers hearing.

[9] My questions were sent to the Claimant on April 27, 2022.

[10] He sent a response that raised a variety of complaints, which I will address here:

Form of Hearing

[11] I chose to do a written Questions and Answers hearing as it was a form of hearing the Claimant selected on his Notice of Appeal.[5]

[12] The Claimant says that he also checked off other forms of hearing and did not only select a written Questions and Answers format.[6]

[13] This is true, he did not only select written Questions and Answers, but it was a format he selected, thus showing it was an option open to select as a form of hearing.

[14] However, that was not my only reason for selecting written Questions and Answers.

[15] The Claimant has stated that he has a disability related to hearing loss and it is difficult for him to hear human speech clearly. He notes this is a particular problem on a cellphone or on a ZOOM call.[7] He expressed his trouble hearing clearly on a pre-hearing phone call that had previously taken place with a Tribunal member.[8]

[16] A written Questions and Answers form of hearing accommodates the Claimant in this disability.

[17] The Claimant also says that he has been professionally diagnosed as persistently suffering from anxiety, depression, dysthymia and personality disorder and

---

[5] GD02-3
[6] GD34A-5
[7] GD22-2
[8] GD22-2

this causes absent mindedness, which is worsened in stressful situations, such if he has to present oral arguments.[9]

[18] A written Questions and Answers form of hearing accommodates the Claimant in this disability as there are no oral arguments to make.

[19] The Claimant specifically says that he would like to conduct as much of any hearing as possible with written submissions and that phone calls or ZOOM meetings be avoided as much as is practical.[10]

[20] A written Questions and Answers form of hearing accommodates the Claimant in his requests to do as much as possible with written submissions and to avoid phone or ZOOM calls.

[21] So, when considering all of the Claimant's disabilities and stated desire to do as much as possible by writing, and avoiding phone or ZOOM calls, along with the fact he chose written Questions and Answers as an acceptable form of hearing on his Notice of Appeal, I find his objection to the form of hearing is unfounded.

Time in which to make submissions

[22] The Claimant says he was not given sufficient time to make submissions.

[23] He argues that when he got the Questions and Answers on April 27, 2022, he sent an email requesting an extension of time, but hearing nothing, sent another email on May 4, 2022.[11] He says he did not get an answer back until May 6, 2022, and with a deadline to respond to the Questions and Answers of May 10, 2022, that left him four days to prepare his answers.

[24] I did not receive an April 27, 2022, email from the Claimant, only his May 4, 2022, email.

---

[9] GD22-2 and GD22-3
[10] GD22-3 and GD2-15
[11] GD34A-4

[25] Regardless, he did not have only four days to prepare his answers. He had from the day he received the written Questions and Answers, April 27, 2022, until the deadline, May 10, 2022.

[26] If he chose to not work on preparing his answers for the questions I asked, as he assumed, or hoped, I would grant his request for an extension, then that is a risk he chose to assume.

[27] Further, the fact that according to the Claimant, he only had four days to answer my questions, yet in that time managed to submit 41 pages to me, which included multiple pages of arguments and copies of multiple Social Security Tribunal decisions, on all the problems with my Questions and Answers, and submitted 39 separate pages to answer my questions,[12] shows the timeline to answer my questions was entirely reasonable.

[28] I also note that prior to my written Questions and Answers the Claimant has submitted over 300 pages of information to support his arguments towards why he should get the antedate he is requesting.

[29] Clearly, the Claimant has had the opportunity to provide ample submissions on the issue at hand.

[30] I note the Claimant has said that his submissions are rushed and incomplete,[13] but he should not sell himself short. As he has said, he is extremely well educated, a skilled researcher with multiple degrees, and qualifies for Mensa,[14] which is a society for people with a very high IQ, and looking through his submissions I note they very ably present his arguments for why he should succeed with his antedate request.

---

[12] GD35
[13] GD35-5
[14] GD3A-42

Irrelevant questions

[31] The Claimant argues that the questions I asked him in the written Questions and Answers are irrelevant to his request for an antedate.[15] He also says my questions preclude him from raising issues he would like to raise on appeal to the Appeal Division or the Courts as part of a judicial review.[16]

[32] I cannot see how the Claimant can argue my questions are irrelevant as they directly address reasons he submitted as to why he meets the test for an antedate.[17]

[33] Second, issues he may want to raise in another forum are not relevant to the issue before me in this appeal. If he chooses to go to those forums and raise certain issues there that is up to him, but my decision making process is focused on the singular question of an antedate request.

Date of the antedate

[34] The Claimant says that my written Questions and Answers contains an error as he is not requesting an antedate to April 26, 2011, as he wants the antedate to late August or some other later date, possibly as late as April 2012.[18]

[35] Respectfully, I disagree with the Claimant. He did indeed ask for an antedate to April 26, 2011. On the form Application to Antedate a Claim for Benefits, in the field where it asks “I request to have my claim antedated to…” he wrote April 26, 2011.[19]

[36] While he did put an asterisk beside that date of April 26, 2011, saying he may want to change it later, he has never changed to any other firm date.

---

[15] GD34A-5
[16] GD34A-6
[17] See my questions in GD1 the Notice of Hearing as compared to the information throughout GD3A-45 to GD3A-47 as an example of the questions relating to reasons he has raised.
[18] GD34A-5
[19] GD3A-24

[37] He has offered a series of vague dates[20] but has never chosen another firm date so April 26, 2011, is the firm date I have to work with.

[38] Also, without selecting a firm date it is not possible for the Commission to determine if the Claimant qualified at that time, or to deal with the issue of good cause, if they are unaware of what actual date the Claimant wants as an antedate.

Reasonable and prudent person standard

[39] The Claimant argues that the "reasonable and prudent person" is a discriminatory concept as it makes no allowance for the mental health struggles he has and how they may impact his ability to make a decision or to think clearly.

[40] I find this is not the case. The actual statement put forward in by Court is [21] "…a reasonable and prudent person would have acted in similar circumstances." [emphasis added]. This means I am not looking at a reasonable and prudent person in differing circumstances from the Claimant, such as imaging the actions of a person with no mental health issues, but instead someone in **similar circumstances** to the Claimant, thus someone with his struggles.

[41] The Claimant has been very diligent in his submissions in meticulously detailing his actions over the years of the delay in filing for benefits, which allows me great insight into his capabilities and what he was able to do with his mental health issues, thus helping me to understand his circumstances.

[42] So when I make a determination on whether the Claimant's actions fit a reasonable and prudent person in similar circumstances I am using a lens of someone with the Claimant's stated high education, high intelligence, research skills, and the impacts his mental health issues have on him.

---

[20] See GD35-5 as an example of a random assortment of possible dates
[21] See *Canada (Attorney General) v Burke*, 2012 FCA 139

Complaints regarding Commission policy and human rights

[43] The Claimant says my questions limit him from making submission on his concerns about the Commission's internal processes and interpretations of law and he feels the Commissions policies violate the Canadian Human Rights Charter.

[44] I find this complaint not relevant as I have no jurisdiction over the Commission's processes and interpretations of law, so I would not be able to provide any remedy to the Claimant on these issues so whether he can make such submissions or not is moot.

[45] Regardless, he actually did make submissions on this issue, so clearly he was not prevented from doing so.[22]

Issue

[46] Can the Claimant's application for benefits be treated as though it was made on April 26, 2011? This is called antedating (or, backdating) the application.

Analysis

[47] To get your application for benefits antedated, you have to prove these two things:[23]

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).

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

---

[22] GD35-28
[23] See section 10(4) of the EI Act.

[49] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[24] 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.

[50] The Claimant has to show that he acted this way for the **entire period of the delay**.[25] That period is from the day he wants his application antedated to, April 26, 2011,[26] until the day he actually applied, February 27, 2020.[27]

[51] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[28] 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.[29]

[52] 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.

[53] The Commission submits the claimant did not act like a 'reasonable person' in his situation would have done to verify his rights and obligations under the law.[30]

[54] The Commission submits that due to the requirement of demonstrating good cause for the entire period of delay, it is often beneficial to first review the period of delay immediately preceding the day the initial claim for benefits was made. If no good cause is found during this period, then the entire antedate fails.[31]

---

[24] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[25] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[26] GD3A-24
[27] GD3A-19
[28] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[29] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[30] GD4A-3
[31] GD4A-3

[55] The Commission submits the claimant was capable of working full-time from June 2018 to July 2019. Yet, despite this, he simultaneously argues his situation during this time was so exceptional that it prevented him from inquiring about his rights and obligations under the law and making an application for benefits.[32]

[56] While the Commission accepts the Claimant's health condition can cause difficulty in his day-to-day life, the Commission is not convinced the Claimant's illness was so exceptional that it prevented him from doing what a reasonable and prudent person would have done in similar circumstances. They say this is evident in the fact that the Claimant was capable of searching, applying, accepting, and engaging in employment in 2012, 2018 and 2019.[33]

[57] The Commission submits that during the period of delay, the Claimant described his multiple petitions to various judicial and semi-judicial bodies. They say this supports the fact that he was capable of taking reasonable prompt steps to learn of his rights and obligations and file an application for benefits.[34]

[58] The Claimant has submitted a myriad of reasons for why he had good cause for the delay in filing his claim for benefits.

[59] A brief sampling of the issue he mentions includes:

- The impact of his mental health conditions
- Dealing with a termination from work which involved contacting lawyers and fighting his employers health insurer for short-term and long-term disability
- Purposely delaying filing for benefits due to it being to his financial benefit to do so

[32] GD4A-3
[33] GD4A-3
[34] GD4A-3

- Feeling no need to contact EI as he visited the EI website several times and he felt knowledgeable enough about EI from his previous experience

[60] I have absolutely no doubts that all of the things the Claimant has said were happening in his life over the entire period of the delay, from the problems with his cat, to having to do renovations on his rental townhouse, to the multitude of various legal actions he was pursuing, to his medical problems, all occurred.

[61] I have no doubt that dealing with his job termination was very difficult, and I can only imagine how frustrating it must have been to fight his benefit provider for the short-term and long-term disability that he felt he was owed.

[62] I also do not doubt that the Claimant's mental health conditions can be exacerbated under stress and I have no doubt he was under stress being terminated and managing his legal options against his employer and fighting his benefit provider for short-term and long-term disability benefits.

[63] However, while I have no doubt that his mental health issues caused some impact on his day-to-day functioning, his ability to undertake all sorts of different activities throughout the period of the delay, such as prosecuting complex legal proceedings, among other activities show it was not so debilitating to prevent him from taking reasonably prompt steps to understand his rights and obligations under the law which he did not do, and/or filing a claim for sickness benefits.

[64] The Claimant says that he delayed as he knew severance would impact his benefits and he was expecting money from other sources such as his short-term disability benefits.[35]

[65] He cites CUB 10737, for support which says that the claimant in that case was to be commended for having looked to another source of income replacement before looking to the EI program.[36]

---

[35] GD3A-42
[36] GD35-15

[66] However, I find that more recent jurisprudence supports that relying on other sources of money, such as living on savings, as a reason for delaying an application for benefits, does not present good cause.[37]

[67] I find that a reasonable and prudent person would not delay filing a claim for EI benefits on the expectation of receiving benefits from another source.

[68] The Claimant cannot be certain he will get the short-term and long-term disability benefits he wants from the benefit provider. Especially when his past experience shows they are not interested in paying up as he says he was forced to take his benefit provider to court previously to get them to pay him benefits.[38]

[69] So, a reasonable and prudent person, with the Claimant's circumstances of knowing the struggles with obtaining disability benefits, would not ignore EI benefits and take the risk of no benefits from any sources, but would instead have taken reasonably prompt steps to understand his rights and obligations under the law and/or filing a claim for sickness benefits.

[70] The Claimant also says that initially he did not contact the Commission as he knew his rights and obligations.[39]

[71] He says that he checked the EI website at least once during the April 26, to July 26, 2011 period to confirm his rights and obligations and that they had not substantially changed since 2002-2004.[40]

[72] The Claimant says in March 2012 he seriously wanted to be able to file a claim but he thought he had lost his eligibility due to delaying his application too long while trying to get short and long term disability benefits from his benefit provider.[41]

---

[37] *Howard v Canada (Attorney General)*, 2011 FCA 116
[38] GD3A-48
[39] GD35-16
[40] GD3A-47
[41] GD35-6

[73] He says he looked at the EI website to hopefully find something that would indicate he might have a valid claim.[42] He says if he had any inkling contacting the Commission directly might have yielded something new he would have, but he says he had no specific questions to ask, and the website did not say it should not be solely relied on.

[74] He says it was not until February 2020, almost 9 years after he could have made a claim for benefits, that he learned about antedates and also learned about the rules around qualifying periods.[43]

[75] When I look at the this sequence of events I do not see the actions of a reasonable and prudent person as the Claimant did not take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.

[76] The problem facing the Claimant is that he delayed because he was relying on an assumption. He assumed he was aware of his rights and obligations under the law, due to his past experience with EI and looking at the EI website;[44] however, this assumption was incorrect.

[77] As he states, he only found out in February 2020, when having a conversation with an EI agent over a different claim, that a claim could be backdated.[45] This clearly demonstrates his assumption that he knew his rights and obligations was incorrect as he was not aware of antedating, and it also shows the value that contacting the Commission can have.

[78] I find a reasonable and prudent person would contact the Commission to see what, if any, options are open to them, rather than simply relying on an assumption they are fully aware of their rights and obligations.

---

[42] GD3A-49
[43] GD3A-42
[44] GD35-36
[45] GD35-36

[79] The Claimant says he looked at the website, and I have no doubts he did, but as the Court has said in *Mauchel v Canada (Attorney General)*, 2012 FCA 202, looking solely at the website is not good enough and relying solely on that will not result in good cause.

[80] The Claimant argues against this interpretation of *Mauchel*, saying that the website is very clear on the time limits of a qualifying period and unlike in *Mauchel*, where the judge said that a more thorough search of the website should have alerted the claimant in that case to wonder whether he might be eligible, when the Claimant looked at the EI website it gave no indication he would be eligible.

[81] The Claimant says in his case the website as it was back in 2011 or early 2012, as he is not completely sure when he looked at it, says nothing about antedate, or backdate, or qualifying period, or extended qualifying period. [46]

[82] I disagree with the Claimant's interpretation of *Mauchel*.

[83] The second last paragraph of *Mauchel* says:

> "Since the website does not purport to deal with the specifics of every person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent in response to an inquiry about their eligibility on given facts."[47]

[84] I find that paragraph is clear that simply looking at the website and calling it a day, whether a more thorough search would turn up more information or not, is not good enough and if that is the reason for a delay it will not result in good cause. So, the fact the Claimant did as such does not represent good cause for the entire period of the delay.

[85] Further, the Claimant's statements about what are on the website show his behaviour was contrary to that of a reasonable and prudent person in similar circumstances. If the website is clear on the qualifying period, as he said, and said

---

[46] GD35-24
[47] *Mauchel v Canada (Attorney General)*, 2012 FCA 202. para 15.

nothing about any options to antedate, or backdate a claim, as he said, then I find a reasonable and prudent person in those circumstances would not delay in filing a claim to ensure they had enough hours in a qualifying period since there was no information about extending it.

[86] Especially as the Claimant has shown in his submissions that he understood the concept of a qualifying period and how that impacts how many hours of insurable employment a person has in order to qualify for EI benefits.[48]

[87] I further find the Claimant has not presented any exceptional circumstances that would exempt him from taking reasonably prompt steps to verify his rights and obligations.

[88] Yes, he had a myriad of things going on in his life, and as I have said I have no doubt his mental health issues caused him problems, but, as he has meticulously detailed in his submissions, he was able to undertake many complex legal proceedings, renovate a townhouse, and even work full-time during the period of the delay, among many other activities.

[89] If he was able to work full-time, deal with multiple complex legal proceedings, and fight his benefits provider for short-term and long-term disability, he definitely could have contacted the Commission at some point.

[90] Finally, I note the Claimant has said that leniency should be applied in the case of antedating a claim for special benefits as that is what the case law says. He cites *De Jesus v Canada (Attorney General)*, 2013 FCA 264, which says at paragraph 51:

> "Since there was no requirement that a claimant for parental benefits be available for work during the benefit period, administrative difficulties of proving claims should not be factored into a determination of whether the claimant had good cause for the delay. Indeed, Service Canada, Antedates, Chapter 3 at 3.3.1 states:

[48] GD3A-48. para 41

> A slightly more lenient approach is applicable when the claim is one for special benefits [including parental benefits] as these claimants are not required to prove availability and there is not the same potential for prejudice to the Commission."

[91] I disagree with the Claimant's submission that leniency should be applied in his situation for several reasons.

[92] First, the case in *De Jesus* involved immigrant farm workers who, as the Court put it, had unique disadvantages such as ineligibility for many social benefits, including most unemployment insurance benefits; exclusion from many statutory protections of workers (including representation by a union); low educational level, functional illiteracy, and lack of knowledge of English or French; social isolation, and lack of access to telephones, computers, and urban centres; long and arduous working schedules with little free time; and fear of employer reprisal and deportation.[49]

[93] This is in complete contrast to the Claimant, who has said in his submissions that he is a native born Canadian, speaks English, is extremely well educated with three university degrees, is a skilled researcher and qualifies for Mensa[50] (an organization for people of very high IQ).

[94] Clearly, his situation is distinguishable from *De Jesus* as he does not have the same struggles as the immigrant farm workers in *De Jesus* in getting information on EI.

[95] Second, in *De Jesus* the Court says a **slightly** more lenient approach should be used. The delay in that case was not even one year.

[96] This is in contrast to the Claimant's situation where the delay is almost nine years, which would require much more than 'slight' leniency.

[97] Finally, we come to the biggest problem with the Claimant trying to use *De Jesus* to argue for leniency, as one of the major stumbling blocks for antedating, proving availability, was said to not apply in *De Jesus*, but it does apply to the Claimant's case.

---

[49] *De Jesus v Canada (Attorney General)*, 2013 FCA 264. para 13
[50] GD3A-42

[98] In *De Jesus* the Court stated that:

> "An important reason for the reluctance to antedate a claim for regular benefits when the claimant was unaware of his or he entitlement is that it would be difficult for the Commission to determine, long after the fact, if the claimant had been available for work during the entire benefit period: see, for example, *Canada (Attorney General) v Brace*, 2008 FCA 118 at paras. 6-7."[51]

[99] The Court then pointed out that determining availability was not necessary for parental benefits so this concern should not be factored in when deciding if there was good cause for the claimant in *De Jesus*.[52]

[100] In the case before me, the Claimant is applying for sickness benefits. These benefits require evidence of availability. The law says that a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work.[53]

[101] This means that the Claimant would have to be able to prove that if it were not for his illness he would otherwise be available for work, unlike the claimant in *De Jesus*.

[102] So, the concerns the Court noted about antedating making it difficult to determine availability would be relevant in the Claimant's case and would support against allowing leniency.

[103] I note this is exactly as the law read back in 2011, the time to which the Claimant is requesting an antedate.

[104] Finally, I want to say one other thing regarding the date of the antedate. While I have used the April 26, 2011, date, which is something the Claimant disagrees with, and I have explained my reasons why I used that date above, using another date in 2011, or 2012, or even the latest vague date he mentioned of December 2012,[54] would

---

[51] *De Jesus v Canada (Attorney General)*, 2013 FCA 264. para 50.
[52] *De Jesus v Canada (Attorney General)*, 2013 FCA 264. para 51.
[53] Section 18(1)(b) of the *Employment Insurance Act*
[54] GD35-5

not help the Claimant. The law is clear that the Claimant is required to show good cause for delaying his claim during the **entire** period of the delay.

[105] He had the same problem of relying on his assumptions regarding his rights and obligations under the law for the entire period of the delay, which is not what a reasonable and prudent person in similar circumstances would have done, so no matter what date, out of all the dates he has offered, I chose to use, he stills fails to show good cause for the entire period of the delay.

[106] While both parts of the test for antedate must be fulfilled in order to antedate a claim, as the Claimant has not shown good cause for the entire period of the delay, I find it is not necessary to determine whether he qualified at the earlier date.

Conclusion

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

[108] The appeal is dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section