



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 783

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

## Decision

**Claimant:** S. A.

**Commission:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (438462) dated November 24, 2021 (issued by Service Canada)

---

**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** February 17, 2022

**Hearing participant:** Claimant

**Decision date:** February 18, 2022

**File number:** GE-22-138

## 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 claiming Employment Insurance (EI) benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's claim can't be treated as though it was made earlier.

## Overview

[3] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.<sup>1</sup> You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.<sup>2</sup>

[4] The Claimant made her claim after the deadline. She wants it to be treated as though it was made earlier, on October 4, 2020.

[5] For this to happen, the Claimant has to prove that she had good cause for the delay.

[6] The Commission decided that the Claimant didn't have good cause and refused her request. The Commission says that the Claimant doesn't have good cause because she didn't make any reasonable effort to verify her eligibility for benefits.

[7] The Claimant disagrees and says that an agent at Service Canada told her that she was not entitled to benefits because she had returned to work.

## Issue

[8] Did the Claimant have good cause for the delay in claiming EI benefits?

---

<sup>1</sup> See section 49 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See section 26 of the *Employment Insurance Regulations*.

## Analysis

[9] The Claimant wants her claim for EI benefits to be treated as though it was made earlier, on October 4, 2020. This is called antedating (or, backdating) the claim.

[10] To get a claim antedated, the Claimant has to prove that she had good cause for the delay during the entire period of the delay.<sup>3</sup> 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.

[11] And, 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>4</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.

[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 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 show that she acted this way for the entire period of the delay.<sup>7</sup> That period is from the day she wants her claim antedated to until the day she actually made the claim. So, for the Claimant, the period of the delay is from October 4, 2020 to July 2, 2021.

---

<sup>3</sup> See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

<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.

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

[14] The Claimant says that she had good cause for the delay because she spoke to an agent at Service Canada. She said that the agent told her that she wasn't entitled to EI benefits because she had returned to work, even though only on a part-time basis.

[15] The Commission says that the Claimant hasn't shown good cause for the delay because she did not make reasonable efforts to verify her eligibility to EI benefits.

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

[17] The Claimant testified that when she was going to apply for EI benefits at the end of June 2020, she was told that there was a "different program". She said that she applied, completed bi-weekly reports, and got benefits for the months of July, August and September 2020.

[18] The Claimant said that she called Service Canada at the end of September 2020 because she wanted to know if she was entitled to EI benefits since she was going back to work on a part-time basis. She says that the agent told her that because she was going back to work, she was not entitled to benefits.

[19] The Commission included a copy of an email in their file that they say they sent to claimants who were transitioning from the Canada Emergency Response Benefits (CERB) to EI benefits. The Claimant testified that she did not receive an email like this. She didn't seem to know what kind of benefits she was getting, only that it was under a different program.

[20] I found the Claimant's testimony to be clear and straightforward. For that reason, I accept her testimony as fact that she didn't receive the Commission's email. I also accept that she understood from her conversation with the Service Canada agent that she couldn't get EI benefits while working part-time.

[21] In spite of my findings above, I don't find that the Claimant acted as a reasonable and prudent person in similar circumstances would have acted. The Claimant testified that she had applied for and received EI benefits while working part-time in the past.

She explained that she got these benefits by completing bi-weekly reports, declaring her hours and earnings, and the Commission would pay her based on the information she gave. Given this past experience, I find that the Claimant could have done more to understand her right to EI benefits beyond speaking to a single Service Canada agent.

[22] The Claimant confirmed that she did not do any research at the Service Canada website to see what her entitlement might be. She also did not go to a Service Canada Centre because of the pandemic. The Claimant testified that she called Service Canada three times, but because of the long wait times, she did not speak to another agent.

[23] When speaking about not doing research online, the Claimant testified that she asked her nephew about her entitlement to EI benefits and he said that he wasn't sure. I find that given her past experience getting EI benefits while working part-time, the Claimant could have done more to confirm that she may have been entitled to do so when she returned to part-time work later in 2020.

[24] I acknowledge that claimants may have been confused, generally, with the different kinds of pandemic-related benefits and how this affected regular EI benefits. However, I don't find that this is an exceptional circumstance that excuses the Claimant from taking reasonably prompt steps to confirm her rights and obligations to get EI benefits.

## **Conclusion**

[25] The Claimant hasn't proven that she had good cause for the delay in making her claim for benefits throughout the entire period of the delay. This means that her claim can't be treated as though it was made earlier.

[26] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section