



Citation: *DG v Canada Employment Insurance Commission*, 2022 SST 863

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

**Decision**

**Appellant:** D. G.  
**Representative:** G. G.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (416163) dated June 29, 2021  
(issued by Service Canada)

---

**Tribunal member:** Linda Bell

**Type of hearing:** In person

**Hearing date:** June 1, 2022

**Hearing participants:** Appellant  
Appellant's representative/witness

**Decision date:** June 28, 2022

**File number:** GE-21-1338

## Decision

[1] I am allowing the appeal. I agree with the Claimant.

[2] The Claimant has shown he requested payment for the Employment Insurance Emergency Response Benefits (the EI-ERB), by December 2, 2020.<sup>1</sup>

[3] The Claimant has also shown he had good cause for the delay in claiming the EI-ERB. In other words, the Claimant has given an explanation that the law accepts. This means that his claims can be treated as though they made earlier.

## Overview

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

[5] The Claimant made his claims after the deadline. He wants them to be treated as though they were made earlier, on March 29, 2020. For this to happen, the Claimant has to prove that he had good cause for the delay.

[6] The Commission decided that the Claimant didn't have good cause and refused the Claimant's request. The Commission says the Claimant doesn't have good cause because he waited 7 months to look into the reasons why he wasn't being paid benefits. The Commission says the Claimant made only one attempt to contact the Commission, which was one day before the December 2, 2020, deadline to request the EI-ERB.

---

<sup>1</sup> CRA administers the first benefit called the Canada Emergency Response Benefit (CERB). The Commission administers the second benefit called the Employment Insurance Emergency Response Benefit (EI-ERB). Not everyone who requests the CERB, EI-ERB, or regular EI benefits can receive benefits. This is because applicants still have to prove that they are entitled to receive the benefits.

<sup>2</sup> See section 49 of the *Employment Insurance Act* (Act).

<sup>3</sup> Section 153.8(2) of the Act states that a claimant is not permitted to make a claim for the EI-ERB after December 2, 2020. Section 26 of the *Employment Insurance Regulations* says biweekly claims must be submitted within 3 weeks after the week for which benefits are claimed.

[7] The Claimant disagrees. He appeals to the Social Security Tribunal (Tribunal). He says he tried to contact the Commission numerous times before the December 2, 2020, deadline. He explains that during COVID it was not normal circumstances in his northern community. He also says there are medical circumstances that explain why he failed to request the EI-ERB on time.

## **Matters I must consider first**

### **Late documents**

[8] In the interests of justice, I have considered all documents and submissions received on file before June 28, 2022. Here is what I considered when determining whether I would accept the late documents.

[9] The Tribunal has a Practice Direction outlining the procedure for when to send supporting documents.<sup>4</sup> This says that the Tribunal Member may grant a party permission to submit late documents and submissions after the hearing started.

[10] The Tribunal provided each party with copies of all documents and submissions received on file by June 8, 2020. Each party was given an opportunity to respond so, I am satisfied the principles of natural justice were upheld. So I will now proceed with determining the issues under appeal.

## **Issue**

[11] Did the Claimant request the EI-ERB, by the December 2, 2020, deadline?

[12] If so, has the Claimant shown good cause for the delay in claiming the EI-ERB?

---

<sup>4</sup> <https://www.sst-tss.gc.ca/en/your-appeal/ei-general-division-appeal>.

## Analysis

### **Did the Claimant request the EI-ERB, by the December 2, 2020, deadline?**

[13] Yes, I find the Claimant has shown he contacted the Commission to request (claim) payment of the EI-ERB within the required time, by December 2, 2020. Here is what I considered.

[14] To receive payment for the EI-ERB the Claimant has to show that he made a claim for any two-week period within March 15, 2020, to October 3, 2020.<sup>5</sup> A claim for the EI-ERB can't be made after December 2, 2020.<sup>6</sup>

[15] The Claimant has to prove he made his claim for the EI-ERB on or before December 2, 2020. He 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 contacted the Commission to request payment for the EI-ERB, on or before December 2, 2020.

[16] The Commission submits there are no records of the Claimant attempting to complete his claim reports online or over the telephone prior to December 2, 2020. It says the only attempt the Claimant made to contact the Commission was one day before the December 2, 2020, deadline.

[17] On January 14, 2021, the Commission documented that it spoke with the Claimant on December 3, 2020. The Commission's officer wrote, the Claimant requested payment for the EI-ERB on December 3, 2020, one day after the deadline. He also requested his claim be backdated (antedated) to March 29, 2020.

[18] The witness disputes the Commission's submissions. He says he assisted the Claimant in trying to contact the Commission for several days. He described in detail how the line was constantly busy. Then during several attempts, a computer voice would say, "thank you for your call goodbye," and would disconnect the call.

---

<sup>5</sup> See section 153.8(1) of the Act.

<sup>6</sup> See section 153.8(2) of the Act.

[19] The witness described how just before the weekend, the week prior to December 3, 2020, his call got through and connected to a person. But that call disconnected before they could discuss the claim. He recalls this happening near the end of the week because his son stayed at the farm for more than a week while they were trying to get through to Service Canada on the telephone.

[20] The witness says they kept trying until they finally got through to another person on December 3, 2020. He says when he told the officer how the person disconnected his call the week before, he was told that Service Canada officers were having difficulties with calls disconnecting because they were taking calls on cellphones, as they were working from their homes.

[21] The witness disputes the contents of the January 14, 2021, SROC.<sup>7</sup> He notes that this document doesn't record how they discussed he was disconnected from the call the week before. This document also indicates the officer was speaking with the Claimant the entire time, when in fact they spoke with the witness and the Claimant.

[22] I give more weight to the witness's assertion that the January 14, 2021, SROC doesn't truly reflect everything said during the conversation. This is because the Commission's officer didn't document their December 3, 2020, telephone conversation until 6 weeks after the conversation occurred.

[23] I found the events as described by the witness and Claimant to be credible and plausible. This is because their testimony was logical and without the appearance of exaggeration.

[24] I also considered the exceptional circumstances created by the effects of the global COVID-19 pandemic. Specifically, the effects of the closure of Service Canada offices during the COVID-19 pandemic.

[25] After careful consideration of the foregoing, I find that it is more likely than not that the witness did make contact with the Commission on Friday, November 27, 2020,

---

<sup>7</sup> See page GD3-20.

to ask for the payment of the Claimant's EI-ERB, but this call disconnected before the claim details could be discussed. This means the Claimant made contact to request payment of the EI-ERB before the December 2, 2020, deadline.

[26] I will now determine whether the Claimant has proven just cause for the entire period of delay in requesting the payment of the EI-ERB.

### **Has the Claimant shown good cause for the delay?**

[27] Yes, the Claimant has shown good cause for the entire period of delay.

[28] The Claimant wants his claims for EI-ERB benefits to be treated as though they were made earlier, on March 29, 2020. This is called antedating (or, backdating) the claims.

[29] To get a claim antedated, the Claimant has to prove that he had good cause for the delay during the entire period of the delay.<sup>8</sup> 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.

[30] And, 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>9</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.

[31] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>10</sup> This means that the Claimant has to show that he tried to learn about his rights and responsibilities as

---

<sup>8</sup> See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the Act.

<sup>9</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

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>11</sup>

[32] The Claimant has to show that he acted this way for the entire period of the delay.<sup>12</sup> That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Claimant, the period of the delay is from March 29, 2020, to December 2, 2020.

[33] The Commission says the Claimant didn't act, as a 'reasonable person' in his situation would have done to verify his rights and obligations under the Act. Specifically, he didn't act, as a reasonable person would have done in the situation to satisfy the rights and obligations under the Act.

[34] The Commission also says it sent the Claimant an email on May 21, 2020, reminding him to complete his claim reports to show that he was eligible for the EI-ERB. This email includes information on what to do in order to continue being paid.

[35] The Commission fails to mention in its documents whether it considered there were any exceptional circumstances in this case.

[36] The Commission documented a telephone conversation that occurred on December 3, 2020. It documented that the Claimant told them how he was dealing with anxiety issues, his "mind shut down," and he was confused on what to do. He was having computer issues but when he tried to access public computers, they refused his request and no one would help him. He also explained how he gave up with going to government buildings about two years earlier.

[37] The Claimant lives in a northern city in British Columbia. He explained at the hearing how he relies heavily on the assistance of his witness, people in the community, and his routine. With that support, he lives and works in town.

---

<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 *Canada (Attorney General) v Burke*, 2012 FCA 139.

[38] The Claimant says he doesn't always have access to reliable internet or cellphone service. So prior to the COVID-19 pandemic, he would attend the Service Canada office to use their computers or to speak with staff for assistance with managing his claims. He says he didn't receive an email saying he had to complete reports for the EI-ERB.

[39] The Claimant appeared agitated and nervous at the hearing. He didn't always follow the discussion. He became distracted easily. The Claimant didn't always provide fulsome statements or answers to my questions. This said, I found his testimony credible because it was consistent and without the appearance of exaggeration.

[40] The witness explained the Claimant is a marginalized indigenous man who has a long history of struggles relating to his cognitive impairment, hearing issues, attention deficit disorder, dyslexia, and anxiety. He has literacy issues and doesn't perform well when talking over the telephone. He manages his day-to-day business through established routines and the assistance of his father (the witness).

[41] The witness lives on the family farm in a nearby rural area. He says there is no cellphone service out there. The internet service at the farm is unreliable, very slow, and often crashes.

[42] The Claimant says he has shown good cause for the entire period of delay because he acted as a reasonable person with his circumstances would have done. He admits that he has experience with collecting regular EI benefits. He says he knows what to do when he is claiming regular EI benefits. When he has a problem with his EI claim, he knows he can go into the Service Canada for help.

[43] The Claimant says he became confused because the EI-ERB is different. He tried to get help but the Service Canada office closed.

[44] The Claimant explained how he became confused after applying for the EI-ERB. He says he received a \$2,000 payment without completing reports. He says this is different from what he had to do with his EI claims. So, he thought he would only receive the one-time \$2,000 payment for EI-ERB and it was over.



[45] The witness testified how the Claimant's anxiety increased during the COVID-19 shutdowns. He says that getting accommodation for the Claimant is not easy. There was no understanding where things were going. He says people don't listen like they used to before the onset of COVID. The Claimant has difficulty explaining himself through speech. They have ongoing computer / internet issues in their community, which makes it difficult to get things done.

[46] I don't see evidence that the Commission considered all of the Claimant's circumstances when determining he didn't act as a reasonable person. There are comments on file that the Claimant said he had given up on going to government offices, he had problems with internet services, he hadn't had contact with non-family members for several years, and he didn't realize he needed to complete reports. But there were no follow-up questions about how his behaviour related to the delay in requesting payment for the EI-ERB.

[47] I find the Claimant did act as a reasonable person in his circumstances. He relied on his previous routine, within his capacity. But because of the rapid changes in his environment, due to the global COVID 19 pandemic, his support system changed. Specifically, the Service Canada office closed and he no longer had access to public computers or government assistance. He was also dealing with an increase in his anxiety as he isolated in his home.

[48] When a family member suggested that the Claimant may be entitled to more payments of the EI-ERB, they were faced with further delays due to the lack of reliable internet and cellphone service.

[49] The law says that unless there are exceptional circumstances, a claimant is expected to take reasonable prompt steps to understand their rights and obligations under the law.<sup>13</sup>

[50] The fact that the Claimant is an indigenous person, living in a northern community with unreliable access to internet and cellphone service, with a long history

---

<sup>13</sup> See *Canada v Somwaru*, 2010 FCA 336 at para 11.

of cognitive and mental health issues, creates a unique circumstance that I find exceptional.

[51] I acknowledge the antedate provisions in the Act are not the product of “mere legislative whim.”<sup>14</sup> They contain a policy that is vital to the Act’s efficient administration. Antedating a claim for benefits may adversely affect the integrity of the system, because it gives a claimant a retroactive and unconditional award of benefits without any possibility of verifying the eligibility criteria during the period of retroactivity.<sup>15</sup>

[52] An antedate is not a right of every claimant, but is an advantage for which he must qualify. The courts have said it is an advantage that should be applied exceptionally. The obligation to promptly apply for benefits is seen as very demanding and strict.<sup>16</sup> This is why the “good cause for delay” exception is cautiously applied.

[53] There is no dispute the Claimant failed to take prompt steps to learn about his rights and obligations under the law. But the law also allows for exceptional circumstances.

[54] I find the Claimant has established that his experience as a person with disabilities, living in a northern community with limited access to reliable internet and cellphone services, are exceptional circumstances, which affected his access to information about the EI-ERB. He acted based on his capacity, relying on his known routines and support systems, which were limited, ineffective, or cut off during the COVID-19 shutdowns.

[55] I accept the medical evidence and the manner in which the Claimant acted during the in-person hearing, shows that the exceptional circumstances relating to why he delayed in asking for EI-ERB benefits existed during the entire period of delay.

---

<sup>14</sup> See *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at para 5.

<sup>15</sup> See *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at para 5.

<sup>16</sup> See *MR v Canadian Employment Insurance Commission (CEIC)*, 2019 SST 1292.

[56] Based on the evidence, as set out above, I find the Claimant has shown there were exceptional circumstances, which prevented him from taking reasonably prompt steps to understand his rights and obligations under the law.

## **Conclusion**

[57] The Claimant has shown that he requested payment for the EI-ERB by December 2, 2020. He has also proven he had good cause for the delay in making his claims for the EI-ERB, throughout the entire period of the delay. This means that his claims can be treated as though they were made earlier.

[58] The appeal is allowed.

Linda Bell

Member, General Division – Employment Insurance Section