



Citation: *HM v Canada Employment Insurance Commission*, 2022 SST 1181

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

**Decision**

**Appellant:** H. M.  
**Representative:** S. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (483222) dated June 10, 2022  
(issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference  
**Hearing date:** September 27, 2022  
**Hearing participant:** Appellant  
**Decision date:** October 11, 2022  
**File number:** GE-22-2344

## 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 October 21, 2021. She is now asking that the application be treated as though it was made earlier, on May 9, 2021. 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 the Claimant didn't have good cause because she didn't make an effort to find out about applying for benefits as soon as she left her job in May 2021.

[6] The Claimant disagrees and says she delayed applying for benefits so she could apply for EI maternity and parental benefits. Unfortunately, she had a miscarriage, and then applied for EI regular 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.

## **Matter I have to consider first**

### **The Claimant didn't send the Commission's reconsideration decision**

[7] The Claimant has to send the Tribunal a copy of the Commission's decision with her notice of appeal.<sup>2</sup> She didn't do so. I have a copy of the Commission's file that has this decision. So, I don't need the Claimant to send it.<sup>3</sup>

### **The Claimant's representative didn't attend the hearing**

[8] The Claimant identified on her notice of appeal that her husband would be her representative. He had spoken to the Commission after its initial decision due to the Claimant's language barrier.

[9] The Claimant attended the hearing alone. An interpreter was also present. I asked the Claimant if her husband would be attending the hearing. She said he was at work. The Claimant said her husband had explained to her what to expect at the hearing, so she wanted to proceed without him. The hearing proceeded as scheduled.

[10] Due to her language barrier, the Claimant had not read the documents in her appeal. I gave her until September 30, 2022 to speak to her husband after the hearing, review the documents with him, and send any additional comments to the Tribunal.

## **Issues**

[11] Can the Claimant's application for benefits be treated as though it was made on May 9, 2021? This is called antedating (or, backdating) the application.

[12] If so, does the Claimant qualify for benefits on the earlier day?

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<sup>2</sup> Paragraph 24(1)(b) of the *Social Security Regulations* .

<sup>3</sup> Paragraph 3(1)(b) of the *Social Security Regulations*.

## Analysis

[13] To get your application for benefits antedated, you have to prove these two things:<sup>4</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).

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

[15] 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>5</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.

[16] The Claimant has to show that she acted this way for the entire period of the delay.<sup>6</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 May 9, 2021 to October 21, 2021.

[17] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.<sup>7</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

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<sup>4</sup> See section 10(4) of the EI Act.

<sup>5</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>6</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>7</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

she must show that there were exceptional circumstances that explain why she didn't do so.<sup>8</sup>

[18] 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.

[19] The Claimant says she had good cause for the delay because she was planning to apply for EI maternity and parental benefits later in the year, but had a miscarriage.

[20] The Commission says the Claimant hasn't shown good cause for the delay because she didn't make an effort to find out about applying for benefits as soon as she left her job.

[21] I find that the Claimant hasn't proven that she had good cause for the delay in applying for benefits. I find that for part of the period, the Claimant didn't do enough to find out about her rights and obligations concerning EI benefits.

[22] The Claimant quit her job on May 8, 2021. But she didn't apply for EI regular benefits until October 21, 2021. She called the Commission to backdate her application to May 9, 2021. She told the Commission she had started to look for work after she quit her job, but she didn't think she would get EI benefits. The Commission decided that the Claimant didn't have good cause for the delay in applying for EI regular benefits.

[23] The Commission reconsidered its initial decision. Its representative spoke to the Claimant's husband due to her language barrier. He advised that the Claimant was pregnant but had a miscarriage. He said they had been told that if they started the claim for regular benefits earlier, they would not get the full amount of maternity and parental benefits.

[24] The Claimant testified at the hearing with the assistance of an interpreter. She explained that she quit her job because she was planning a pregnancy, but the work load was heavy. She said she thought she would find another job within two weeks, but

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<sup>8</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

that didn't happen. The Claimant said she called the Commission and asked how to apply. She told the officer why she quit her job. The Claimant testified that the officer told her she could get 52 weeks of benefits and an extra three months of benefits for the period that had passed since she stopped working.

[25] The statements the Claimant and her husband made to the Commission are somewhat different from her testimony at the hearing. Because she spoke to the Commission first time without using an interpreter, I give those statements less weight than I do to her testimony through an interpreter and under oath.

[26] Similarly, I give less weight to her husband's statements. I don't find the Commission's notes clearly show who was making the statements. For example, the notes say that the Claimant gave permission for her husband to speak because her English is not good. But the next sentence starts, "Claimant states ...".

[27] Based on the above, I prefer the Claimant's testimony. The Commission's notes say the Claimant misunderstood that she had to apply for benefits after one day or one week. But this could have been her husband speaking. The note continues that they called in October and found out they could apply.

[28] I asked the Claimant when she called Service Canada. The Claimant couldn't remember. But she said she called several times.

[29] Even though the Claimant doesn't remember when she called Service Canada, she testified that she spoke to three officers who all told her that when she applied for maternity benefits, she would be able to get the three months of benefits she had lost for the period since she had stopped working. I find from this testimony that the Claimant likely first contacted Service Canada in August 2021, three months after she quit her job.

[30] The Claimant testified that she had never applied for EI benefits before. She said that she had applied for benefits during the COVID-19 pandemic, but that was different.

[31] I find that a reasonable and prudent person in her situation would have called Service Canada or taken steps without delay to inquire about getting EI benefits. The Claimant didn't do this. Instead, she looked for work and didn't call for approximately three months. I don't find that the Claimant's inexperience with the EI program or looking for a job are exceptional circumstances that excuse her from trying to learn about her rights and responsibilities between May 9, 2021 and August 2021 after she quit her job.

[32] The Claimant's testimony about what the Service Canada officer told her isn't clear. But, I find it likely that the officer was explaining options to the Claimant given her pregnancy. For example, the law that limits the number of weeks of EI benefits for a claimant who gets regular and maternity benefits in the same benefit period. This can affect the time a mother spends with her newborn.

[33] I accept as fact that the Claimant was pregnant when she spoke Service Canada. I also find it likely the Claimant made a decision not to apply for EI benefits when she spoke to Service Canada so she could get benefits in a way that would work best for her and her baby. But, she testified that she had a miscarriage on October 15, 2021. The Claimant applied for EI regular benefits six days later.

[34] I find the Claimant has shown good cause for the delay in applying for benefits from August 2021 to October 15, 2021. I find that a reasonable person in a similar situation would likely have delayed applying for benefits to get the maximum number of weeks of maternity and parental benefits. I don't find the Claimant could have known that she would have a miscarriage two months later.

[35] But since I have found that the Claimant hasn't shown good cause for the delay from May 9, 2021 to August 2021, she hasn't shown good cause for the entire period of the delay.

[36] 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**

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

[38] The appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section