



Citation: *FD v Canada Employment Insurance Commission*, 2022 SST 1039

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

**Decision**

**Appellant:** F. D.  
**Representative:** Benjamin Fulton

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (465597) dated April 4, 2022  
(issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference  
**Hearing date:** September 21, 2022  
**Hearing participant:** Appellant  
**Decision date:** October 12, 2022  
**File number:** GE-22-1392

## Decision

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

[2] The Claimant has not shown that he had good cause for the delay in applying for Employment Insurance (EI) benefits. In other words, the Claimant has not given an explanation that the law accepts. This means that the Claimant's application cannot be treated as though it was made earlier.<sup>1</sup>

## Overview

[3] F.D. is the Claimant in this case. The Claimant applied for EI regular benefits on December 19, 2021.<sup>2</sup> He is now asking that the application be treated as though it was made several months earlier, on February 21, 2021. The Canada Employment Insurance Commission (Commission) has already refused this request.<sup>3</sup>

[4] The Commission says that the Claimant did not have good cause for the delay because he did not act like a reasonable person in similar circumstances to verify his rights and obligations under the *Employment Insurance Act (EI Act)*.<sup>4</sup>

[5] The Claimant disagrees because he previously spoke to a Service Canada agent who told him that his antedate request had been approved.<sup>5</sup> He argues that his claim should be antedated to February 21, 2021 because a legal contract was formed with Commission. As well, he was provided bad advice and misleading information from a Service Canada agent.

[6] I have to decide whether the Claimant has proven that he had good cause for not applying for EI benefits earlier.

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<sup>1</sup> See section 10(4) of the *Employment Insurance Act (EI Act)* uses the term "initial claim" when talking about an application.

<sup>2</sup> See application for EI benefits at GD3-3 to GD3-12.

<sup>3</sup> See initial decision at GD3-16 and reconsideration decision at GD3-24 to GD3-25.

<sup>4</sup> See Commission's submissions at GD4-1 to GD4-4.

<sup>5</sup> See notice of appeal at GD2-1 to GD2-11.

## Matters I have to consider first

### This case was previously adjourned

[7] This case was first scheduled to be heard on June 10, 2022.<sup>6</sup> The Claimant asked for administrative date change<sup>7</sup> because he was not available on that date.<sup>8</sup>

[8] The case was then rescheduled to July 7, 2022.<sup>9</sup> The Claimant sent an email asking for an adjournment. He wrote that the new date was not convenient for him and asked for a hearing in August.<sup>10</sup> I denied the Claimant's adjournment request because he had not provided any reason for making his request.<sup>11</sup>

[9] The Claimant sent a subsequent email after the adjournment was denied explaining that additional time was needed because he had to secure legal representation.<sup>12</sup> I denied the Claimant's subsequent request for an adjournment because there was enough time for him to obtain legal representation in advance of the hearing.<sup>13</sup>

[10] On July 4, 2021, the Claimant's legal representative sent the Tribunal an email noting that he had been retained for this file.<sup>14</sup> He asked for an adjournment of the July 7, 2021 hearing date explaining that he needed time to review and prepare for the hearing.

[11] I granted the Claimant's adjournment request because his legal representative had just been retained and needed time to prepare.<sup>15</sup> The case was rescheduled to the next available hearing date, on September 21, 2021.

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<sup>6</sup> See GD1-1 to GD1-3.

<sup>7</sup> The Tribunal allows for administrative date changes if the request is made within two days of receiving the notice of hearing.

<sup>8</sup> See GD5-1.

<sup>9</sup> See GD1A-1 to GD1A-3.

<sup>10</sup> See GD6-1.

<sup>11</sup> See GD7-1 to GD7-3.

<sup>12</sup> See GD8-1 to GD8-2.

<sup>13</sup> See GD9-1 to GD9-3.

<sup>14</sup> See GD12-1.

<sup>15</sup> See GD13-1 to GD13-3.

[12] The Claimant sent another email stating that he preferred a hearing in late July 2021 and provided alternate available dates in August 2021.<sup>16</sup> His legal representative also wrote in to advise the urgency of the matter and asked for an earlier hearing date, if possible.<sup>17</sup>

[13] I denied the Claimant's request for subsequent adjournment because a previous adjournment had been granted and exceptional circumstances were not established.<sup>18</sup> Given the Claimant and legal representative's limited availability for July and August 2021, the earliest date the matter could be heard was September 21, 2022.

### **The Claimant submitted documents after the hearing**

[14] The Claimant's legal representative made reference to several cases during the hearing. I asked him to submit them after the hearing so that I could review them.<sup>19</sup> The Claimant's submissions and case law were received on September 25, 2022.<sup>20</sup> The Tribunal shared these documents with the Commission and no reply submissions were received as of the date of this decision.

### **Issue**

[15] Can the Claimant's application for EI benefits be treated as though it was made on February 21, 2021? This is called antedating (or, backdating) the application.

### **Analysis**

[16] To get your application for benefits antedated, you have to prove these two things:<sup>21</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.

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<sup>16</sup> See GD14-1 to GD14-2.

<sup>17</sup> See GD15-1 to GD15-9.

<sup>18</sup> See GD16-1 to GD16-3.

<sup>19</sup> The deadline to submit was September 26, 2022.

<sup>20</sup> See Claimant's post hearing documents at GD17-1 to GD17-7.

<sup>21</sup> See section 10(4) of the EI Act.

- b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

[17] 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>22</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.

[18] The Claimant has to show that he acted this way for the entire period of the delay.<sup>23</sup> That period is from the day he wants his application antedated to until the day he actually applied.

[19] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to EI benefits and obligations under the law.<sup>24</sup> 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 did not take these steps, then he must show that there were exceptional circumstances that explain why he did not do so.<sup>25</sup>

[20] 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.

### **The period of delay is from February 21, 2021 to December 19, 2021**

[21] The Claimant testified that he submitted his application for EI benefits on December 19, 2021. This is consistent with the date identified in the EI application included in the file.<sup>26</sup>

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<sup>22</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>23</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>24</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>25</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>26</sup> See application for EI benefits at GD3-3 to GD3-12.

[22] The Claimant said that he spoke to a Service Canada agent on December 23, 2021 who told him that he could antedate his claim to November 14, 2021. He called back and spoke to another Service Canada agent and asked them to antedate his claim to February 21, 2021. This is the date he stopped working for his previous employer. This is consistent with the telephone note included in the file.<sup>27</sup>

[23] Accordingly, I accept that the period of the delay is from February 21, 2021 to December 19, 2021. This is not disputed between the parties.

### **The Claimant has not shown good cause for the entire period of delay**

[24] I find that the Claimant has not proven that he had good cause for the delay in applying for EI benefits for the following reasons:

[25] I do not find that the Claimant acted as a reasonable and prudent person would have done in the circumstances to find out about his rights and obligations for the entire period of delay.

[26] The Claimant admitted that he was already familiar with the EI benefit program and he knew he needed 420 hours to qualify for EI benefits, but says he was not sure he had enough hours in February 2021, so he did not bother applying.

[27] I was not persuaded by the Claimant's explanation that his employer split his record of employment, so he did not know his total number of hours when he stopped working in February 2021.

[28] In my view, a reasonable and prudent person in similar circumstances would have contacted Service Canada after his employment ended in February 2021 to verify his rights and obligations. Since the Claimant was already familiar with the EI program, he could have taken steps to call or visit a Service Canada centre to ask whether he had enough hours to qualify for EI benefits given that his previous employer split his record of employment.

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<sup>27</sup> See supplementary record of claim (SROC) on GD3-13.

[29] The court has already said that ignorance of the law does not constitute good cause.<sup>28</sup> As well, the court has established that a Claimant has an obligation to make prompt inquiries with the Commission to verify personal assumptions.<sup>29</sup>

[30] I accept that the Claimant took steps to contact the Commission after his application for EI benefits was submitted, but the relevant period that he needs to establish good cause is from February 21, 2021 to December 19, 2021.

### **The Claimant did not have any exceptional circumstances**

[31] I asked the Claimant if there were any exceptional circumstances. He said that he was dealing with stuff that was stressful and incredibly difficult.

[32] I do not find there were any exceptional circumstances that prevented or contributed to the Claimant's delay in applying for EI benefits because the Claimant did not provide any specific reason or elaborate further when asked.

### **There was no contract with the Commission**

[33] The Claimant testified and provided a timeline of discussions he had with various Service Canada agents after he filed his application for EI benefits.<sup>30</sup>

[34] The Claimant argues that a Service Canada agent verbally agreed to antedate his claim to February 21, 2021 and retroactively pay him \$595.00 per week for 45 weeks. He agreed to the terms offered by Commission, so he says that an enforceable legal contract was established between them. He submitted case law to support his position.<sup>31</sup>

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<sup>28</sup> See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>29</sup> See *Canada (Attorney General) v Persiiantsev*, 2010 FCA 101.

<sup>30</sup> See GD17-2.

<sup>31</sup> See GD17-3 to GD17-7.

[35] I was not persuaded by the Claimant's testimony on this issue because I did not find it credible. There was no supporting evidence in the file that the Claimant spoke to a Service Canada agent on February 10, 2022 and/or February 11, 2022 as claimed.

[36] The file shows provides other records of telephone discussions between the Claimant and Service Canada agents on several dates such as: December 23, 2021; March 15, 2021; April 1, 2021; April 4, 2021.<sup>32</sup> I note that none of the above discussions indicate that the Claimant's antedate request to February 21 2021 was previously granted by the Commission.

[37] The Claimant previously argued was that he got bad advice and misleading information from a Service Canada agent.<sup>33</sup>

[38] Even if the Claimant did speak to a Service Canada agent on February 10, 2022 and/or February 11, 2022 and was provided with incorrect information, it is well-established case law that any commitment that the Commission or its representatives make, whether in good or bad faith, to act in a way other than that which is prescribed by the Act, is absolutely null and void.<sup>34</sup>

[39] As a result, I was not persuaded that a legal and enforceable contract was established between the Claimant and Commission. EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive EI benefits. The Claimant does not have an automatic right to EI benefits or an antedate. The court has said that antedate is an advantage that should be applied exceptionally.<sup>35</sup> In this case, the Claimant had to prove that he had good cause for the entire period of delay, he failed to do so.

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<sup>32</sup> See SROC at GD3-13; SROC at GD3-15; SROC at GD3-20; SROC at GD3-21 and SROC at GD3-22 to GD3-23.

<sup>33</sup> See Claimant's written statement at GD3-19; SROC at GD3-22.

<sup>34</sup> See *Granger v Canada Employment and Immigration Commission*, [1986] 3 FC 70.

<sup>35</sup> See *Canada (Attorney General) v McBride*, 2009 FCA 1.



[40] I do not need to consider whether the Claimant qualified for EI benefits on the earlier day. If the Claimant does not have good cause, his application cannot be treated as though it was made on the earlier date.

## **Conclusion**

[41] The Claimant has not proven that he had good cause for the delay in applying for EI benefits throughout the entire period of the delay.

[42] The appeal is dismissed.

Solange Losier  
Member, General Division – Employment Insurance Section