



Citation: *KA v Canada Employment Insurance Commission*, 2022 SST 1548

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

Decision

Appellant: K. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (537658) dated August 12, 2022 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: November 1, 2022

Hearing participants: Appellant

Decision date: December 7, 2022

File number: GE-22-2793

Decision

[1] **I am dismissing the Claimant's appeal.** This decision explains why.

[2] The Claimant has not shown that he had good cause for his delay in applying for benefits. In other words, he has not given an explanation that the law accepts.

[3] This means that the Claimant's application cannot be treated as though he made it earlier.

Overview

[4] The Claimant applied for Employment Insurance (EI) benefits on May 31, 2022.¹ He is now asking that his application be treated as though he made it earlier, on March 27, 2022. The Canada Employment Insurance Commission (Commission) has already refused this request.

[5] To decide the Claimant's appeal of the Commission's decision, I have to find whether or not he proved that he had good cause for applying for benefits late.

[6] The Commission says the Claimant did not have good cause because a reasonable person in his situation would have tried to find out if he was entitled to benefits. The Commission says he should have asked what he had to do and when.

[7] The Claimant disagrees. He says he waited to apply because he thought he would get a job sooner. He had been called to many interviews. He says he wanted to work; he did not want to rely on benefits. He argues that he did not know there was a deadline to apply. He says he was not thinking straight due to COVID-19.

The issue I must decide

[8] Can the Claimant's application for benefits be treated as though he made it earlier, on March 27, 2022? **This is called antedating (backdating) an application.**

¹ Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application for benefits.

Analysis

[9] To get your application for benefits antedated, **you must prove two things:**²

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

[10] The main arguments in this case are about whether the Claimant had good cause for his delay in applying for benefits, so I will start with that issue.

[11] To show good cause, **the Claimant has to prove that he acted as a reasonable and prudent person would have done in similar circumstances.**³ In other words, he has to show that he acted just as reasonably and carefully as anyone else would have done in a similar situation.

[12] The Claimant has to show that he acted this way **for the entire period of his delay.**⁴ The delay is from the day he wants his application antedated to until the day he actually applied. So, **his delay is from March 27, 2022, to May 31, 2022.**

[13] The Claimant has to prove that he took **reasonably prompt steps to understand his entitlement to benefits and what he had to do to get them.**⁵ This means he has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If he did not take these steps, he must show that there were **exceptional circumstances** to explain why he did not do this.⁶

[14] The Claimant has to prove this on a balance of probabilities. This means that **he has to show it is more likely than not that he had good cause for his delay.**

² Section 10(4) of the EI Act sets out the rules for an antedate.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ See *Burke*, above.

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁶ See *Somwaru*, above; and *Kaler*, above.

[15] The Claimant argues that he had good cause for his delay since he did not know he would be unemployed for so long. He was hopeful of getting a job because he was called to many interviews. He says he did not know that there was a deadline for applying for EI and only made an application when his money ran out.

[16] The Commission says the Claimant did not show good cause. **Nothing stopped him contacting Service Canada** to ask about EI benefits and how to get them.

[17] I agree with the Commission that **the Claimant has not proved that he had good cause for his delay**. I find that a reasonable and careful person in his situation would have taken steps to check his belief that there was no deadline to apply for EI.

[18] The courts have said that **ignorance of the law is not enough to show good cause**, even if you act in good faith as the Claimant did.⁷ Looking for work and attending interviews are important activities, but that does not stop you making enquiries about your benefits.

[19] The Claimant says he applied for EI when family and friends said he should, but only consulting his immediate circle was no substitute for contacting the Commission.

[20] You can find out about EI benefits quite easily, by phone, by visiting a Service Canada Centre or through a simple online search.

[21] The Claimant, a manager in the hospitality industry, confirms that he knows how to use the Internet. But he did not use those skills to look into EI benefits earlier.

[22] **The Claimant had no exceptional circumstances to explain why he did not take reasonably prompt steps to make these enquiries.**

[23] The Claimant says the stress of COVID-19 was an exceptional circumstance. He argues that losing his job after five years made him sick and anxious. He says he saw a doctor. He argues that he was not thinking straight at the time.

⁷ See *Canada (Attorney General) v Albrecht*, A-172-85, and *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

[24] There is no medical note on file to suggest the Claimant had cognitive or emotional difficulties due to COVID-19 that might explain his delay in applying for benefits. At the time, he was able to attend job interviews. That would likely require more effort than calling the Commission or checking EI's rules online.

[25] As for exceptional circumstances, I agree that the pandemic was unprecedented, but all claimants who lost their jobs when the Claimant did faced stress and anxiety. So, his situation was not exceptional. And each claimant still had to act as a reasonable and careful person would have done in a similar situation.

[26] The Claimant did not act as a reasonable and careful person would have done since **he took no action to check into when he had to apply for benefits**. He had applied for benefits before and was prompt on that occasion. So, he already had some experience with how to contact the Commission.

[27] **Since the Claimant does not have good cause for his delay, his application cannot be treated as though he made it earlier, on March 27, 2022.** This means that I do not need to consider whether he qualified for benefits on that earlier day.

Conclusion

[28] The Claimant did not prove that he had good cause for his delay in applying for benefits during the entire period of the delay. So, he cannot get an antedate.

[29] This means that I must dismiss his appeal.

Lilian Klein

Member, General Division – Employment Insurance Section