



[TRANSLATION]

Citation: *JF v Canada Employment Insurance Commission*, 2023 SST 288

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

**Decision**

**Appellant:** J. F.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (525706) dated August 30, 2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Videoconference  
**Hearing date:** January 17, 2023  
**Hearing participant:** Appellant  
**Decision date:** February 24, 2023  
**File number :** GE-22-3179

## Decision

[1] The appeal is dismissed. I find that the Appellant's application for Employment Insurance (EI) benefits must not be antedated to June 20, 2021.<sup>1</sup> The Appellant hasn't shown that she had good cause for the delay in applying for benefits. This means that her application can't be treated as though it was made earlier.

## Overview

[2] From August 28, 2020, to June 17, 2021, the Appellant worked as a student monitor at X. She stopped working for this employer because of a shortage of work or an end of contract or season.<sup>2</sup>

[3] From November 10, 2021, to December 21, 2021, she worked as a school sedan driver for the employer X. She stopped working for this employer because of a shortage of work or an end of contract or season.<sup>3</sup>

[4] On December 26, 2021, she applied for EI benefits (regular benefits).<sup>4</sup>

[5] On April 11, 2022, she asked the Canada Employment Insurance Commission (Commission) to antedate her December 26, 2021, application. She wanted it to start on June 20, 2021.<sup>5</sup>

[6] On June 21, 2022, the Commission told her that her claim for EI benefits could not start on June 20, 2021, because she hadn't proven that between June 20, 2021, and January 1, 2022, she had good cause to apply late for benefits.<sup>6</sup>

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<sup>1</sup> Section 10(4) of the *Employment Insurance Act* (Act) uses the term "initial claim" to refer to a claimant's application for benefits, which is used to determine whether the claimant qualifies to establish a benefit period.

<sup>2</sup> See the Record of Employment (ROE) that X issued on July 6, 2021—GD7-9 and GD7-10.

<sup>3</sup> See the ROE that the employer X issued on January 5, 2022—GD10-5.

<sup>4</sup> See GD3-3 to GD3-11.

<sup>5</sup> See GD3-12.

<sup>6</sup> See GD2-1 and GD3-13.

[7] On August 30, 2022, after a request for reconsideration, the Commission told her that it was upholding its June 21, 2022, decision about her antedate request.<sup>7</sup>

[8] The Appellant says that she had good cause for applying late. She argues that she isn't responsible for the delay in applying.

[9] The Appellant explains that after she stopped working for X on June 17, 2021, this employer never told her about her employment ending during the summer break from June 21, 2021, to August 28, 2021. She argues that she didn't think that her employment with that employer was over after June 17, 2021. This is because, a few days earlier, it had confirmed her position for the following school year (2021–2022 school year) and told her that she would be going back to work on August 28, 2021. According to her, this means that she was on leave or vacation between June 17, 2021, and August 28, 2021. She explains that she worked for another employer, X, in November and December 2021. On November 19, 2021, this employer sent her notice that she was going to be laid off for the 2021–2022 holidays. She says that after receiving the notice from this employer, she contacted X to find out why it hadn't sent her this type of notice when she stopped working on June 17, 2021. She says that the employer told her it hadn't done this because she didn't have enough hours to be able to get EI benefits. She argues that she would have applied for benefits on time if X had sent her notice of her employment ending or if she had been told that this employer had issued a Record of Employment (ROE) for her period of employment from August 28, 2020, to June 17, 2021.

[10] Even though her file shows that she made an antedate request in April 2022, she says that she discussed it with the Commission in January 2022. She says she had to apply for benefits before she could request an antedate.

[11] She says that in delaying her application, she acted as a reasonable person would have acted in a similar situation.

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

[12] On September 11, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

## Issues

[13] I have to decide whether the Appellant's application must be antedated to June 20, 2021.<sup>8</sup> To decide this, I have to answer the following questions:

- Has the Appellant proven that she qualified for EI benefits on an earlier day than the day she applied?
- Did the Appellant have good cause for the delay in applying for benefits, therefore justifying her antedate request?

## Analysis

[14] When a late claim for EI benefits gets antedated, it is considered as having been made on an earlier day than the day it was actually made.

[15] To get their application for benefits antedated, a claimant has to meet two conditions:

- They have to prove that they qualified for EI benefits on an earlier day than the day they applied.
- They have to prove that they had good cause for the delay during the entire period of the delay. That period is from the earlier day they want their application antedated to until the day they actually applied.<sup>9</sup>

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<sup>8</sup> See section 10(4) of the Act.

<sup>9</sup> See section 10(4) of the Act.

[16] Good cause is an explanation that the *Employment Insurance Act* (Act) accepts. When good cause is shown, a claim for benefits can be treated as though it was made earlier.

[17] The Federal Court of Appeal (Court) has held that a claimant who doesn't make their claim on time has to show that they had good cause for the delay and that they acted as a reasonably prudent person would have acted in the same situation.<sup>10</sup>

[18] According to the Court, having good cause means acting as a "reasonable person" would have acted to find out about their rights and obligations under the Act.<sup>11</sup>

[19] The claimant has to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that they had good cause for the delay.

[20] The claimant also has to prove this for the entire period of the delay.<sup>12</sup> That period is from the day they want their application antedated to until the day they actually applied. For the Appellant, the period of the delay is from June 20, 2021, to January 1, 2022, according to the Commission's June 21, 2022, decision.<sup>13</sup>

### **Issue 1: Has the Appellant proven that she qualified for EI benefits on an earlier day than the day she applied?**

[21] I find that the evidence on file shows that the Appellant qualified for EI benefits on an earlier day than the day she applied, that is, December 26, 2021.

[22] The Appellant says that she is entitled to receive benefits from June 20, 2021, given her periods of employment in the 52 weeks leading up to that date.<sup>14</sup>

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<sup>10</sup> The Federal Court of Appeal (Court) reiterated this principle in the following decisions: *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.

<sup>11</sup> The Court established or reiterated this principle in the following decisions: *Burke*, 2012 FCA 139; *Persiiantsev*, 2010 FCA 101; *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.

<sup>12</sup> The Court established or reiterated this principle in the following decisions: *Burke*, 2012 FCA 139; *Dickson*, 2012 FCA 8; *Kaler*, 2011 FCA 266; and *Chalk*, 2010 FCA 243.

<sup>13</sup> See GD2-1 and GD3-13.

<sup>14</sup> See GD2-6 and GD3-18.

[23] In its arguments, the Commission explains that the Appellant would have been entitled to receive benefits from June 20, 2021, if she had applied within the time set out in the Act.<sup>15</sup>

[24] It says that in that case, the Appellant's period would have been from June 21, 2020, to June 19, 2021.<sup>16</sup>

[25] Based on the Commission's analysis, the Appellant's periods of employment during her qualifying period<sup>17</sup> show that she qualifies for EI benefits with a benefit period established effective June 20, 2021.

## **Issue 2: Did the Appellant have good cause for the delay in applying for benefits, therefore justifying her antedate request?**

[26] I find that the Appellant's reasons for applying late don't amount to good cause for such a delay, under the Act.

[27] The Appellant's testimony and statements indicate the following:

- a) She says that she isn't responsible for the delay in applying for benefits. The fault lies with one of her employers, X, and in part with the Commission (Service Canada), because they [translation] "distorted" the information she needed to be able to apply on time.<sup>18</sup>
- b) She explains that after she stopped working for X on June 17, 2021, this employer never told her about her employment ending during the summer break from June 21, 2021, to August 28, 2021. She says she doesn't understand why this employer kept her in the dark.<sup>19</sup>

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<sup>15</sup> See GD7-1.

<sup>16</sup> See GD7-1. In general, the qualifying period is the 52 weeks before your benefit period would start. See section 8 of the Act.

<sup>17</sup> See GD7-3 to GD7-10.

<sup>18</sup> See GD2-6, GD2-10, and GD2-11.

<sup>19</sup> See GD2-10 and GD2-11.

- c) She didn't think that her employment with that employer was over after June 17, 2021. She didn't consider herself unemployed or out of work. On June 15 or 16, 2021, this employer confirmed her position for the following school year (2021–2022 school year) and told her that she would be going back to work on August 28, 2021. She didn't sign a contract with the employer. It didn't tell her that her contract had ended and that she had to wait to be called back to work. She didn't ask it whether she was entitled to benefits after she stopped working on June 17, 2021.<sup>20</sup>
- d) She says that she was on leave or vacation between June 17, 2021, and August 28, 2021, as is the case in schools during public holidays, professional development days, the holiday period, and March break. She wasn't in a layoff or shortage of work situation.<sup>21</sup>
- e) She worked for the employer X from November 10, 2021, to December 21, 2021.<sup>22</sup> On November 19, 2021, this employer sent her notice that she was going to be laid off for the 2021–2022 holidays. That was when she was first told that she was going to be able to apply for benefits after she stopped working. If the employer hadn't sent her this notice, she would never have known that she could get benefits. She applied for benefits on December 26, 2021, after the employer in question issued a ROE.<sup>23</sup>
- f) In November 2021,<sup>24</sup> a few days after receiving the notice from the employer X, she contacted X to find out why it hadn't sent her notice of her employment ending when she stopped working on June 17, 2021. X told her that she didn't have enough hours to be able to get EI benefits.<sup>25</sup>

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<sup>20</sup> See GD2-10, GD2-11, GD3-16 to GD3-19, GD6-3, GD6-4, and GD12-3.

<sup>21</sup> See GD12-3 and GD12-4.

<sup>22</sup> See GD10-5.

<sup>23</sup> See GD2-2, GD2-6, GD2-10, GD2-11, GD3-16 to GD3-19, GD6-3, GD6-4, GD10-5, and GD12-4.

<sup>24</sup> See GD2-6 and GD2-10.

<sup>25</sup> See GD2-6, GD2-10, GD2-11, and GD12-4.

- g) She didn't contact the Commission between June 17, 2021, and the week of December 12, 2021, when she found out she could have applied for benefits, because she didn't know or think that she was entitled to benefits, given her knowledge of EI. She says that during that time, she wasn't sick, out of the country, or unable to apply for benefits.<sup>26</sup>
- h) She says she thought that to apply for benefits, she needed to have worked full-time and to have been let go.<sup>27</sup>
- i) She never needed to claim benefits before she applied in December 2021.
- j) She would have applied for benefits on time if X had sent her notice of her employment ending or if she had been told that this employer had issued a ROE for her period of employment from August 28, 2020, to June 17, 2021.<sup>28</sup>
- k) Her employer should have told her that her period of employment had ended.<sup>29</sup>
- l) The changes in the way employers treat separations and ROEs (for example, sending the Commission an electronic ROE) should not penalize her or jeopardize her entitlement to benefits.<sup>30</sup>
- m) Her reasoning was [translation] "undermined" by the fact that X hadn't given her notice of her employment ending in June 2021 or a ROE and the fact that she wasn't told it had sent the Commission (Service Canada) information about her period of employment. She questions how much the Commission can benefit from engaging with employers in such a practice, which she finds deceptive and disloyal.<sup>31</sup>

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<sup>26</sup> See GD3-19.

<sup>27</sup> See GD3-12.

<sup>28</sup> See GD2-6, GD2-10, GD2-11, and GD3-16 to GD3-18.

<sup>29</sup> See the Court's decision in *Quadir*, 2018 FCA 21. See also GD6-2.

<sup>30</sup> See CUB 5625. See also GD6-3 and GD6-4.

<sup>31</sup> See GD2-10, GD2-11, GD3-16 to GD3-18, GD12-3, and GD12-4.



- n) A “reasonable person” in the same circumstances and with a similar work history would not have thought or believed that their situation was that of someone considered unemployed.<sup>32</sup>
- o) She made an antedate request to have her December 26, 2021, application start on June 20, 2021, after working from late August 2021 to December 2021. It was reasonable not to apply for benefits if she could not get any unless she was unemployed, since she wasn’t unemployed for the entire period of the delay.<sup>33</sup>
- p) She says that X [translation] “deceived” her and committed “*dolus*”<sup>34</sup> against her.<sup>35</sup>
- q) The denial of her antedate request is hurting her, and EI (the Commission) and X are to blame.<sup>36</sup>
- r) Even though her file shows that she made her antedate request in April 2022, she discussed it with the Commission in January 2022. Before she could request an antedate, she had to apply for benefits, and her application needed to be approved. Her December 26, 2021, application was refused. On January 6, 2022, she applied again, and that application was approved. She discussed her antedate request with the Commission after making that application. She points out that her antedate request was [translation] “formalized” in April 2022.<sup>37</sup>

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<sup>32</sup> See GD2-11, GD3-16 to GD3-18, GD6-3, GD6-4, and GD12-4.

<sup>33</sup> See the Court’s decision in *Dunnington*, A-1865-83, 1984 CanLII 5332 (FCA), [1984] 2 FC 978. See also GD6-2.

<sup>34</sup> “*Dolus*” is fraud that is intended to deceive.

<sup>35</sup> See GD2-10, GD2-11, GD3-16 to GD3-18, and GD12-4.

<sup>36</sup> See GD3-16 to GD3-18.

<sup>37</sup> See GD12-3.

[28] The Commission, meanwhile, argues as follows:

- a) The Appellant hasn't shown that she acted as a "reasonable person" in her situation would have acted to find out about their rights and obligations under the Act.<sup>38</sup>
- b) Based on her knowledge, the Appellant assumed that she wasn't entitled to benefits, in part because she still had her job, she was only on temporary layoff, and she had never used EI before.<sup>39</sup>
- c) She failed to contact the Commission during the relevant period. She blamed the employer for her late application because it hadn't issued the ROE on time.<sup>40</sup>
- d) Ignorance of the Act, even if coupled with good faith, isn't sufficient to establish good cause.<sup>41</sup>

[29] Taking into account all the circumstances of her case, I find that the Appellant hasn't shown that she had good cause for the delay in applying for benefits.

[30] I don't accept the Appellant's argument that she didn't think her employment with X had ended on June 17, 2021, given that her position had been confirmed for the following school year (2021–2022 school year), that she was supposed to go back to work on August 28, 2021, and that she was actually on leave or vacation between those two dates.

[31] The fact is that she stopped working on June 17, 2021, and was scheduled to go back to work more than two months later, on August 28, 2021. I find that she was out of work between June 17, 2021, and August 28, 2021. The ROE that X issued on July 6,

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<sup>38</sup> See GD4-3 and GD4-4.

<sup>39</sup> See GD4-3 and GD4-4.

<sup>40</sup> See GD4-3 and GD4-4.

<sup>41</sup> See the Court's decision in *Kaler*, 2011 FCA 266. See also GD4-3.

2021, indicates that the Appellant stopped working because of a shortage of work or an end of contract or season.<sup>42</sup>

[32] In my view, it was up to her to get information from the Commission about her entitlement to receive benefits during the period from June 17, 2021, to August 28, 2021, which she describes as a period of leave or vacation.

[33] I find that there is no evidence that the Appellant was prevented from applying for benefits on time after she stopped working on June 17, 2021.

[34] I find that nothing was stopping her either from getting information from the Commission about what she needed to receive benefits, given her situation.

[35] The Appellant's explanation that she didn't know or think that she was entitled to benefits after she stopped working on June 17, 2021, given her knowledge of EI, can't weigh in her favour.

[36] The Court tells us that good faith and ignorance of the Act aren't, in themselves, good cause for delaying an application for benefits.<sup>43</sup>

[37] The Court also tells us that a claimant has an obligation to take "reasonably prompt" steps to determine their entitlement to EI benefits and to ensure their rights and obligations under the Act.<sup>44</sup>

[38] The Court says that this obligation involves a "duty of care that is both demanding and strict."<sup>45</sup>

[39] In my view, the fact that X didn't give her notice of her employment ending or that she wasn't promptly told that a ROE had been issued for her period of employment from

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<sup>42</sup> See GD7-9 and GD7-10.

<sup>43</sup> The Court established or reiterated this principle in the following decisions: *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Somwaru*, 2010 FCA 336; *Kaler*, 2011 FCA 266; and *Mauchel*, 2012 FCA 202.

<sup>44</sup> The Court established or reiterated this principle in the following decisions: *Dickson*, 2012 FCA 8; *Kaler*, 2011 FCA 266; and *Carry*, 2005 FCA 367.

<sup>45</sup> See the Court's decision in *Kaler*, 2011 FCA 266.

August 28, 2020, to June 17, 2021, isn't good cause for the delay in applying for benefits.

[40] The Court tells us that a claimant who delays applying for benefits because their employer failed to issue a ROE or issued one late doesn't have good cause.<sup>46</sup>

[41] So, I don't accept the Appellant's statement that the blame for her late application must be placed on X for not giving her notice of her employment ending in June 2021 or a ROE, and on the Commission for not telling her about the information it had received from X about her period of employment.

[42] I find that it was primarily up to the Appellant to get information from the Commission about her entitlement to benefits after she stopped working on June 17, 2021.

[43] Although the Appellant argues that X should have told her that her period of employment had ended, relying on a decision from the Court,<sup>47</sup> the decision in question doesn't say that an employer has to do this. In that decision, the Court found that the Tribunal had to assess the reasonableness of a claimant's conduct on the facts of the case, which included the fact that the claimant hadn't received a ROE.<sup>48</sup>

[44] I don't accept the Appellant's argument that she wasn't unemployed for the entire period of the delay before applying for benefits, given that she worked from late August 2021 to December 2021. As a result, she believes it was reasonable for her not to apply for benefits while she was working.

[45] Despite the Appellant's argument on this point, the fact is that she didn't work between June 17, 2021, and August 28, 2021, and that nothing prevented her from applying for benefits soon after June 17, 2021.

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<sup>46</sup> The Court established or reiterated this principle in the following decisions: *Brace*, 2008 FCA 118; and *Chan*, A-185-94.

<sup>47</sup> See the Court's decision in *Quadir*, 2018 FCA 21. See also GD6-2.

<sup>48</sup> See the Court's decision in *Quadir*, 2018 FCA 21.

[46] On this point, I note that the Court has also said that good cause has to exist throughout the entire period of the delay for which an antedate is required.<sup>49</sup>

[47] In the Appellant's case, the Commission decided that the period of the delay is from June 20, 2021, to January 1, 2022,<sup>50</sup> even though the file indicates that she requested an antedate on April 11, 2022.<sup>51</sup>

[48] In my view, a reasonable person, under the Act, would have applied for benefits without delay after their period of employment ended or would have gotten information from the Commission about their entitlement to benefits.

[49] I find that the Appellant's situation wasn't exceptional, and nothing prevented her from taking such an initiative.

[50] I find that the Appellant's act of not doing so on time isn't what a "reasonable person" would have done in similar circumstances.

[51] I find that the Appellant was responsible for taking the necessary steps to apply for benefits on time or to get the relevant information from the Commission.

[52] The Appellant's explanations for why she didn't do this on time can't exempt her from the requirements of the Act.

## **Conclusion**

[53] I find that the Appellant hasn't shown that she had good cause for the delay in applying for EI benefits.

[54] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section

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<sup>49</sup> The Court established or reiterated this principle in the following decisions: *Burke*, 2012 FCA 139; *Dickson*, 2012 FCA 8; *Kaler*, 2011 FCA 266; and *Chalk*, 2010 FCA 243.

<sup>50</sup> See GD2-1 and GD3-13.

<sup>51</sup> See GD3-12.