



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2023 SST 935

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

## Decision

**Appellant:** M. B.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (434074) dated October 29, 2021 (issued by Service Canada)

---

**Tribunal member:** Guillaume Brien

**Type of hearing:** On the record

**Hearing date:** April 25, 2023

**Decision date:** May 1, 2023

**File number:** GE-22-3909

## Decision

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

[2] The Claimant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

[3] In addition, he hasn't shown good cause for delaying his application (initial claim).

[4] He also hasn't shown that he qualified for EI benefits on September 6, 2020.

## Overview

[5] The Claimant stopped working on September 5, 2020. He applied for EI benefits on August 17, 2021.<sup>1</sup> This means that he applied 346 days, or 11 months and 12 days, after his employment ended.

[6] On August 18, 2021, the Canada Employment Insurance Commission (Commission) denied him EI benefits because he didn't have enough insurable hours of employment in his qualifying period. He had 391 hours but needed 420.<sup>2</sup>

[7] On September 8, 2021, the Claimant asked the Commission to reconsider.<sup>3</sup>

[8] On October 29, 2021, the Commission told the Claimant that it was upholding its decision. It also denied him the antedate he requested when he asked it to reconsider.<sup>4</sup>

## Social Security Tribunal (Tribunal) file history

[9] On November 24, 2021, the Claimant appealed to the Tribunal's General Division. He asked for an in-person hearing.<sup>5</sup>

---

<sup>1</sup> See GD3-3 to GD3-21.

<sup>2</sup> See GD3-23.

<sup>3</sup> See GD3-25 and GD3-26.

<sup>4</sup> See GD3-41.

<sup>5</sup> See GD2-3.

[10] On December 8, 2021, the Tribunal told the Claimant that there were no in-person hearings for the time being because of the COVID-19 pandemic. It said that he could have a teleconference hearing if he could get access to a telephone. He could contact the Tribunal to provide available dates. His file was being held in abeyance in the meantime.<sup>6</sup>

[11] Since the Claimant didn't respond to the letter, the Tribunal ultimately opted for a question and answer hearing so that he could be heard given the communication constraints he had imposed and the pandemic restrictions.

[12] The Tribunal gave the Claimant until April 18, 2022, to answer the questions. The mail was returned with the indication that it wasn't the Claimant's address, even though his address has never changed to this day.

[13] After multiple attempts to hear the Claimant, the Tribunal decided to make a decision on the record.

[14] The Claimant's appeal was dismissed. He hadn't shown that he had worked enough hours to qualify for EI benefits. He also hadn't shown good cause for applying late.<sup>7</sup>

[15] In response to his appeal being dismissed, the Claimant asked the Tribunal's Appeal Division for permission to appeal. He argued that he had been discriminated against because the Commission never answered the telephone and because he hadn't received anything related to his request for an in-person hearing. He said that he had documents to submit at the hearing and that witnesses and a lawyer would be there.<sup>8</sup>

[16] On December 5, 2022, the Tribunal's Appeal Division decided to allow the appeal and send the file back to the Tribunal's General Division for reconsideration. According to the Appeal Division, the notice of hearing was returned to the General Division as

---

<sup>6</sup> See GD-5 [*sic*].

<sup>7</sup> See AD1A-2.

<sup>8</sup> See AD01 and AD01-B.

undelivered before the General Division made a final decision. So, the Claimant wasn't given an opportunity to be heard or to answer the Commission's allegations.<sup>9</sup>

### **File sent back to the Tribunal's General Division**

[17] As a result of the decision by the Tribunal's Appeal Division, the file was reassigned to me.

[18] To respect the Appellant's choice as to the type of hearing, an in-person hearing was scheduled for 11 a.m. on Tuesday, April 25, 2023.

[19] A notice of in-person hearing dated March 14, 2023, was sent to the Claimant to inform him of his hearing.<sup>10</sup>

[20] The notice of hearing was given to Purolator on Wednesday, March 15, 2023 (departing from Ottawa). Purolator made a first delivery attempt at 10:32 a.m. on Thursday, March 16, 2023. A second delivery attempt was made at 4:17 p.m. later that day. Since the Claimant still wasn't answering, a delivery notice was left at his door telling him that a package was waiting for him at X, located at X. This business is about 4.3 km from his home, according to Google Maps. To date, he has **never picked up the package** despite the delivery notice.<sup>11</sup>

[21] On the day of the hearing, scheduled for 11 a.m. on April 25, 2023, I waited for the Claimant until 11:30 a.m. He never showed up for his hearing.

[22] After carefully reviewing the record, I find that it is appropriate to make a decision on the record given the following circumstances.

---

<sup>9</sup> See the December 5, 2022, decision by the Tribunal's Appeal Division (AD-22-639).

<sup>10</sup> See RGD1-1.

<sup>11</sup> See POS in the record.

– **The Claimant clearly wants to make it impossible to communicate with him**

[23] The Claimant alleges that he has no telephone and doesn't want one either. So, he demands that the Tribunal communicate with him only by Xpresspost, without a signature.

[24] But, despite his allegations, the record shows the following:

- a) The Claimant mentioned attempting to call the Commission 51 times during the pandemic, with no answer.<sup>12</sup>
- b) He had a telephone conversation with the Commission around 8:45 a.m. on October 5, 2021.<sup>13</sup>
- c) He called the Commission back at 10:34 a.m. on October 5, 2021.<sup>14</sup>
- d) He mentioned calling the Commission at least 57 times between late September 2020 and October 5, 2021.<sup>15</sup>
- e) He mentioned finding an old number from his previous claims in August 2021. He said that someone had finally answered.<sup>16</sup>
- f) He mentioned being able to reach an agent at 1-800-431-5595. He then explained his file from A to Z to this agent.<sup>17</sup>
- g) When asked whether he was looking for a job, he replied that the construction commission was supposed to find him work, since he was unionized. Still, he said, [translation] "I make about 20 phone calls a week."<sup>18</sup>

---

<sup>12</sup> GD3-25.

<sup>13</sup> GD3-29 to GD3-31.

<sup>14</sup> GD3-32 and GD3-33.

<sup>15</sup> GD3-32.

<sup>16</sup> GD3-32.

<sup>17</sup> GD3-32.

<sup>18</sup> GD3-32.

- h) He explained that even though the construction commission was supposed to be responsible for finding him a job, he had since called many companies, and he gave the Commission at least eight names.<sup>19</sup>

[25] It is clear from the record that the Claimant **has access to a telephone when he wants to**. His refusal to provide the Commission and the Tribunal with a telephone number clearly shows that he is trying to make any telephone communication between him and the Commission and the Tribunal impossible.

[26] There is **no specific medical circumstance** that could reasonably explain the Claimant's refusal to be contacted by telephone:

- a) He didn't add a medical certificate to his application.<sup>20</sup>
- b) He reported being ready and willing to work and capable of working each day.<sup>21</sup>
- c) He answered "no" when asked whether he had medical reasons for not trying to get information.<sup>22</sup>
- d) He said he had no restrictions (medical work restrictions).<sup>23</sup>

[27] It is clear that **reaching the Claimant by telephone is possible**, but he unreasonably refuses to let the Commission and the Tribunal do so. He said that his union was responsible for finding him work. It is more likely than not that the union can reach him by telephone to recommend new jobs to him.

---

<sup>19</sup> GD3-33.

<sup>20</sup> GD3-8.

<sup>21</sup> GD3-30.

<sup>22</sup> GD3-32.

<sup>23</sup> GD3-33.

[28] In addition, the Claimant says that he often works **outside Quebec**.<sup>24</sup> It is also more likely than not that his potential employers outside Quebec communicate with him by telephone.

[29] What is more, the fact that the Claimant is making it impossible to communicate with him makes the Tribunal highly doubt that he is **available** for work, which is an essential condition for receiving EI regular benefits. But, I don't have to decide that issue in this decision.

[30] After reviewing the record, I find that the Claimant **unreasonably** refuses to let the Commission and the Tribunal communicate with him by telephone.

[31] This shows **bad faith** on the Claimant's part. In refusing to acknowledge communications from the Tribunal and the Commission, he is placing an undue burden on public government institutions, funded by Canadian taxpayers, without good cause.

[32] The Claimant's bad faith is also shown by the fact that although the Tribunal's Appeal Division agreed to send the file back to the General Division, especially because of the Appellant's allegations that he had documents to submit at the hearing, that he had witnesses to call, and that he had a lawyer who would represent him, none of this has been filed in the record so far. No lawyer appeared for the Claimant despite the allegations he made to the Appeal Division.

[33] Furthermore, the file notes show that the Claimant has an undesirable temperament toward the Commission and in his communications in general.<sup>25</sup>

---

<sup>24</sup> GD3-32.

<sup>25</sup> GD3-32.

– **The Claimant isn't acting as a reasonable and prudent person would act in such circumstances**

[34] In unreasonably refusing to be contacted by telephone, and in refusing to accept envelopes addressed to him, the Claimant isn't acting as a reasonable and prudent person would act in such circumstances.

[35] A person who is appealing in good faith would try to make themselves available to be able to resolve their case quickly.

[36] The record shows that the Claimant isn't taking reasonable steps to move his file forward. Here are some examples:

- a) In his reconsideration request, the Claimant mentioned appealing to the Tax Court of Canada (TCC) in October 2020. He also mentioned two other proceedings before the Administrative Labour Tribunal.<sup>26</sup> When the Commission agent explained to him that his file could be kept open pending the TCC ruling if he provided evidence of his legal efforts, he said that he understood and that he would provide the document.<sup>27</sup> A year and a half later, he still hasn't provided anything to the Commission or the Tribunal.
- b) During that same telephone conversation on October 8, 2021, the agent tried to ask his first question about the reason for the delay in applying. The Claimant refused to answer. He said that he wanted to get the questions in writing instead.<sup>28</sup> As requested, the Commission sent him a list of questions, dated October 12, 2021.<sup>29</sup> He never responded to the letter.<sup>30</sup> So, the Commission had no choice but to make the reconsideration decision on the

---

<sup>26</sup> GD3-25.

<sup>27</sup> GD3-35.

<sup>28</sup> GD3-35.

<sup>29</sup> GD3-37.

<sup>30</sup> GD3-40.



record.<sup>31</sup> The Claimant's refusal to answer the oral and written questions is unreasonable and again shows his bad faith.

- c) What is more, during his appeal to the Tribunal's General Division, the Claimant was mailed a series of questions. Once again, he refused to respond. So, the decision was again made on the record.
- d) Lastly, as mentioned earlier, the Claimant recently refused to pick up his notice of hearing. Purolator had delivered it on March 16, 2023. The website shows that the package was still waiting for the Claimant on April 12, 2023. This refusal to receive correspondence isn't reasonable.

[37] So, I find that the facts of the case clearly show that the Claimant isn't acting as a reasonable and prudent person would act to move their file forward. He refuses to answer the relevant questions that would help resolve his case when the burden of proof rests on his shoulders. He also unreasonably refuses to be contacted.

[38] The Claimant seems to be playing a game of cat and mouse, refusing to do his homework and complaining that the Commission and the Tribunal aren't able to contact him. This behaviour shows that he has an undesirable and querulous attitude.

### **Hearing on the record**

[39] In light of all the above, I find that it is in **the interests of justice** to move the file forward and make a final decision on the Claimant's EI claim, which is already several years old.

[40] I also find that in refusing communications addressed to him, and in refusing to answer questions related to his case, the Claimant **doesn't show a continuing intention to pursue his appeal.**

---

<sup>31</sup> GD3-41.

[41] So, I find that it is appropriate that a decision be made on the record so that a claimant can't monopolize finite government resources without good cause.

## Issues

[42] Has the Claimant shown that he has worked enough hours to qualify for EI benefits?

[43] Has the Claimant shown good cause for applying late?

[44] Has the Claimant shown that he qualified for EI benefits on September 6, 2020?

## Analysis

[45] In its initial decision, dated August 18, 2021, the Commission found that the Claimant didn't have enough hours of insurable employment to qualify. He had 391 hours but needed 420.<sup>32</sup>

[46] In its reconsideration decision, dated October 29, 2021, the Commission upheld its decision about his hours of insurable employment. It also denied him an antedate to September 6, 2020, because, at that time, he didn't have enough hours to establish a benefit period for regular benefits or for the EI Emergency Response Benefit.<sup>33</sup>

### Hours of insurable employment upon application (391 hours)

[47] The Commission found, at least twice, that the Claimant had 391 hours of insurable employment when he applied. He needed 420 hours of insurable employment to qualify for EI benefits. So, he didn't have enough hours of insurable employment to qualify.

[48] In his notice of appeal, the Claimant wrote that the 640 unpaid hours he had worked had never been considered.<sup>34</sup>

---

<sup>32</sup> GD3-23.

<sup>33</sup> GD3-41 and GD3-42.

<sup>34</sup> GD2-4.

[49] As mentioned earlier, the Claimant has **never submitted a ruling** by the TCC that would confirm his argument that he has 640 hours of insurable employment instead of the 391 determined by the Commission.

[50] Additionally, the record shows that the Claimant **refused** to let the Commission make an insurability request to the Canada Revenue Agency (**CRA**), even though the CRA has jurisdiction to make decisions about insurable hours.<sup>35</sup>

[51] As case law from the Federal Court of Appeal dictates, I have **no jurisdiction** to determine hours of insurable employment.<sup>36</sup>

[52] After thoroughly analyzing the record, I find that the Claimant has failed to prove, on a balance of probabilities, that he had 640 hours of insurable employment.

### **Antedates**

[53] To get your application for benefits antedated, you have to prove these two things:<sup>37</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).

#### **– Good cause**

[54] An analysis of the record shows the following:

- a) The Claimant refused to answer the Commission's oral questions about his antedate request as part of his reconsideration file.<sup>38</sup>

---

<sup>35</sup> GD3-34.

<sup>36</sup> *Banwait v Metropolitan Toronto Police*, 2001 FCA 326 (CA).

<sup>37</sup> See section 10(4) of the *Employment Insurance Act*.

<sup>38</sup> GD3-35.

- b) Despite saying he wanted to answer the Commission's questions related to his antedate request in writing instead, the Claimant didn't respond to the October 12, 2021, letter that contained those same questions.<sup>39</sup>
- c) The Claimant also didn't answer the March 18, 2022, questions from the Tribunal's General Division about the antedate.

[55] Given the Claimant's repeated refusal to answer questions related to his antedate request, both verbally and in writing, he hasn't proven it is more likely than not that he had good cause for the delay.

– **Qualifying for benefits on the earlier day**

[56] The Claimant also hasn't proven that he qualified for EI benefits on September 6, 2020.

[57] The Commission denied the Claimant an antedate because, on September 6, 2020, he still didn't have enough hours of insurable employment to qualify, even in the hypothetical situation where an antedate would have been granted. The Commission wrote that, at that time, he had 280 hours of insurable employment, not the required 420.

[58] As I explained earlier, I have no jurisdiction to determine the number of hours of insurable employment that the Claimant had. I have to rely on the hours of insurable employment determined by the Commission.

## **Conclusion**

[59] The Claimant hasn't shown that when he applied for EI benefits, he had enough hours to qualify.

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

---

<sup>39</sup> GD3-40.

[61] The Claimant hasn't proven that he qualified for EI benefits on September 6, 2020.

[62] The appeal is dismissed.

Guillaume Brien  
Member, General Division – Employment Insurance Section