



Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 1799

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

**Decision**

**Appellant:** A. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (457738) dated February 18, 2022  
(issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** September 8, 2022

**Hearing participant:** Appellant

**Decision date:** November 13, 2022

**File number:** GE-22-988

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant (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 stopped working because of sickness in March 2021. Manulife paid her short-term disability benefits until March 21, 2021. She started a gradual return to work on June 4, 2021.<sup>2</sup> On July 27, 2021, Manulife confirmed to the Claimant that it would not pay her any benefits after March 21, 2021.<sup>3</sup>

[4] The Claimant applied for Employment Insurance (EI) benefits on November 18, 2021.<sup>4</sup> She would like EI benefits for the period she couldn't work. To get benefits for this period, her application has to be treated as though it was made earlier, on March 21, 2021.<sup>5</sup>

[5] The Canada Employment Insurance Commission (Commission) refused to treat her application as though it was made earlier.

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

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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.

<sup>2</sup> For example, see application for benefits on page GD3-8. See also medical note on page GD3-25, and Supplementary Record of Claim on page GD3-32.

<sup>3</sup> Manulife's initial decision letter is dated June 29, 2021. See page GD3-26. Its second letter is dated July 27, 2021. See page GD3-29.

<sup>4</sup> She applied for EI sickness benefits. See application for benefits, specifically page GD3-4. The application form is dated November 18, 2021. See page GD3-18.

<sup>5</sup> Despite the Commission's note on page GD3-36, and the Claimant's reconsideration request on page GD3-38, at the hearing, the Claimant said she wanted her application antedated to March 21, 2021. My decision would be the same if the antedate were to March 14, 2021.

[7] The Commission says the Claimant didn't have good cause for the entire period of delay. It says a reasonable person in her situation would have looked into the possibility of obtaining EI benefits shortly after she received Manulife's July 2021 denial letter.

[8] The Claimant disagrees. She says that the Commission didn't consider all the evidence.<sup>6</sup> She didn't know she could apply for EI benefits while she was disputing Manulife's denial.

## Issue

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

## Analysis

[10] To get your application for benefits antedated, you have to prove these two things:<sup>7</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).

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

[12] 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>8</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.

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<sup>6</sup> The Claimant's arguments are set out in her notice of appeal. See pages GD2-10 to GD2-11.

<sup>7</sup> See section 10(4) of the EI Act.

<sup>8</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[13] The Claimant has to show that she acted this way for the entire period of the delay.<sup>9</sup> That period is from the day she wants her application antedated to until the day she made her application for benefits. For the Claimant, the period of the delay is from March 21, 2021, to November 18, 2021.

[14] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.<sup>10</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 she must show that there were exceptional circumstances that explain why she didn't do so.<sup>11</sup>

[15] 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.

### **What the Claimant says**

[16] The Claimant says that she had good cause for the delay for these reasons:

- She was sick. She couldn't get professional advice to help her with her claim because of pain, fatigue and dry cough. She had to stay home because of COVID-19 restrictions.
- She was still working on her Manulife application. She didn't know she could apply for EI benefits while continuing to pursue benefits from Manulife.
- Manulife needed information from a lung specialist. She couldn't see the specialist until April 2022.

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<sup>9</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>10</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>11</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

- There were delays in seeing doctors and specialists because of COVID-19 restrictions.
- She didn't know she could apply for EI benefits until her doctor told her so. She applied after she found this out.
- She had financial hardship because she had no income for months.
- The Commission didn't look at all the medical documents.

### **What the Commission says**

[17] The Commission says the Claimant had good cause until July 27, 2021. It says she has **not** shown good cause for the delay from July 27, 2021, until November 18, 2021, because unlike a "reasonable person", she didn't take any action to inquire about the possibility of EI benefits.

[18] It points out that she wasn't prevented from applying because of illness as the medical notes and her statements show she was recovered and working full time from July 2021.

[19] The Commission provided evidence to show that the Claimant applied for EI regular benefits before, and that in a different claim, she called the Commission and was told about another type of EI benefits (EI compassionate care benefits).<sup>12</sup>

### **My findings**

[20] I find that the Claimant hasn't proven that she had good cause for the entire period of delay.

[21] The Claimant had no income from March 21, 2021, until she returned to work in June 2021. In these circumstances, even with an ongoing cough and the COVID-19

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<sup>12</sup> See her 2017 application form starting on page GD3-51. See also page GD3-60.

restrictions, a reasonable and prudent person would have made some telephone inquiries about whether there were other types of benefits available.

[22] I agree with the Commission that given her previous experience with EI benefits, she should have known that she could call Service Canada to ask about the possibility of receiving EI benefits.

[23] As the Claimant didn't make any inquiries until November 2021, it can't be said that she acted as a reasonable and prudent person would have done in similar circumstances.

[24] I accept what the Claimant says about her circumstances at the time. There is no reason to doubt what she said. I understand that the Claimant doesn't have computer skills or children to help her. I understand she was sick and that there were medical delays because of COVID-19.

[25] Despite her situation, the Claimant still could have called Service Canada to ask about possible benefits. And after she was well enough to return to work, she would have been well enough to visit a Service Canada Centre.

[26] As the Claimant didn't do anything to find out about the possibility of EI benefits for all August, September and October 2021, it can't be said that she took reasonably prompt steps to find out her rights and obligations.

[27] I understand that the Claimant didn't know she could apply for EI benefits until her doctor told her to apply.

[28] The courts have stated that there may be cases where inaction and submissiveness are understandable, but to be considered a valid excuse for delay, the circumstances have to be "very exceptional."<sup>13</sup>

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<sup>13</sup> See *Canada (Attorney General) v Caron*, A-395-85.

[29] The Claimant has not proven exceptional circumstances. I considered what she said about not knowing she could apply for two types of benefits at the same time. But not knowing about benefits is not an exceptional circumstance.<sup>14</sup>

[30] The Claimant says the Commission didn't look at all her medical evidence and mistakenly considered the antedate in the context of EI regular benefits, not EI sickness benefits.

[31] I agree that the Commission's initial decision letter reads as though it considered her antedate in the context of EI regular benefits.<sup>15</sup>

[32] Whether the Commission missed medical evidence, or provided a poorly worded initial decision letter, the Claimant still hasn't proven good cause for her delay in applying for EI benefits.

[33] I don't need to consider whether the Claimant qualified for benefits on the earlier day. As the Claimant doesn't have good cause, her application can't be treated as though it was made earlier.

## **Conclusion**

[34] Considering all the circumstances, I find that the Claimant hasn't proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay. This means that her application can't be considered as though it was made earlier.

[35] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section

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<sup>14</sup> The law is clear that ignorance of the law, even when coupled with good faith, is not enough to establish good cause. See *Quadir v Canada (Attorney General)*, A-430-16.

<sup>15</sup> See the Claimant's arguments on page GD2-10 to GD2-11, and the initial decision letter on page GD3-37.