



[TRANSLATION]

Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 821

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

## Decision

**Appellant:** S. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (560300) dated January 5, 2023 (issued by Service Canada)

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**Tribunal member:** Normand Morin

**Type of hearing:** Videoconference

**Hearing date:** May 11, 2023

**Hearing participant:** Decision on the record

**Decision date:** June 9, 2023

**File number:** GE-23-327

## Decision

[1] The appeal is dismissed. I find that the Appellant hasn't shown that she had good cause for the delay in making her renewal claim for Employment Insurance (EI) benefits.<sup>1</sup> This means that her claim can't be treated as though it was made earlier. She should not be granted an antedate of her claim for benefits.<sup>2</sup>

## Overview

[2] On July 2, 2021, after completing a period of employment ending on May 18, 2021, the Appellant made a renewal claim for EI benefits (regular benefits).<sup>3</sup> Her benefit period was reactivated effective June 20, 2021.<sup>4</sup>

[3] On July 5, 2021, she asked the Canada Employment Insurance Commission (Commission) to process her claimant reports from May 19, 2021.<sup>5</sup>

[4] On October 28, 2022, the Commission told her that the renewal of her claim for benefits could not start before June 20, 2021, because she made her claim late and hasn't shown good cause for this delay.<sup>6</sup>

[5] On January 5, 2023, after a reconsideration request, the Commission told her that it was upholding the October 28, 2022, decision about her antedate request.<sup>7</sup>

[6] The Appellant says that she is entitled to benefits from May 19, 2021.

[7] She explains that she stopped working on May 18, 2021, and accepted an offer of employment from another employer on May 20, 2021. The Appellant says that she signed a contract with this new employer on May 26, 2021, and started working for it on June 21, 2021. She argues that the period from when she stopped working on May 18,

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<sup>1</sup> See sections 10(5) and 50 of the *Employment Insurance Act* (Act) and section 26(2) of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> See sections 10(5) and 50 of the Act and section 26(2) of the Regulations.

<sup>3</sup> See GD3-3 to 13.

<sup>4</sup> See GD3-1 and GD4-1.

<sup>5</sup> See GD3-14 to 16.

<sup>6</sup> See GD3-18.

<sup>7</sup> See GD3-18.

2021, to when she started another job on June 21, 2021, wasn't supposed to be that long.

[8] The Appellant explains that she didn't make her claim for benefits by the deadline because she didn't think she would need benefits before starting her new job. She argues that her delay in claiming benefits was also because she was more concerned with the tasks of her new job (for example, completing documents) than with claiming benefits. The Appellant explains that four weeks passed before she received her first pay from her new employer. She says that, after finding that she was going to be longer than expected without pay, she made a claim for benefits on July 2, 2021. The Appellant argues that she doesn't have much knowledge about EI and isn't used to relying on this type of program to support herself. She says that she didn't think claiming benefits late could be a problem. On January 26, 2023, the Appellant challenged the Commission's reconsideration decision. This decision is being appealed to the Social Security Tribunal of Canada (Tribunal).

## **Preliminary matters**

[9] The Appellant wasn't at the videoconference hearing on May 11, 2023. A hearing can go ahead without a claimant if the Tribunal is of the opinion that they got the notice of hearing.<sup>8</sup>

[10] On March 24, 2023, a notice of hearing was emailed to the Appellant to inform her of the hearing.<sup>9</sup> In her January 26, 2023, notice of appeal, the Appellant gave the Tribunal permission to contact her by email.<sup>10</sup>

[11] At the start of the May 11, 2023, hearing, the Tribunal tried to contact the Appellant but was unsuccessful.

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<sup>8</sup> Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

<sup>9</sup> See GD1-1 to 3.

<sup>10</sup> See GD2-3.

[12] Convinced that the Appellant was notified of the May 11, 2023, hearing, I proceeded in her absence, as permitted by section 58 of the *Social Security Tribunal Rules of Procedure*, in this situation.

[13] I waited more than 45 minutes after the May 11, 2023, hearing started to make sure the Appellant was present. Despite this wait, she didn't indicate her presence. Before the hearing, the Tribunal didn't receive any notice from the Appellant that she wasn't going to attend.

[14] The Commission was also absent from the hearing, even though it was duly convened.

[15] In these circumstances, I am making a decision on the record.

## **Issue**

[16] I have to decide whether the Appellant had good cause for the delay in making her renewal claim for benefits so that it can be treated as though it was made earlier.<sup>11</sup>

## **Analysis**

[17] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.<sup>12</sup> You make claims by submitting reports to the Commission every two weeks. Usually, you make your claims online. There are deadlines for making claims.<sup>13</sup>

[18] A renewal claim for benefits is a claim made by a claimant who wants to reactivate a benefit period previously established by an initial claim that was put on hold for four or more consecutive weeks. A renewal claim must be made within one week after the week of unemployment.<sup>14</sup>

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<sup>11</sup> See sections 10(5) and 50 of the Act and section 26(2) of the Regulations.

<sup>12</sup> See section 49 of the Act.

<sup>13</sup> See section 26 of the Regulations.

<sup>14</sup> See section 26(2) of the Regulations.

[19] 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.

[20] To get a claim for benefits antedated, a claimant must show that they had good cause for the delay throughout the entire period of the delay. That period is from the earlier day they want their claim antedated to until the day they actually made the claim.<sup>15</sup>

[21] Good cause is a reason the *Employment Insurance Act* (Act) accepts for the delay. Having good cause means that a claim for benefits can be treated as though it was made earlier.

[22] The Federal Court of Appeal (Court) has established that a claimant who doesn't make their claim on time must 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>16</sup>

[23] 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.

[24] The Court says that having good cause means acting as a "reasonable person" would have acted to find out their rights and obligations under the Act.<sup>17</sup>

[25] The claimant also has to show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the Act.<sup>18</sup> This means that the claimant has to show that they tried to learn about their rights and responsibilities as soon as possible and as best they could. If the claimant didn't take these steps, then they must show that there were exceptional circumstances that explain why they didn't do so.<sup>19</sup>

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<sup>15</sup> See section 10(5) of the Act.

<sup>16</sup> The Court reiterated this principle in *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.

<sup>17</sup> The Court established or reiterated this principle in *Persiiantsev*, 2010 FCA 101; *Kokavec*, 2008 FCA 307; and *Paquette*, 2006 FCA 309.

<sup>18</sup> The Court reiterated this principle in *Somwaru*, 2010 FCA 336; and *Kaler*, 2011 FCA 266.

<sup>19</sup> The Court reiterated this principle in *Somwaru*, 2010 FCA 336; and *Kaler*, 2011 FCA 266.

**Did the Appellant have good cause for the delay in making her renewal claim for benefits so that it can be treated as though it was made earlier?**

[26] I find that the Appellant's reasons for not making her renewal claim for benefits on time don't amount to good cause for such a delay, under the Act.

[27] In this case, the evidence indicates that, on July 5, 2021, the Appellant asked the Commission to process her claim for benefits from May 19, 2021, after she stopped working on May 18, 2021.<sup>20</sup>

[28] The Appellant argues that she had good cause for the delay in making her claim for benefits. Her statements indicate the following:

- a) She didn't make her claim for benefits by the deadline because she didn't think she would need benefits before starting her new job.<sup>21</sup>
- b) She stopped working on May 18, 2021, and accepted an offer of employment from another employer on May 20, 2021. She signed a contract with this new employer on May 26, 2021, and started working for it on June 21, 2021.<sup>22</sup>
- c) The period between her job ending on May 18, 2021, and her job starting on June 21, 2021, wasn't supposed to be that long. She had to start working for her new employer before June 21, 2021. She didn't realize she could claim benefits during that period.<sup>23</sup>
- d) Her delay in claiming benefits was also because she was more concerned with the tasks involved in this new job (for example, completing documents) than with claiming benefits. She didn't think of making her claim.<sup>24</sup>

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<sup>20</sup> See GD3-14 to 16.

<sup>21</sup> See GD3-14 to 16.

<sup>22</sup> See GD3-14 to 16 and GD3-21.

<sup>23</sup> See GD3-14 to 16 and GD3-19.

<sup>24</sup> See GD3-14 to 16 and GD3-21.

- e) After finding that she was going to be longer than expected without any salary from her new employer, she made a claim for benefits on July 2, 2021.<sup>25</sup>
- f) In her January 3, 2023, statement to the Commission, the Appellant indicated that she didn't remember trying to complete her claimant reports on June 9 and 29, 2021, and on July 2, 2021, before making her renewal claim for benefits.<sup>26</sup>
- g) In her notice of appeal, the Appellant said that, around June 2021, she tried to connect to the Commission's reporting system to complete her claimant reports. She wondered why she didn't continue to do so and said she didn't remember exactly.<sup>27</sup>
- h) A friend told her that she might be entitled to benefits during the period she didn't work.<sup>28</sup>
- i) The Appellant says that she doesn't have much knowledge about EI and isn't used to relying on this type of program to support herself. She didn't think to ask the Commission for more information.<sup>29</sup>
- j) She says that she didn't think that claiming benefits late could be a problem. People don't [translation] "master all laws by heart."<sup>30</sup>
- k) On August 1, 2021, a Commission representative she spoke with criticized her about the job she stopped working at in May 2021. The Appellant then asked whether she could be called back because she didn't have all the information asked for in that call. The Commission didn't contact her after

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<sup>25</sup> See GD3-21.

<sup>26</sup> See GD3-21.

<sup>27</sup> See GD2-5.

<sup>28</sup> See GD3-21.

<sup>29</sup> See GD3-21.

<sup>30</sup> See GD2-5 and GD3-21.

that, and a decision was made about her without her being able to express herself clearly.<sup>31</sup>

[29] The Commission argues as follows:

- a) The Appellant's claim for benefits should have been renewed on June 20, 2021, and her antedate request should have been denied on May 19, 2021.<sup>32</sup>
- b) The Appellant didn't act as a reasonable person would have acted in her situation to find out her rights and obligations under the Act.<sup>33</sup>
- c) The Appellant didn't ask about her rights and obligations between May 19, 2021, and July 2, 2021. She contacted the Commission on July 2, 2021, when she made her claim for benefits, and on July 5, 2021, when she asked for an antedate.<sup>34</sup>
- d) Although the Appellant was busy, didn't rely on EI, and had little knowledge of it, her duty was to make her claim for benefits by the deadline, or to ask the Commission about the deadline to do so.<sup>35</sup>
- e) She made a personal choice to delay dealing with her file, without good cause.<sup>36</sup>
- f) She acted carelessly by delaying her renewal claim for benefits.<sup>37</sup>
- g) The Appellant hasn't shown that insurmountable medical or personal conditions prevented her from making a claim for benefits or finding out her rights and obligations when she stopped working in May 2021.<sup>38</sup>

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<sup>31</sup> See GD2-5.

<sup>32</sup> See GD4-3.

<sup>33</sup> See GD4-2 to 4.

<sup>34</sup> See GD4-2.

<sup>35</sup> See GD4-3.

<sup>36</sup> See GD4-4.

<sup>37</sup> See GD4-3.

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



h) The Appellant's communication problems and omissions, as well as the possible misunderstandings she refers to in her notice of appeal, occurred after July 2, 2021—that is, after she applied for benefits. This doesn't retroactively affect the period from May 19, 2021, to July 1, 2021, when the Appellant didn't contact the Commission.<sup>39</sup>

[30] In this case, I find that, despite the reasons the Appellant puts forward, she hasn't shown that she had good cause for the delay in making her renewal claim for benefits or contacting the Commission about this.

[31] The Court established the principle that claimants have a duty to ask about their rights and obligations and the steps that should be taken to protect a claim for benefits.<sup>40</sup>

[32] I find that the Appellant didn't make efforts to do that with the Commission within the time frame to do so.

[33] After she stopped working on May 18, 2021, it wasn't until July 5, 2022, that she asked the Commission to antedate her claim for benefits to May 19, 2021.<sup>41</sup>

[34] I find that the fact that the Appellant didn't think that she would need benefits between the time she stopped working on May 18, 2021, and the time she started a new job on June 21, 2021, doesn't amount to good cause under the Act for delaying her claim for benefits or contacting the Commission.

[35] The fact that the Appellant was more concerned with the tasks she had to perform in her new job (for example, completing documents) than she was with claiming benefits, and that she therefore didn't think or realize that she could claim benefits, also doesn't amount to good cause for her antedate request.

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<sup>39</sup> See GD4-2 and GD4-3.

<sup>40</sup> The Court established or reiterated this principle in *Dickson*, 2012 FCA 8; and *Kaler*, 2011 FCA 266.

<sup>41</sup> See GD3-14 to 16.

[36] Although the Appellant argues that she doesn't have much knowledge about EI, the Court tells us that good faith and ignorance of the Act aren't in themselves good cause for the delay in applying for benefits.<sup>42</sup>

[37] I am of the view that a reasonable person, within the meaning of the Act, would have made a claim for benefits and completed their claimant reports without delay or asked the Commission about their entitlement to benefits.

[38] I note that the *Employment Insurance Regulations* (Regulations) provide for a three-week period to make a claim for benefits.<sup>43</sup>

[39] In the case of a renewal claim, the Regulations say that a claimant who hasn't made a claim for benefits for four or more consecutive weeks and who then makes a claim for benefits must do so within one week after the week of unemployment.<sup>44</sup>

[40] I find that there is no evidence that the Appellant was prevented from making her claim for benefits by the deadline or from asking the Commission about this.

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

[42] The Appellant's explanations for not doing so within by the deadline can't exempt her from the requirements of the Act.

[43] I find that the Appellant hasn't shown that the communication problems with the Commission that she refers to in her notice of appeal are related to her antedate request. I note that she is referring instead to a discussion with a Commission representative on August 1, 2021, about the end of her employment in May 2021.<sup>45</sup>

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<sup>42</sup> The Court established or reiterated this principle in *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Kaler*, 2011 FCA 266; and *Mauchel*, 2012 FCA 202.

<sup>43</sup> See section 26(1) of the Regulations.

<sup>44</sup> See section 26(2) of the Regulations.

<sup>45</sup> See GD2-5.

## **Conclusion**

[44] I find that the Appellant hasn't proven that she had good cause for the delay in making her renewal claim for benefits. Her claim can't be treated as though it was made earlier.

[45] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section