



Citation: *PC v Canada Employment Insurance Commission*, 2023 SST 1785

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

# **Decision**

**Appellant:** P. C.  
**Representative:** J. C.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (566833) dated February 8, 2023  
(issued by Service Canada)

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**Tribunal member:** Katherine Parker  
**Type of hearing:** Teleconference  
**Hearing date:** May 31, 2023  
**Hearing participant:** Appellant's Representative  
**Decision date:** June 7, 2023  
**File number:** GE-23-722

## Decision

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

[2] The Appellant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's claims can't be treated as though they were made earlier.

## Overview

[3] 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>1</sup> You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.<sup>2</sup>

[4] The Appellant made his claims after the deadline. He wants them to be treated as though they were made earlier, on July 31, 2022.

[5] For this to happen, the Appellant has to prove that he had good cause for the delay.

[6] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request. The Commission says that the Appellant doesn't have good cause because a reasonable and prudent person (in a similar situation) would have contacted them about why he didn't receive his access code and how to make a claim for benefits.

[7] The Appellant disagrees and says that he was waiting for the Commission to send him the access code. He made an initial application on August 23, 2022, but he forgot to follow-up after he didn't get the code. He only followed-up in October, 2022, after he made a second application that failed.

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<sup>1</sup> See section 49 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See section 26 of the *Employment Insurance Regulations*.

## **Matters I have to consider first**

### **The Appellant wasn't at the hearing**

[8] The Appellant wasn't at the hearing. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.<sup>3</sup> The Appellant's Representative attended and presented the evidence. So, the hearing took place when it was scheduled, but without the Appellant.

### **Post-hearing documents**

[9] The Tribunal received documents after the hearing from both the Commission and the Appellant's Representative. These were accepted. The Commission provided clarification in its submission and didn't change its representations.<sup>4</sup>

[10] The Appellant submitted new documents with additional testimony intended to further dispute the Commission's evidence. Since this was not presented at the hearing under oath, I won't accept the new information. The new information calls into question the accuracy of some phone calls made to the Appellant when he said he forgot to apply for benefits. Accepting this after the hearing would be prejudicial to the Commission so I will proceed with the decision based on the evidence provided under oath.<sup>5</sup>

## **Issue**

[11] Did the Appellant have good cause for the delay in claiming EI benefits?

## **Analysis**

[12] The Appellant wants his claims for EI benefits to be treated as though they were made earlier, on July 31, 2022. This is called antedating (or, backdating) the claims.

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<sup>3</sup> Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

<sup>4</sup> See GD7-1.

<sup>5</sup> See GD9-2.

[13] To get a claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.<sup>6</sup> The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he had good cause for the delay.

[14] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.<sup>7</sup> In other words, he has to show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[15] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>8</sup> This means that the Appellant has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Appellant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.<sup>9</sup>

[16] The Appellant has to show that he acted this way for the entire period of the delay.<sup>10</sup> That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Appellant, the period of the delay is from August 1, 2022, to September 2, 2022, when he returned to work full-time.

[17] The Appellant says that he had good cause for the delay because he didn't receive an access code form the Commission after he made the initial application for benefits on August 23, 2022. He said in his request for reconsideration:<sup>11</sup>

- he failed to follow an instruction sent to him
- he lacked oversight and knowledge of the process

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<sup>6</sup> See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

<sup>7</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>8</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>9</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>10</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>11</sup> See GD3-36.

- he filed by telephone as soon as he realised
- he doesn't have regular access to a computer so didn't receive the instruction in time

[18] The Appellant's Representative said two decisions were very similar to the Appellant's.<sup>12</sup> She asked me to read two decisions: 1) JF v Employment Insurance Commission 2018 SST 1099<sup>13</sup> and, 2) ZR v. Canada Employment Insurance Commission 2020 SST 783<sup>14</sup>. However, these cases are different.

[19] In the decision for ZR, the claimant had exceptional circumstances and the appeal was allowed on that basis. The Appellant in this case hasn't provided any evidence of exceptional circumstances.

[20] In the decision for JF, the claimant was given inaccurate information that caused the delay. The Appellant in this appeal didn't receive any misinformation.

[21] The Commission says that the Appellant hasn't shown good cause for the delay because the Appellant said he forgot to apply and that the time got away from him.<sup>15</sup> The Commission indicated that the Appellant changed his reasons after the appeal and said he was waiting for a code that never arrived. The Commission relied on the Appellant's evidence provided before the appeal because it was more likely true given it was a spontaneous response.<sup>16</sup>

[22] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he forgot to follow-up before it was too late. The evidence on file shows that it is likely that the Appellant forgot to follow up and didn't know how to go about getting his benefits. He didn't contact the Commission for information and asked a friend/colleague for information instead of contacting the Commission.

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<sup>12</sup> See GD6-7.

<sup>13</sup> See file number GE-18-1155.

<sup>14</sup> See file number GE-20-1461.

<sup>15</sup> See GD3-32 and GD3-34.

<sup>16</sup> See GD4-4.

[23] He said he was waiting for the access code after his initial application, but he didn't provide any evidence that he tried to submit a claim report with the wrong code. If the Appellant made his first report with the wrong code in August, 2022, he would have received information from the Commission on how to fix the problem.

[24] His Representative testified that he usually used the telephone. This is how the errors were fixed in October, 2022, after the second application was made by mistake.

[25] The Appellant made a second application on the advice of a friend/colleague on October 17, 2022. This shows he knew there was something wrong and instead of contacting the Commission, he sought the advice of a friend/colleague.<sup>17</sup>

[26] The Appellant didn't say he had any exceptional circumstances that would have prevented him from following up on his claim. He even sought the advice of a friend/colleague and took their advice before contacting the Commission. This shows that he knew he should fix the problem. He also testified that he simply forgot.

[27] Although his Representative submitted documents to support the appeal, her evidence was related to the appeal and request for reconsideration, rather than to the reasons for the delay.

[28] I find that the Appellant didn't prove he acted as a reasonable and prudent person would have acted in similar circumstances. In other words, he didn't show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

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<sup>17</sup> At the hearing the Appellant's Representative said they got the advice from someone, not sure who, but someone in the Appellant's network. It wasn't the Commission. However, the documents provided for the appeal look as though the Appellant was saying the Commission advised them to reapply. In fact, the Appellant didn't contact the Commission until after he received a code for the second application.

## **Conclusion**

[29] The Appellant hasn't proven that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims can't be treated as though they were made earlier.

[30] The appeal is dismissed.

Katherine Parker  
Member, General Division—Employment Insurance Section