



Citation: *UB v Canada Employment Insurance Commission*, 2023 SST 1374

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

## **Decision**

**Appellant:** U. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (556108) dated November 24,  
2022 (issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** In person

**Hearing date:** June 14, 2023

**Hearing participants:** Appellant  
Appellant's witness,

**Decision date:** July 9, 2023

**File number:** GE-22-4006

## Decision

[1] U. B. is the Appellant. I am dismissing his appeal.

[2] The Appellant hasn't shown he had good cause for the entire period of delay in applying for Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means the Appellant's application can't be treated as though it was made earlier.<sup>1</sup>

## Overview

[3] The Appellant applied for EI benefits on March 8, 2022. He asked the Commission to treat his application as though it was made earlier, on December 3, 2017. This is called antedating (or, backdating) the application.

[4] The Commission says the Appellant qualifies for benefits on the earlier date. But the Commission refused to start his benefits on December 3, 2017, because he doesn't have good cause for the entire period of delay in applying. The Commission says the Appellant didn't take enough steps to learn about his entitlement to EI benefits during the delay.

[5] The Appellant disagrees with the Commission. He appeals to the general division of the Social Security Tribunal.

## Matter I must consider first

### Late documents

[6] In the interest of justice, I have accepted all documents and submissions received after the June 14, 2023, hearing.<sup>2</sup>

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<sup>1</sup> Section 10(4) of the *Employment Insurance Act* (Act) uses the term "initial claim" when talking about an application.

<sup>2</sup> Section 42 of the *Social Security Rules of Procedures* state that after considering any relevant factor, the Tribunal may give a party permission to file documents after the filing deadline.

[7] During the hearing the Appellant requested permission to submit additional evidence in support of his appeal. He argued that he has been dealing with long COVID symptoms so he didn't think to submit all his medical documents before the hearing.

[8] To uphold the principles of natural justice and procedural fairness, I gave the Appellant leave to submit additional documents, providing they were submitted on or before July 5, 2023.

[9] On June 25, 2023, the Tribunal received an email from the Appellant, with additional medical documents attached. In that email, the Appellant set out his medical conditions, how he's having to deal with his brother's abuse, and he states he has "nothing more to add."

[10] The late documents are relevant to the issue under appeal. The Commission was given copies of the late documents. During the hearing, the Appellant provided testimony about these documents and his medical conditions. So, had the Commission attended the hearing, they would have had the opportunity to cross exam the Appellant on this evidence. So, I find there would be no prejudice to either party if the late documents were accepted. Accordingly, I proceeded to determine the merits of this appeal.

## **Issue**

[11] Can the Appellant's application for benefits be treated as though it was made earlier, on December 3, 2017?

## **Analysis**

[12] To get your application for benefits antedated, you have to prove these two things:<sup>3</sup>

[13] You had good cause for the delay during the entire period of the delay. In other words, you have an explanation the law accepts.

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<sup>3</sup> See section 10(4) of the Act.

[14] You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[16] To show good cause, the Appellant must prove that he acted as a reasonable and prudent person would have acted in similar circumstances.<sup>4</sup> In other words, he has to show that he acted reasonably and carefully just as anyone else would have in a similar situation.

[17] The Appellant has to show that he acted this way for the entire period of the delay.<sup>5</sup> That period is from the day he wants his application antedated to, until the day he actually applied. So, for the Appellant, the period of the delay is from December 3, 2017, to February 18, 2022.

[18] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>6</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>7</sup>

[19] 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.

### **Can the Appellant's application for benefits be treated as though it was made earlier, on December 3, 2017?**

[20] No. After careful consideration of the evidence before me, I find the Appellant hasn't shown good cause during the entire period of delay. In this case the period of

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<sup>4</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>5</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>6</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>7</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

delay is four years and two months, from December 3, 2017, to February 18, 2022. Here is what I considered.

[21] At the hearing, the Appellant explained in detail that between 2015 and September 2017 he took periods of sick leave and was on short-term disability. He had a couple of workplace injuries and suffered from stress and depression from caregivers' burnout. He said he provided care for his mother and was dealing with an ongoing court case in India.<sup>8</sup>

[22] The Appellant testified that he had used up his vacation time from October 15, 2017, to December 2, 2017, when he took his terminally ill mother to India. He went on leave without pay from December 3, 2017, to March 2018, while he continued to provide care for his mother in India.<sup>9</sup> He is asking that his claim be antedated to December 3, 2017, for compassionate care EI benefits.

[23] The Appellant said he returned to work full-time, upon his return to Canada in March 2018. He worked and provided care for his mother until she passed away on December 9, 2018. He remained working until the second week of February 2019, when he went to India for three weeks for his mother's final ritual. Upon his return to Canada in early March 2019, he returned to work, until he contracted the COVID-19 virus on December 29, 2019. He returned to work fulltime on May 5, 2020, until May 31, 2021, when he went on long-term disability.

[24] The Appellant submitted medical documents which show he was dealing with ongoing medical conditions between December 29, 2019, to December 2021. Those conditions include COVID-19, surgery to repair testicular torsion, a right ankle injury, cognitive assessment for long COVID symptoms, ankle surgery, and a six-month

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<sup>8</sup> This is supported by the April 14, 2016, Health Link referral detailing how he was dealing with care giver stress while caring for his mother.

<sup>9</sup> The Appellant said that he was in India from December 3, 2017, until mid December 2017, which is when he returned to Canada for 3 weeks to spend Christmas with his family. He went back to India early January 2018 to March 2018. He didn't work during this period as he was on leave without pay.

recovery from ankle surgery ending in December 2021. He underwent gastric by-pass surgery thirteen months later on January 25, 2023.

[25] The Appellant says he has exhausted all his financial resources. He didn't know about compassionate care benefits until his co-worker told him to apply in March 2022. He submitted his application on March 8, 2022.

[26] When asked why the Appellant didn't contact the Commission or Service Canada sooner to determine if there were any benefits or supports that he may qualify for, he said he had never collected EI benefits before, so he didn't know there were compassionate care benefits available. He argued that since contracting COVID-19 on December 29, 2019, he has been dealing with long COVID symptoms, including depression and brain fog.

[27] The Commission says the Appellant hasn't shown good cause during the fifty-two-month delay. The Commission submits that although it uses a more lenient approach for special benefits, the Appellant didn't consider enquiring about possible benefits and did nothing to overcome that barrier, even after his mother passed away.

[28] The Commission submits that there were no real obstacles that prevented the Appellant from filing earlier. The Commission contends that the Appellant didn't act like a 'reasonable person' to verify his rights and obligations under the Act. Specifically, he didn't reach out to any government assistance program, his employer, or the Service Canada 1-800 telephone number or website. He lives approximately 23 minutes away by car from a Service Canada office and he didn't stop in at the office at any time to ask about possible benefits in the four plus years since December 3, 2017.

[29] I accept that the Appellant has shown good cause during two periods of the delay, but not the entire delay. First, from December 3, 2017, to March 2019, the Appellant was suffering from what he called caregiver burnout and depression while he provided care for his mother until she passed away on December 9, 2018. Then from December 10, 2018, until March 2019, when he was dealing with the emotional stress

of making funeral arrangements in Canada and attending his mother's last rituals in India.

[30] Second, the Appellant has shown good cause for the delay during the period from December 29, 2019, to December 2021. During this period, he was dealing with the effects of COVID-19, the symptoms of long COVID, testicular and ankle surgery, and the stress from recovering from those injuries and surgeries. He was approved for long-term disability and his last day paid by his employer was May 31, 2021.

[31] Specifically, the Appellant hasn't shown good cause during the period from March 2019 to December 29, 2019. There were no extraordinary circumstances during these periods that prevented the Appellant from seeking out information about his entitlement to EI benefits, from contacting the Commission, searching on-line or applying for benefits. The Appellant readily admits that he was working full-time during this period. He says he just didn't know there were compassionate care benefits available.

[32] I am truly sympathetic with the Appellant's situation, but even if I find his arguments about his physical and mental health issues to be exceptional circumstances contributing to his delay in applying for EI benefits, those events didn't happen all at the same time or during the entire period of delay. Instead, they occurred prior to March 2019, and after he contracted the COVID-19 virus on December 29, 2019.

[33] Although the Appellant argued the court case brought against him by his brother caused him stress, this is not an extraordinary or exceptional circumstance that prevented him from seeking out information or applying for EI benefits. Even though he has had to attend court in India and may have been required to contact his lawyer to follow up on that case, I don't accept that the court case explains the delay in applying for EI benefits for the duration of the lengthy delay. The Appellant was in Canada and able to return to work full-time, during periods of the delay, while managing this court case.

[34] After careful consideration of the totality of the evidence before me, I find the Appellant hasn't proven he had good cause for the entire period of delay in applying for EI benefits. He hasn't shown he took reasonably prompt steps to learn more about his rights. Even though he says he didn't know about compassionate care benefits, there weren't exceptional circumstances that prevented him from contacting the Commission or Service Canada to ask for information, or from looking on-line to see what new benefits were being offered.

[35] Good cause for delay is not the same as having a good reason, or a justification for the delay. An antedate is not a right of every Appellant but is an advantage for which they must qualify. The courts have said it is an advantage that should be applied exceptionally. The obligation to promptly apply for benefits is seen as very demanding and strict.<sup>10</sup> This is why the "good cause for delay" exception is cautiously applied.

[36] The law says the Appellant has to prove that he took reasonably quick steps to learn about his rights. The Appellant hasn't shown he did this.

[37] As set out above, the Appellant hasn't shown that his circumstances were exceptional during the entire period of delay. Ignorance about EI benefits isn't an exceptional circumstance. Nor is good cause shown if you don't take prompt steps to learn more about the EI program.<sup>11</sup> This means the Appellant hasn't shown good cause for the delay in applying for EI benefits.

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

[39] As previously stated, I am truly sympathetic to the Appellant's circumstances. But my decision is not based on financial hardship or humanitarian reasons. Instead, my decision is based on the facts before me and the application of the EI law. There are no

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<sup>10</sup> See *MR v Canadian Employment Insurance Commission (CEIC)*, 2019 SST 1292.

<sup>11</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336.



exceptions and no room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>12</sup>

## **Conclusion**

[40] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

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<sup>12</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.