



Citation: *MC v Canada Employment Insurance Commission*, 2023 SST 1734

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: M. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (566738) dated January 30, 2023 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: May 29, 2023

Hearing participants: Appellant

Decision date: August 2, 2023

File number: GE-23-579

Decision

[1] **I'm dismissing the Claimant's appeal.** This decision explains why.

[2] The Claimant hasn't shown that he had **good cause** for his delay in applying for benefits **throughout the period of his delay**. In other words, he hasn't given an explanation that the law accepts.

[3] This means that **the Claimant's application can't be treated as though he made it earlier**.

Overview

[4] The Claimant applied for Employment Insurance (EI) regular benefits on September 22, 2022. He's now asking that his application be treated as though he made it earlier, on November 18, 2021. The Canada Employment Insurance Commission (Commission) has already refused his request.

[5] To decide the Claimant's appeal, I must first determine whether he had good cause for applying for his benefits late. To get an antedate, you must show good cause.

[6] The Commission says the Claimant didn't have good cause since a reasonable person in his situation would have followed up on his benefits much earlier.

[7] The Claimant says he tried applying in November and December 2021 but got an error message. He says when he called the number on the message, he was told this was due to a problem with his Social Insurance Number (SIN) and he spent months fixing this.

The issue I must decide

[8] Can the Claimant's application for benefits be treated as though he made it earlier, on November 18, 2021? This is called **antedating (backdating)** an application.

The post-hearing documents I considered

[9] After the hearing, I asked the Commission if it had information on attempts by the Claimant to apply for benefits in November or December 2021, or any records of

conversations with him about either his SIN or his benefits.¹ The Commission replied that it has no further information in its records.

[10] The Claimant then submitted additional information about his attempts to file a claim in November 2021. I gave him the chance to resubmit this information since it was illegible. I accepted his resubmitted documents as relevant to his appeal and shared them with the Commission, but it didn't respond by my deadline of July 28, 2023.

Analysis

[11] To get your application for benefits antedated, **you must prove two things:**²

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).

[12] The main arguments in this case are about whether the Claimant had good cause for his delay in applying for EI, so I'll start with that issue.

[13] To show good cause, the Claimant must prove that he **acted as a reasonable and prudent (careful) person would have done in similar circumstances.**³

[14] The Claimant must show that he acted this way **for the entire period of his delay.**⁴ The delay starts on the date he wants his application antedated to and ends on the day he applied for benefits. So, **his delay is from November 18, 2021, to September 22, 2022.** That's a delay of more than 11 months.

[15] The Claimant must prove that he took **prompt steps to understand his entitlement to benefits and what he had to do to get them.**⁵ This means he must

¹ See the Investigation and Report request on page GD6-1. The Commission's response is in the GD7 file.

² Section 10(4) of the *Employment Insurance Act* (EI Act) sets out the rules for an antedate.

³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ See *Burke*, above.

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

show that he **tried** to learn about his rights and responsibilities as soon as possible and as best he could. If he didn't take these steps, he must show that there were **exceptional circumstances** to explain his inaction.⁶

[16] The Claimant must prove good cause on a balance of probabilities. This means he must show **it's more likely than not** that he had good cause for his delay.

[17] **The Claimant says he had good cause** because he tried to file a claim on November 18, 2021, and again on December 10, 2021, but his claims didn't go through. He says when he called the Commission, it said they didn't go through due to a problem with his SIN. He submitted a letter he received in January 2022 about his SIN.

[18] The Claimant argues that his efforts to sort out his SIN and birth certificate issues during the months of his delay should be seen as good faith efforts to follow up on his EI.

[19] The Claimant says he tried to call the Commission many times, but the wait times were too long. He says going to Service Canada meant having to line up outside in the winter with no guarantee he'd be seen before the office closed. He says when he did get in, he was told he'd need a new birth certificate to fix his SIN. He spent months getting this document. Then he lost it and had to apply for a new one. His trip to Italy delayed this.

[20] The Claimant first told the Commission he'd been unsure if he could apply for EI while he was getting a wage continuance.⁷ At the hearing, he denied that this delayed him.

[21] **The Commission says the Claimant didn't show good cause** because there's no evidence that he made an application or asked specifically how to apply for EI. It says there'd be no need for him to have a SIN to apply for benefits; the application specifically states this. It says there'd be no need for him to get a new birth certificate to apply either.

The Claimant didn't show good cause

[22] I find, on a balance of probabilities, that the Claimant didn't show good cause for his delay in applying for benefits. I find that a reasonable and careful person would have

⁶ See *Somwaru*, above; and *Kaler*, above.

⁷ See the antedate request on page GD3-16 and records of his call with the Commission on page GD3-17.

kept trying to call or visit the Commission when months went by without progress on his benefits. The evidence doesn't show that he did this **throughout the period of his delay**.

The Claimant's evidence

[23] The **unfinished application** that the Claimant first submitted as proof that he tried to apply for benefits in November and/or December 2021, is marked as "last modified" on October 31, 2022.⁸ So, this isn't the application that he tried to file in 2021.

[24] The **warning message** shows that the Claimant was locked out of his Service Canada account on November 17, 2021.⁹ He says: "I'm not saying the error message ... is the direct product of my EI application failures as I don't recall for sure, but it was generated as part of my efforts to resolve my EI application access."¹⁰

[25] So, I find it's more likely than not that the Claimant tried to file an application for benefits on November 17, 2021. There's no evidence that he tried to file another online application in December 2021. And if he was locked out of the online system due to an unresolved issue with his SIN, he wouldn't have been able to try again until it was fixed.

[26] The Claimant's **phone records** shows that he called the Commission four times in January 2022.¹¹ Three of these calls indicate long wait times. There's no evidence of any more attempts to call the Commission until just before he applied for EI.

[27] The Claimant's **letter about his SIN** dated January 8, 2022, doesn't refer to a processing problem with an EI application. It only shows there was a problem processing his application for a SIN.¹² Birth certificate issues related to getting a new SIN are also irrelevant since you don't need one to apply for EI. You only need to give your date of birth.

[28] The Claimant says someone at "Canada.ca" told him in a **phone call** that his online EI application failed due to a SIN issue. But I can't tell which of the Commission's departments he reached or what he was told, since there's no record of what was said.

⁸ See page GD10-8.

⁹ See the GD10 file.

¹⁰ See page GD09-1.

¹¹ See page 10-7

¹² See the letter from Service Canada regarding an application for a SIN on page GD3-30.

[29] The Claimant argues in a **post-hearing submission** that there's no evidence other ways of applying for EI (aside from an online application) "would have been processed successfully without my underlying SIN error first being corrected."¹³

[30] But, as noted on the EI application form, if there's information on your application that doesn't match your SIN details, this "**may cause a delay** in the processing of your claim."¹⁴ The application **doesn't say** that a problem with your SIN will stop your EI application from going through.

[31] So, the problem with the Claimant's SIN was likely related to a different issue. I can't speculate on what that issue was based on the limited evidence before me.

My findings

[32] **The Claimant hasn't met his burden of proof to show good cause** for his delay since he hasn't shown that he took action **throughout the period of that delay**.

[33] I find that a reasonable and careful person would have done more during an eleven-month delay to try to understand his benefits and what he must do to protect them.

[34] The Claimant hasn't shown **prompt action** to respond to the error message dated **November 17, 2021**. His phone records show four attempts to call the Commission, but those efforts only start in **early January 2022**. The last attempt was on January 6, 2022.

[35] The Claimant also hasn't shown that his attempts to contact the Commission were **sustained** throughout the months of his delay. I've noted his testimony that he tried to call again but the waits on hold were excessive. He's said that he visited a Service Canada centre in January and March 2022, but it was hard to keep going in the winter due to long lines to get inside the building when entry that day wasn't even guaranteed.

[36] I acknowledge these difficulties but the Claimant's delay in getting answers about his benefits went well beyond the winter months. He's reported other reasons for his delay during the summer that had nothing to do with difficulty reaching the Commission.

¹³ See the Claimant's submissions on page GD8-1.

¹⁴ See the benefit application example on page GD2-18.

[37] The Claimant says he ordered a new birth certificate, which arrived at the end of May 2022.¹⁵ But then he lost it and had to reapply. He says he could only reapply later in the summer since he left for a trip to Italy. So, that delay was due to his vacation plans.

[38] The Claimant argues that the actions he took to correct his SIN problem show good faith efforts to advance his EI claim. He says **he didn't specifically ask if there was another way to apply for EI** on the occasions when he managed to speak to the Commission. But he argues that the Commission should have told him he could still apply for EI despite error messages about his SIN.

[39] It would have helped if the Commission had volunteered that information, but the Federal Court of Appeal (FCA) says **ignorance of the law isn't enough to show good cause**, even if you act in good faith.¹⁶ FCA decision are binding, so I must follow them.

[40] This means that the Claimant can't show good cause for his delay on the basis that he lacked information on how to apply for EI when his online attempt failed.

[41] I acknowledge that long wait times to speak to the Commission can be frustrating, but you have to persevere to find the information you need. The calls the Claimant made in January 2022, and his visits to a Service Canada office in the winter of 2022, don't cover the eleven months of his delay. He could also have searched online for answers to the difficulties he was facing or made an eService request for more information.

[42] I considered the Claimant's argument that the Commission **misinformed** him when it told him that an issue with his SIN stopped his EI claim going through. He argues that the Tribunal has previously allowed an appeal due to misinformation.¹⁷

[43] But the circumstances in the appeal the Claimant cited were different. In that appeal, the Tribunal found that the claimant's exceptional life circumstances excused his inaction. Those unique circumstances don't apply to the Claimant in this appeal.

¹⁵ See GD3-17.

¹⁶ See *Canada (Attorney General) v Albrecht*, A-172-85, and *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

¹⁷ See *DF v Canada Employment Insurance Commission*, 2022 SST 484.

[44] As well, the FCA says even if the Commission hasn't given clear information, **the law still applies**. FCA decisions supersede Tribunal decisions, so I must follow them.

[45] **The law says** you show good cause for your delay by acting as a reasonable and careful person would have done in your situation. The Claimant made some efforts soon after his EI application failed, but he didn't sustain those efforts during the months of his delay as a reasonable and careful person would have done. This is illustrated by his delay in the summer of 2022 reapplying for his birth certificate despite seeing that document as crucial to addressing his SIN issues and, thereby, his problems with EI.

The Claimant had no exceptional circumstances

[46] The Claimant reported no exceptional circumstances to excuse him from the requirement to act as a reasonable and careful person would have done in his situation. So, he **can't show good cause for his delay**.

[47] As a result, the Claimant's application **can't be treated as though he made it earlier**, on November 18, 2021. This means that I don't need to consider whether he qualified for benefits on that earlier date.

[48] The Claimant argues that he's paid into EI for over 30 years and shouldn't lose benefits over missing a deadline. But EI is an insurance plan. As with other insurance plans, you not only pay into the plan. You must also meet all its conditions and deadlines. The Claimant didn't meet these conditions since he didn't show good cause for his delay in applying for benefits throughout the period of his delay.

Conclusion

[49] The Claimant hasn't proved that he had good cause for his delay in applying for EI benefits. So, he **can't get an antedate** to his claim.

[50] This means that I must dismiss the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section