



Citation: *TC v Canada Employment Insurance Commission*, 2024 SST 274

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

## **Decision**

**Appellant:** T. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (0) dated February 9, 2024  
(issued by Service Canada)

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**Tribunal member:** Nathalie Léger

**Type of hearing:** Teleconference

**Hearing date:** March 14, 2024

**Hearing participant:** Appellant not present.

**Decision date:** March 18, 2024

**File number:** GE-24-643

## 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 claim can't be treated as though it was 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 submitted a renewal application on September 29, 2022, for regular benefits. He wants it to be treated as though it was made earlier, on August 21, 2022. For this to happen, the Appellant has to prove that he had good cause for the delay.

[5] 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 he did not contact Service Canada to verify his rights soon enough, as would have done a reasonable person placed in the same situation.

[6] The Appellant disagrees and says he was too busy packing his house to move to where his new job was located to apply sooner. He says that he tried to file his report to reactivate his claim but that it did not work.

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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*.

## **Matter I have to consider first**

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

[7] 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> I am confident that the Appellant got the notice of hearing because it was sent electronically to him, and no error message was received by the Tribunal. Also, a voicemail was left for him on February 29, 2024, to remind him of the hearing. Finally, the Tribunal's help desk tried to call him on the morning of the hearing and left a message. The Appellant never called back. So, the hearing took place when it was scheduled, but without the Appellant.

### **Issue**

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

### **Analysis**

[9] The Appellant wants his claim for EI regular benefits to be treated as though it was made earlier, on August 21, 2022. This is called antedating (or, backdating) the claim.

[10] 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>4</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.

[11] 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>5</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.

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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 *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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

[12] 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>

[13] The Appellant has to show that he acted this way for the entire period of the delay.<sup>8</sup> That period is from the day he wants his claim antedated until the day he made the claim. So, for the Appellant, the period of the delay is from August 21, 2022, to September 29, 2022.

[14] The Appellant says that he had good cause for the delay because he quickly got a new job in another town after being laid off. That meant he had to find a new place to live, pack his things, organize the move, etc. He was therefore too busy to make his claim earlier.<sup>9</sup>

[15] He also thought he could just continue with his sick claim but when he tried to do his report on September 29, 2022, he couldn't. He called Service Canada and was told to apply for a new claim, which he did. He did not know he had only 4 weeks to make his claim.<sup>10</sup>

[16] The Appellant also said he contacted the Commission about his options many times between May 2022 and September 2022 and that he tried to login before September 29, 2022. The Tribunal therefore asked the Commission to provide any notes or recorded contacts between the Appellant and the Commission and any attempted logins.<sup>11</sup>

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<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.

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

<sup>9</sup> See GD2-5, GD3-18 and GD3-22.

<sup>10</sup> See GD3-22.

<sup>11</sup> See GD5-1.

[17] The Commission provided its report a few days later explaining it had no records or notes of communications with the Appellant before September 29, 2022, and no records of attempted logins before that date.<sup>12</sup>

[18] The Commission says that the Appellant hasn't shown good cause for the delay because there is no evidence on file that the attempted to contact Service Canada before submitting his application on September 29, 2022.<sup>13</sup> It also says that there is constant jurisprudence to the effect that ignorance of the law does not constitute good cause to file a claim late. Because there is no evidence that the Appellant tried to ascertain his rights or act in any other way to obtain benefits before September 29, 2022, it cannot be said he acted like a reasonably prudent person would have done in the circumstances.

[19] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because the only reason he mentioned to explain the delay was that he was busy preparing his move to another location. This does not constitute a good cause under the Act. If the Appellant was able to do everything that is necessary to move, he should have been able to, at a minimum, call Service Canada to enquire about his rights.

[20] Because nothing in the evidence provided shows me that he did try to call Service Canada or to log in to his account before September 29, 2022, I find that it is more probable than not that he did not do so. And since the Appellant was not at the hearing, no additional question could be asked about what steps he took to ascertain his rights. Therefore, I have no choice but to find that he did not show good cause for the delay in filling his claim.

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<sup>12</sup> See GD6-1.

<sup>13</sup> See GD4-3.

## **Conclusion**

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

[22] The appeal is dismissed.

Nathalie Léger

Member, General Division – Employment Insurance Section