



Citation: *TC v Canada Employment Insurance Commission*, 2023 SST 1928

## 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 (575720) dated March 9, 2023 (issued by Service Canada)

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**Tribunal member:** Elizabeth Usprich

**Type of hearing:** Teleconference

**Hearing date:** July 18, 2023

**Hearing participant:** Appellant

**Decision date:** July 31, 2023

**File number:** GE-23-1084

## 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 made his claim after the deadline. He wants it to be treated as though it was made earlier, on August 21, 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 the Appellant doesn't have good cause because he didn't act as a reasonable and prudent person because he should have contacted Service Canada to verify his rights/obligations under the Act.<sup>3</sup>

[7] The Appellant disagrees and says he was trying his best. He stopped working on August 19, 2022. He got offered a new job around August 23, 2022 which required him to move. He says he was busy with his move which is why he didn't apply earlier.

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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*.

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

## Issue

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

## Analysis

[9] The Appellant wants his claim for EI 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 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 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.

[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 to until the day he actually made the claim. So, for the Appellant, the period of the delay is from August 21, 2022 to September 29, 2022.

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<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.

<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.

**Did the Appellant have good cause for the delay?**

[14] I find that the Appellant didn't have good cause for the delay.

[15] The Appellant had an EI sickness benefits claim that ended in May 2022. He went back to work and then he was laid off due to a shortage of work with his employer. The Appellant's last day of work was August 19, 2022.

[16] The Appellant testified he was able to find another job around August 23, 2022. That job didn't start until September 6, 2022. The Appellant testified he had to move from Kanata to Pembroke for the new position.

[17] The Appellant testified he had to pack up a 3-bedroom townhome. He says he was in a hurry and he was also downsizing to an apartment. He says he had to put some things in storage.

[18] The Appellant moved on September 2, 2022.

[19] One of the things he put in storage was his access code number for his online My Service Canada Account (MSCA). At the end of September 2022, he went to his storage unit and found the access code. He tried to use the code to do a claimant's report. He said he could access his account. But he wasn't able to report for a previous time period (August 21, 2022 to September 4, 2022). He says the computer wouldn't allow him to go back that far. So, he phoned Service Canada at that time.

[20] The Appellant also testified he was working four 10-hour shifts in a row and trying to unpack at his new apartment.

[21] The Appellant says he had good cause for the delay because he was busy trying to move. He forgot his code and tried to login. When he phoned Service Canada, he asked for a code but it was the same one as before.

[22] The Appellant says everyone's life gets busy and he wasn't aware of the timeframes for filing his claimant's reports.

[23] He says he was able to login to his MSCA but it wouldn't accept the report.

[24] He says he didn't do anything before September 29, 2022, because he was trying to find his access code.

[25] The Commission says that the Appellant hasn't shown good cause for the delay because he didn't act as a reasonable and prudent person because he should have contacted service Canada to verify his rights/obligations under the Act.

[26] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he could have called Service Canada to find out about his rights and obligations. He also could have looked online to see if he could find information. The Appellant testified that because he was busy with his move, he didn't take any actions.

[27] The Appellant believes he was locked out of his account. Yet, he testified the problem was that he couldn't access the time period he wanted when he was attempting to file online.

[28] All claimants for EI benefits are required to submit their claimant reports within 3-weeks of the period of unemployment.<sup>9</sup> The Commission says they allow people an additional 2-weeks before the report is considered late.<sup>10</sup>

[29] This means that the Appellant had waited so long to file reports that the existing May 2022 claim wasn't accepting reports due to the passage of time.

[30] The Appellant was laid off from work on August 19, 2022. He found another job, but it didn't start until September.

[31] The Appellant couldn't provide a specific date that he contacted Service Canada prior to his application on September 29, 2022. The Commission says they have no records of any communication from the Appellant between May 27, 2022 and September 29, 2022.<sup>11</sup>

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<sup>9</sup> See section 26(1) of the *Employment Insurance Act* Regulations.

<sup>10</sup> See GD6-1.

<sup>11</sup> See GD6-1.

[32] The Commission says the Appellant attempted to complete his claimant reports on September 30, 2022, November 9, 2022, November 10, 2022 and November 23, 2022. The Commission says the Appellant was locked out of his account because he hadn't reported since May 2022.

[33] The Commission says all claimants are required to complete their reports promptly. The application for benefits also says that a failure to complete bi-weekly reports can result in a loss of entitlement and payment.<sup>12</sup>

[34] The Appellant didn't try to find out his rights and obligations under EI at that time. The Appellant says he was busy packing and moving. I appreciate that it was a busy time for the Appellant. I appreciate that he was busy packing his home and trying to move. Yet, I find the Appellant could have attempted to get information to find out what his rights and obligations were. There was nothing preventing the Appellant from making a phone call to the Commission (Service Canada) during this time.

[35] I find that the Appellant delayed in making his claim for benefits for the weeks of August 22, 2022 and August 29, 2022. There was nothing preventing him from promptly filling out claimant's reports for those times. If the Appellant found himself locked out of the system at that time, he could have taken prompt steps to deal with it at that time. Unfortunately, he waited until September 29, 2022 to take any action. I find that the Appellant wasn't so busy that he couldn't have looked into his rights and obligations at that time.

[36] I asked the Appellant if there were any exceptional circumstances that prevented the Appellant from applying earlier. He said there weren't. He didn't understand that he had to apply quickly. I find that there were no exceptional circumstances in this case.

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<sup>12</sup> See, for example, GD3-12.

## **Conclusion**

[37] 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.

[38] The appeal is dismissed.

Elizabeth Usprich  
Member, General Division – Employment Insurance Section