



Citation: *MK v Canada Employment Insurance Commission*, 2022 SST 1179

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

Decision

Appellant: M. K.
Representative: D. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (494234) dated July 15, 2022
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference
Hearing date: October 31, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: December 21, 2022
File number: GE-22-2691

Decision

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

[2] The Claimant hasn't shown good cause for her delay in applying for benefits. In other words, she hasn't given an explanation that the law accepts as good cause. So, **she cannot get an antedate.**

[3] This means that the Claimant's application cannot be treated as though she made it earlier. **It cannot be backdated to October 31, 2021.** It can only begin on March 13, 2022, the day she applied for benefits.

Overview

[4] The Claimant applied for Employment Insurance (EI) benefits on March 13, 2022.¹ She is now asking that her application be treated as though she made it earlier, on October 31, 2021. The Canada Employment Insurance Commission (Commission) has already refused to antedate (backdate) her application.

[5] The Claimant's request for an antedate is now before me. I have to decide if she proved that she had good cause for applying late for her benefits. To get an antedate, you must first show good cause for your delay.

[6] The Commission says the Claimant didn't have good cause because a reasonable person in her situation would have tried to find out earlier about her benefits.

[7] The Claimant disagrees. She says she didn't apply earlier because she has no experience applying for EI, she didn't know that her employer had issued a Record of Employment (ROE) and she was unsure of her employment status.

[8] The Claimant also says the union told her to wait before applying for EI because it was still fighting her "dismissal."²

¹ Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application for benefits.

² The Claimant's Record of Employment says she quit. She disagrees. She says she was dismissed.

The issue I must decide

[9] Can the Claimant's application for benefits be treated as though she made it earlier, on October 31, 2021? **This is called antedating an application.**

Post-hearing documents

[10] The Claimant submitted more documents after the hearing. I accepted them because they were relevant to her appeal. I shared them with the Commission and invited a response but it submitted nothing further.

Analysis

[11] To get your application for benefits antedated (backdated) to an earlier day, **you must prove two things:**³

- a) **that you had good cause during the entire period of your delay.** In other words, you have an explanation for your delay that the law accepts; and
- b) that 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 her delay in applying for benefits. So, I will start with that issue.

[13] To show good cause, **the Claimant has to prove that she acted as a reasonable and prudent (careful) person would have done** in a similar situation.⁴ This means she has to show she acted just as reasonably and carefully as anyone else would have done.

[14] The Claimant has to show that she acted this way **for the entire period of her delay.**⁵ This period is from the day she wants her application antedated to until the day she applied. So, **her delay was from November 1, 2021,⁶ until March 12, 2022.**

³ Section 10(4) of the EI Act sets out the rules for an antedate.

⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁵ See *Burke*, above.

⁶ The Claimant was escorted off the premises when she came in to work on November 1, 2021.

[15] The Claimant has to prove that she took **reasonably prompt steps** to understand whether she could get benefits and when she had to apply for them.⁷ This means she has to show that she tried to learn about her rights and responsibilities **as soon as possible** and as best she could. If she did not take these steps, she must show that there were **exceptional circumstances** to explain her inaction.⁸

[16] The Claimant has to prove this on a balance of probabilities. This means she has to show **it is more likely than not that she had good cause** for her delay.

What does the Claimant say?

[17] The Claimant says she had good cause since she has no experience with EI and was unsure of her employment status. She says she was waiting for a termination letter.

[18] The Claimant also says she hadn't seen her ROE. She didn't know it was issued and didn't know it stated that she had quit.

[19] The Claimant argues the union told her to wait to apply for benefits since it was going to fight her dismissal. She says she then heard nothing from the union from early November 2021, to late January 2022.⁹

[20] The Claimant says her son called the Commission on two occasions to check what she should do about her benefits, but he found the wait times too long to stay on hold.

What does the Commission say?

[21] The Commission says the Claimant did not show good cause because nothing stopped her contacting Service Canada to ask how or when to apply for EI benefits.

[22] The Commission says the evidence contradicts the Claimant's statements that she wasn't given any information or timeframes about her employment status. The Commission says the employer's letter dated October 22, 2021, told her exactly what would happen—and when—if she did not comply with the updated vaccination policy.

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

⁸ See *Somwaru*, above; and *Kaler*, above.

⁹ See GD6-1 to GD6-2. The union told her on January 27, 2022, that it had begun a grievance process.

So, did the Claimant show good cause for her delay?

[23] No. I find that **the Claimant did not show good cause for her delay** in applying for EI. I find that a reasonable and careful person in her situation would have taken steps much earlier to check what to do about her benefits. She had no guarantee that her grievance would be successful.

[24] A reasonable and careful person would not have relied on a union that the Claimant says did not respond to her from early November 2021 until late January 2022.

[25] I accept the Claimant's evidence showing a collective agreement in place from April 1, 2018, to March 31, 2021. I see that it allowed religious accommodations as well as medical exemptions.¹⁰ The employer's vaccination policy, last revised or reviewed by the employer on September 3, 2021, also included religious exemptions.¹¹

[26] But this appeal is only about whether the Claimant showed good cause for her delay in applying for benefits. It is not my role to consider whether her employer should have included religious exemptions in its new mandatory vaccination policy.

[27] I must also consider the following evidence. It shows that the Claimant delayed applying for EI despite knowing, on a balance of probabilities, that her job had ended.

1. When she tried to report to work on November 1, 2021, she was sent home.
2. She was no longer being paid.
3. The employer's letter of October 22, 2021, warned her that this would happen if she didn't comply with the new vaccination policy.
4. The letter also said that as of December 15, 2021, employees without a medical exemption who weren't fully vaccinated "will be considered to have voluntarily taken themselves out of service."¹² The letter said that in those circumstances, the employment relationship would end "without further notice."¹³

¹⁰ See GD5-3.

¹¹ See GD5-4.

¹² See GD2-16.

¹³ See GD2-13.

5. The Claimant says she was working with the union to challenge her dismissal. So it is contradictory to say she was waiting for a termination letter before applying for EI.

[28] This evidence, taken together, tells me the Claimant has no firm grounds to argue that she delayed applying for EI because she didn't know that she was unemployed.

[29] So, I find that the Claimant didn't show good cause for failing to contact the Commission to discuss how, and when, to apply for her benefits.

[30] The Federal Court of Appeal (FCA) has said that **ignorance of the law is not enough to show good cause**, even if you act in good faith.¹⁴ FCA decisions are binding, which means that I have to follow them.

[31] So, I find that the Claimant's ignorance about EI rules and deadlines does not excuse her delay in applying for benefits.

[32] I find this especially true when I consider that she could have got information about EI quite easily, by phone, from a Service Canada Centre or by an online search.

The Claimant had no exceptional circumstances

[33] The Claimant reported no exceptional circumstances to explain why she did not take reasonably prompt steps to make enquiries about benefits and to apply for them.

[34] I acknowledge the Claimant's argument that she faced some language barriers trying to access information about her benefits. But her son, acting as her representative, said he was in charge of making enquiries on her behalf.

[35] So, the Claimant had help in accessing information about EI. But her son says he only tried to call the Commission twice and did not have the time to wait on hold on either occasion. The Claimant only went to a Service Canada Centre for advice for the first time in early March 2022.

¹⁴ See *Canada (Attorney General) v Albrecht*, A-172-85, and *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

[36] This means that the Claimant had no exceptional circumstances to explain her delay. Having a long wait to speak to the Commission does not count as an exceptional circumstance. All claimants have to face a long wait on hold when call volumes are high.

[37] This is why I find that **the Claimant did not act as a reasonable and careful person would have done in her situation**. She did not make much effort to find out about her EI. So, **she did not show good cause** for her delay in applying for benefits.

[38] As a result, the Claimant's application cannot be treated as though she made it earlier. This means that I do not need to consider whether she would have qualified for benefits on October 31, 2021.

Conclusion

[39] The Claimant did not prove that she had good cause for her delay in applying for benefits during the entire period of her delay. So, **she cannot get an antedate of her claim to an earlier date**.

[40] This means that her claim can only begin on March 13, 2022, the date she applied for benefits.

[41] This is why I must dismiss the Claimant's appeal.

Lilian Klein
Member, General Division – Employment Insurance Section