



Citation: *DM v Canada Employment Insurance Commission*, 2023 SST 2015

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

## Decision

**Appellant:** D. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (607668) dated September 6, 2023 (issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** In person

**Hearing date:** November 29, 2023

**Hearing participant:** Appellant

**Decision date:** December 11, 2023

**File number:** GE-23-2865

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown that he had good cause for the delay in applying for benefits. In other words, the Appellant has given an explanation that the law accepts. This means that the Appellant's application will be treated as though it was made earlier.<sup>1</sup>

## Overview

[3] The Appellant applied for Employment Insurance (EI) fishing benefits on July 5, 2023.<sup>2</sup> In his application form, he asked the Commission to start his winter fishing claim on May 28, 2023.<sup>3</sup>

[4] The Canada Employment Insurance Commission (Commission) refused to start his benefit period as of May 28, 2023. It started it as of July 2, 2023.<sup>4</sup>

[5] I have to decide whether the Appellant has proven that he had good cause for not applying for benefits earlier.

[6] The Commission says that the Appellant didn't have good cause because a reasonable person would have applied in a timely manner following the end of his fishing trip on May 27, 2023, but the Appellant didn't do so. The Commission says the Appellant could have contacted it to clarify doubts about whether he would qualify for benefits, but he took no action to inform himself about his rights and obligations under the employment Insurance Act (EI Act).<sup>5</sup>

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

<sup>2</sup> See page GD3-12.

<sup>3</sup> See page GD3-6.

<sup>4</sup> See page GD3-21.

<sup>5</sup> See page GD4-3.

[7] The Appellant says it was a bad fishing season and he was under a lot of stress. He has never missed the deadline before, and he won't miss it again.<sup>6</sup>

## Issue

[8] Can the Appellant's application for benefits be treated as if it had been made on May 28, 2023? This is called antedating (or, backdating) the application.

## Analysis

[9] To get your application for benefits antedated, you have to prove these two things:<sup>7</sup>

- 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).

[10] There is no dispute that the Appellant qualified for benefits on the earlier day.

[11] The issue in this appeal is whether the Appellant had good cause for his delay.

[12] 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>8</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.

[13] The Appellant has to show that he acted this way for the entire period of the delay.<sup>9</sup> That period is from the day he wants his application antedated to until the day

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<sup>6</sup> See page GD2-3.

<sup>7</sup> See section 10(4) of the EI Act.

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

<sup>9</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

he actually applied. So, for the Appellant, the period of the delay is from May 28, 2023, to July 5, 2023. He missed the Commission's four-week rule window by 1 ½ weeks.<sup>10</sup>

[14] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>11</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>12</sup>

[15] 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.

[16] The Appellant says that he had good cause for the delay because he missed the deadline by mistake. It was a stressful fishing season. He forgot to apply in the middle of the fishing season, but applied as soon as it was over.

[17] The Appellant told me he knew there were specific dates for a winter fishing claim. He did not know about the four-week window to apply for EI fishing benefits. He has fished and applied for EI fishing benefits for over 45 years. He has never before missed the deadline.

[18] The Appellant explained that when he wrote on his reconsideration request that he didn't know if he would qualify for EI benefits, he meant that at the very start of the season when fishing was so poor, he didn't know if he could fish enough to qualify. He knew that he would qualify by the time he got his record of employment.

[19] The Commission says that the Appellant hasn't shown good cause for the delay. It says that a poor fishing season doesn't show good cause.<sup>13</sup> It says that the Appellant

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<sup>10</sup> The four-week window is an administrative rule followed by the Commission. The rule is not part of the EI Act. See the Commission's Digest of Benefit Entitlement Principles at [https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-15/qualifying-period.html#a15\\_3\\_1](https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-15/qualifying-period.html#a15_3_1) for more information about this administrative rule.

<sup>11</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>12</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>13</sup> See page GD4-2.

wasn't prevented from applying, he just forgot to do so.<sup>14</sup> The Commission says that the Appellant took no action to contact the Commission about his entitlement to EI benefits until July 5, 2023, which demonstrates that he didn't act as a reasonable person would in his circumstances. It says that his inaction shows a lack of concern or effort to find out whether he would qualify, or what he needed to do.<sup>15</sup>

[20] I find that the Appellant has proven that he had good cause for the delay in applying for benefits. My reasons follow.

[21] Generally, a reasonable and prudent person would have called Service Canada, or gone to a Service Canada Centre, to find out about their entitlement to EI benefits. But in the Appellant's circumstances, I find that he acted like a reasonable and prudent person even though he didn't do this. Without knowing that he had to apply within 4 weeks, the Appellant has applied for EI benefits on time for more than 40 years. In these circumstances, it was reasonable for him to believe that he could apply when he did. It was reasonable for him not to contact Service Canada. Given his experience, even a prudent person wouldn't have thought it necessary to ask Service Canada for more information.

[22] I don't agree with the Commission's assertion that the Appellant's inaction shows a lack of concern or effort to find out if he qualified and what he needed to do. I find that the Appellant acted like a reasonable and prudent person in his situation. Such a person with more than 40 years' experience receiving EI fishing benefits wouldn't have needed to call Service Canada about qualifying for benefits. He knew that the earnings on his record of employment would qualify him for EI benefits.

[23] The Appellant didn't take reasonably prompt steps to learn about his rights and obligations under the EI Act. But that is okay because there are exceptional circumstances to explain his delay. He applied for EI fishing benefits on time for more than 40 years even though he didn't know about the four-week window. Given this

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<sup>14</sup> See page GD4-3.

<sup>15</sup> See page GD4-3 to GD4-4.

decades-long experience, it would have been extraordinary for him to think he needed more information.

## **Conclusion**

[24] The Appellant has proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay. This means that his application for benefits will be treated as though it was made on May 28, 2023.

[25] The EI system, especially as it relates to EI fishing benefits, is complex and changes over time. So, if the Appellant applies for EI benefits again, I encourage him to seek information and advice from Service Canada about his rights and obligations under the EI Act.<sup>16</sup>

[26] The appeal is allowed.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section

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<sup>16</sup> Some information about [EI fishing benefits](https://www.canada.ca/en/services/benefits/ei/ei-fishing/apply.html) can be found on the Government of Canada website <https://www.canada.ca/en/services/benefits/ei/ei-fishing/apply.html>