



Citation: *FP v Canada Employment Insurance Commission*, 2024 SST 506

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

# Decision

**Appellant:** F. P.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (617123) dated September 13, 2023 (issued by Service Canada)

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**Tribunal member:** Edward Houlihan

**Type of hearing:** **IN WRITING**

**Decision date:** January 30, 2024

**File number:** GE-23-3325

## 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 applying for benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's application can't be treated as though it was made earlier.<sup>1</sup>

## Overview

[3] The Appellant worked for his employer until January 31, 2022. The Appellant applied for Employment Insurance (EI) benefits on August 22, 2022. On September 2, 2022, he asked that the application be treated as though it was made earlier, on March 13, 2022. He says he was trying to get his Record of Employment (ROE) The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause because he didn't act like a reasonable and prudent person in his circumstances. He should have contacted Service Canada sooner to find out that he didn't need his ROE to apply for benefits and that he needed to file his claim for benefits within 4 weeks after his last day worked or risk losing benefits for those extra weeks.

[6] The Appellant disagrees. He says that he didn't know that an ROE wasn't required to apply for benefits. He hadn't applied for benefits since 2010.

[7] He says he tried to contact his employer repeatedly for months to get his ROE but didn't get an answer. His employer or Service Canada should have told him the ROE had been filed.

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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.

## Issue

[8] Can the Appellant's application for benefits be treated as though it was made on March 13, 2022? 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>2</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] The main arguments in this case are about whether the Appellant had good cause. So, I will start with that.

[11] 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>3</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 has to show that he acted this way for the entire period of the delay.<sup>4</sup> That period is from the day he wants his application antedated to until the day he actually applied. So, for the Appellant, the period of the delay is from March 13, 2022, to August 22, 2022.

[13] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>5</sup> This means that

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<sup>2</sup> See section 10(4) of the EI Act.

<sup>3</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>4</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

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>6</sup>

[14] 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.

[15] The Appellant says that he had good cause for the delay because he would have applied for benefits sooner, but he hadn't received his ROE from his employer. He tried to contact his employer repeatedly to get his ROE. He says that he was diligent in trying to get the documentation for his application.

[16] He says he hadn't applied for benefits since 2021. He says he didn't know that an ROE wasn't needed to apply for benefits until he contacted Service Canada on August 22, 2023.

[17] He says that he learned from Service Canada that an ROE had been filed by his employer in February 2022. He says that his employer or Service Canada should have told him that the ROE had been filed.

[18] He also says that he wasn't planning on applying for benefits as he thought he would get a new job shortly. He started a new job on September 26, 2023.

[19] The Appellant didn't know of anything that prevented him from applying for benefits.<sup>7</sup>

[20] The Commission says that the Appellant hasn't shown good cause for the delay because he didn't act show that he acted like a reasonable and prudent person would have in the same situation.

[21] The Commission says that the Appellant delayed 7 months trying to get his ROE from his employer. When he finally contacted Service Canada, he learned that he didn't

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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 GD3-24

need an ROE to apply for benefits. He also learned that his employer had filed an ROE in February 2022.

[22] The Commission says that the Appellant could have applied for benefits much sooner if he has simply contacted Service Canada online or by phone to find out about his rights and obligations under the Act. They say there were no exceptional circumstances that prevented him from applying for benefits.

[23] The Commission says that the Appellant could have found out that an ROE wasn't needed to apply for benefits and that his ROE had been filed in February. Also, it isn't Service Canada's responsibility to advise him that an ROE has been filed.

[24] The Commission says that it is commendable that the Appellant says he was looking for work but the fact he was looking for work isn't good cause for the delay.

[25] Also, even though the Appellant thought he needed his ROE to apply for benefits, ignorance of the law isn't good cause for the delay either.

[26] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. He didn't act like a reasonable and prudent person would have in his situation.

[27] The Appellant says he tried to contact his employer repeatedly to get his ROE to apply for benefits. He says he eventually stopped trying to get his ROE.<sup>8</sup>

[28] I find that the Appellant didn't take reasonably prompt steps to find out about his rights and obligations under the Act.

[29] A reasonable person wouldn't ask their employer for an ROE for 7 months before contacting Service Canada. If he had contacted Service Canada earlier, he would have learned that he didn't need an ROE to apply for benefits and that his ROE had been filed by his employer in February.

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<sup>8</sup> See GD3-17

[30] The Appellant says that he hadn't applied for benefits since 2010. He wasn't sure how the process worked. He says that he didn't know an ROE wasn't required to apply for benefits.

[31] I find that the fact that the Appellant didn't know that an ROE wasn't needed to apply for benefits this doesn't constitute good cause for the delay. The cases say that ignorance of the law and good faith doesn't mean that the Appellant has good cause for the delay.<sup>9</sup>

[32] I find that there were no exceptional circumstances that prevented the Appellant from taking steps to understand his obligations under the Act as soon as possible.

[33] The law says that the Appellant is expected to take reasonable prompt steps to understand their rights and obligations under the law unless there are exceptional circumstances why they didn't.<sup>10</sup>

[34] The Appellant didn't know of anything that prevented him from applying for benefits.<sup>11</sup> There was no evidence of exceptional circumstances that prevented him from taking steps to understand his obligations under the Act as soon as possible.

[35] I don't need to consider whether the Appellant qualified for benefits on the earlier day. If the Appellant doesn't have good cause, his application can't be treated as though it was made earlier.

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<sup>9</sup> See *Canada (Attorney General) v. Carry*, 2005 FCA 367

<sup>10</sup> See *Canada (Attorney General) v. Somwaru*, 2010 FCA 336

<sup>11</sup> See GD3-24.

## **Conclusion**

[36] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[37] The appeal is dismissed.

Edward Houlihan  
Member, General Division – Employment Insurance Section