



Citation: *SR v Canada Employment Insurance Commission*, 2024 SST 807

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

## Decision

**Appellant:** S. R.  
**Representative:** Matthew Moyal

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (609235) dated August 31, 2023  
(issued by Service Canada)

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**Tribunal member:** Katherine Parker

**Type of hearing:** Videoconference  
**Hearing date:** December 28, 2023  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** January 2, 2024  
**File number:** GE-23-2712

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that she 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 applied for Employment Insurance (EI) benefits on December 29, 2022. On May 4, 2023, she asked that her application be treated as though it was made earlier, on July 1, 2022.<sup>2</sup> The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Commission says that the Appellant didn't have good cause because her circumstances weren't exceptional, and she didn't inform herself of her rights and obligations. It said that she was negligent and that circumstances weren't beyond her control.<sup>3</sup>

[6] The Appellant disagrees and says that she applied for benefits at the end of June 2022, when the school year ended. She said the Commission made mistakes and lost her application. She believed the pandemic caused serious backlog and that's why she didn't follow up. She thought the claim was being processed.<sup>4</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 GD3-17.

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

<sup>4</sup> See GD2-5.

## Issue

[7] Can the Appellant's application for benefits be treated as though it was made on July 1, 2022? This is called antedating (or, backdating) the application.

## Analysis

[8] To get your application for benefits antedated, you have to prove these two things:<sup>5</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 too).

[9] The main arguments in this case are about whether the Appellant had good cause. So, I will start with that.

[10] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.<sup>6</sup> In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[11] The Appellant has to show that she acted this way for the entire period of the delay.<sup>7</sup> That period is from the day she wants her application antedated too, until the day she actually applied. So, for the Appellant, the period of the delay is from July 1, 2022, to May 4, 2023.

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<sup>5</sup> See section 10(4) of the EI Act.

<sup>6</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>7</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[12] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.<sup>8</sup> This means that the Appellant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Appellant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.<sup>9</sup>

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

[14] The Appellant says that she had good cause for the delay because she was told by colleagues to expect delays. She said she heard that the Commission was slow in processing claims because of a backlog caused by the pandemic. So she waited.

[15] The Commission says that the Appellant hasn't shown good cause for the delay because a reasonable person would have contacted the Commission to inquire about her claim. It said that there is no evidence to show that it contributed to the delay. The Commission couldn't find the claim that the Appellant said she made in the summer.

[16] The Commission said that the Appellant's circumstances weren't exceptional. It said that she was negligent and should have followed up to find out about her claim.

[17] The Appellant said she submitted her claim for benefits in the summer of 2022. But it was lost. I think it is more likely that the claim wasn't completed, and she forgot about it. The Commission said that incomplete claims remain in the system for 72 hours then they are purged.<sup>10</sup> I suspect this is what happened to the Appellant. But we will never know because she never contacted Service Canada, she never submitted a claim report for this period, and she never looked at her personalized Service Canada portal again until it was too late.

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<sup>8</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>9</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>10</sup> See GD4-4 for details about the step-by-step guide online to apply for EI regular benefits.

[18] The Appellant provided a summary of her defence on GD5-2 to GD5-3. I will respond to each item below. We reviewed this at the hearing and the Appellant's Representative confirmed that we covered all items.

- The Appellant claims that there were unprecedented strains on the EI system. She said that her initial application made in the summer of 2022 may have been affected. She doesn't explain how her application may have been affected. She heard this from a colleague at work, it's anecdotal and hearsay. She didn't contact Service Canada to confirm if her application was affected. I would have expected a reasonable person would call to find out the status of her application.
- The Appellant said she was experiencing financial distress and urgency. I accept her testimony and evidence that she needed the income. But a reasonable person would have done something to find out the status of her claim given she needed the money.
- She said she was treated inconsistently by the Commission. This was a misunderstanding of the process. We discussed this at the hearing. I explained that the winter decision was overturned upon reconsideration. The Commission allowed her late reports in December 2022. If the Appellant was confused by this, she had an opportunity to have the Commission explain it. I don't see how it affected her responsibilities to follow up on her summer 2022 application.
- The Appellant said that the absence of a confirmation number doesn't mean she didn't get one. I agree. It's possible that she got a confirmation number and didn't take note of it. The application when it is complete provides detailed information about the claimant's roles and responsibilities. It provides links, guides, and phone numbers to call if the claimant is confused. The confirmation number isn't the cause of the Appellant's failure to follow up.

[19] I find that the Appellant hasn't proven that she had good cause for the delay in applying for benefits because she waited six months before making any inquiries on her claim. Then she waited another four months to request an antedate. During that time she relied on anecdotal information and heresy from colleagues. Colleagues told her to expect delays, so she waited.

- The Appellant said she made a claim in the summer of 2022, but she couldn't provide the date.<sup>11</sup> It was never found in the system. She followed up in December 2022, but only made the request for antedate in May 2023. This might be related to not knowing she could ask for an antedate. But a responsible person would have found out more information in December 2022 when she made her winter claim.
- The Appellant never returned to her Service Canada portal to check the status of her claim before her winter claim in December 2022. Had she checked, she would have been able to find status updates. Or if her claim hadn't been completed, she could have renewed her claim and submitted timely reports.
- During the six months that the Appellant waited, she never submitted a weekly report of her earnings or hours. When you are asking for EI benefits, you have to make a report or claim. She said she didn't know she had to do anything, but the system provides a step-by-step how-to guide. She didn't check to see what was required of her if anything.
- The Appellant provided notarized evidence that she was in dire need of financial assistance during this same period.<sup>12</sup> I would expect that a reasonable person under such circumstances would have contacted the Commission to try and expedite or give priority to her claim given she was suffering financially. This would have been especially important because the

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<sup>11</sup> See GD3-19, paragraph 3.

<sup>12</sup> See GD5-2, paragraph 2.

Appellant believed there was a backlog. I would have expected her to be even more diligent and proactive. But she did nothing to follow up.

- The Appellant never contacted the Commission while she was waiting. She said she was waiting for the Commission to call her (or email her). I think it is unreasonable to conclude that the Commission phones claimants to sort out their application. Especially if the Appellant believed the Commission was backlogged.
- If the Appellant thought the claim would be delayed because of the pandemic, I think it might have been reasonable to wait a few weeks. But it doesn't explain why she would wait six months and never follow-up, or believe that the Commission would be giving her a call.

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

## **Conclusion**

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

[22] The appeal is dismissed.

Katherine Parker  
Member, General Division—Employment Insurance Section