



Citation: *MD v Canada Employment Insurance Commission*, 2024 SST 827

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

# **Decision**

**Appellant:** M. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (641319) dated February 16, 2024  
(issued by Service Canada)

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**Tribunal member:** Paula Turtle

**Type of hearing:** Videoconference

**Hearing date:** May 15, 2024

**Hearing participant:** Appellant

**Decision date:** May 17, 2024

**File number:** GE-24-882

## 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 applied for Employment Insurance (EI) benefits on May 21, 2022. He is now asking that the application be treated as though it was made earlier, on November 21, 2021. 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 person in his situation. A reasonable person would have asked Service Canada or his union or his employer about his rights and obligations under the Act.

[6] The Appellant disagrees. He last collected EI benefits 30 years ago. He thought he needed a record of employment (ROE) to claim benefits. Last time he got benefits, his employer mailed him his ROE. So, he waited for his ROE this time, as well.

## Issue

[7] Can the Appellant's application for benefits be treated as though it was made on November 21, 2021? This is called antedating (or, backdating) the application.

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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.

## Analysis

[8] 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).

[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 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.

[11] 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 November 21, 2021, to May 21, 2022.

[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>5</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>6</sup>

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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.

<sup>6</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[13] 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.

[14] The Appellant says that he had good cause for the delay because he assumed the EI rules were just like the last time he applied for EI. He thought he had to wait for his ROE.

[15] The Appellant said at the hearing that he thought he wouldn't be entitled to EI benefits. He saw news reports that said people like him who lost their jobs because they didn't get the Covid-19 vaccine do not get EI benefits. So, that's another reason he didn't apply earlier.

[16] The Commission says that the Appellant hasn't shown good cause for the delay because he could have found out from Service Canada, or from his union or his employer that he didn't need to get his ROE from his employer to apply for benefits. Or that he should go ahead and apply for benefits, even if he thinks he might not qualify.

[17] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits because he didn't do what a reasonable and prudent person would have done in the circumstances to find out his rights and obligations.

[18] The Appellant's employer put him on unpaid leave in November 2021. Then, his employer let him go in December 2021. The union filed a grievance for him. He talked to the union about his grievance in January.

[19] He could have asked his union about whether he needed an ROE. And about whether he should claim EI benefits. And, he could have contacted Service Canada or his employer to ask about the ROE and his right to benefits.

[20] Instead, the Appellant assumed the rules for getting EI were the same as they were 30 years ago. This is not a reasonable assumption. A reasonable person would have checked the rules to find out if he needed to wait for a hard copy of the ROE from his employer.

[21] And a reasonable person who wants to get EI benefits would apply and see what happens. Even if they're not sure they are entitled to benefits. Or they'd ask their union about it, instead of delaying because they think they aren't entitled.

[22] The Appellant had lots of opportunities to get information. And he didn't take any of them.

[23] I find that the Appellant didn't take reasonably prompt steps to find out whether he needed an ROE. He asked his union rep in May 2022, if he needed an ROE. The rep told him he didn't. He could have asked his union rep sooner if he should apply for benefits even if he thought he wasn't entitled.

[24] If a claimant can show exceptional circumstances that explain why they didn't ask about the rules earlier, then that might excuse their delay. But the Appellant didn't say that any exceptional circumstances existed in his case.

[25] And there is nothing in the file that indicates exceptional circumstances exist.

[26] 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.

## **Conclusion**

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

[28] The appeal is dismissed.

Paula Turtle

Member, General Division – Employment Insurance Section