



Citation: *AC v Canada Employment Insurance Commission*, 2024 SST 858

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

Decision

Appellant: A. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (629253) dated November 21, 2023 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: March 26, 2024

Hearing participant: Appellant

Decision date: May 15, 2024

File number: GE-24-241

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown good cause for his delay in filing his weekly reports to claim employment insurance (EI) benefits. He hasn't given an explanation the law accepts. This means his reports cannot be treated as though they were made earlier.

[3] It also means the disentitlement imposed on the Appellant's claim for failing to file his reports on time must remain.

Overview

[4] In general, to receive EI benefits, you must make a claim for each week that you didn't work and want to receive benefits¹. The law requires you to prove you're entitled to EI benefits for that week².

[5] You make claims by submitting reports to the Respondent (Commission) every two weeks. Usually, you communicate the required information to the Commission by reporting online³. I will refer to this information you are required to submit on an on-going basis as Reports.

[6] There are deadlines for making claims⁴. The law says if you want to claim EI benefits for a particular week of unemployment, you need to submit your Report "within 3 weeks after the week for which the benefits are claimed"⁵

[7] The Appellant applied for EI benefits on February 11, 2023 and established a benefit period starting February 5, 2023⁶. But he didn't submit any Reports.

¹ See section 49 of the *Employment Insurance Act* (EI Act).

² See section 49(1)(a) and (b) of the EI Act.

³ Although claim reports can also be submitted via the Commission's telephone reporting system.

⁴ See section 50(4) of the EI Act says that a claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

⁵ See section 26(1) of the *Employment Insurance Regulations* (Regulations).

⁶ See GD4-1. Generally, a benefit period is the 52-week window in which you can potentially receive EI benefits based on your application.

[8] By the time he contacted the Commission on September 5, 2023, his Reports were considered late, and he was locked out of the online reporting system. He asked to have his Reports treated as though they were made earlier so he could be paid EI benefits from the start of his benefit period in February 2023. This process of backdating is called antedating.

[9] For his Reports to be antedated, the Appellant must prove he had good cause for his delay in filing them⁷.

[10] The Commission denied his antedate request. It decided he couldn't be paid EI benefits from February 6, 2023 to September 1, 2023 because he didn't file his Reports on time⁸ and didn't show good cause for his delay⁹.

[11] The Appellant appealed to the Social Security Tribunal (Tribunal).

Preliminary Matters

The Appellant was outside of Canada during his benefit period.

[12] The Commission made 2 decisions on the Appellant's claim. It said:

- a) He is disentitled to EI benefits from **February 6, 2023 to September 1, 2023** because he didn't file his Reports within the allowed time and didn't show good cause for being late; and
- b) He is disentitled to EI benefits from **May 2, 2023 to September 1, 2023** because he was outside of Canada.

⁷ See section 10(5) of the EI Act.

⁸ Subsection 50(1) of the EI Act says that claimants who fail to file their reports on time are disentitled to EI benefits for the period of the outstanding reports. So these are the weeks of the Appellant's benefit period that he is disentitled to EI benefits as a result of filing his Reports late.

⁹ See the October 24, 2023 decision letter (at GD3-19) and the November 21, 2023 reconsideration decision (at GD3-24).

[13] The Appellant doesn't dispute the disentitlement imposed on his claim for being outside of Canada. He's only asking to be paid EI benefits for the period before he left Canada, namely from February 6, 2023 to May 1, 2023.

[14] For this to happen, his request to antedate his Reports must be granted.

[15] This decision will address whether the Appellant's Reports can be antedated and treated as though they were filed in time for him to receive the benefits he's asking for.

[16] The disentitlement imposed for being outside of Canada remains in effect.

The Commission didn't respond to my request for information.

[17] The Commission decided the Appellant didn't prove good cause for his delay in filing his Reports. But it hasn't identified the period of his delay anywhere in the reconsideration file (GD3) or its submissions in response to this appeal (GD4).

[18] This is problematic.

[19] The legal test for an antedate requires the Appellant to prove good cause *throughout the entire period of his delay*¹⁰. Yet there's no indication of what period the Commission looked at when it decided the Appellant didn't have good cause and denied his antedate request.

[20] The Appellant testified that his claim was under review from the moment he applied for EI benefits on February 11, 2023 because he'd quit his prior employment in November 2022¹¹. He said the Commission was looking into why he quit and made an initial decision to deny his claim. He filed a request for reconsideration of that decision, and his claim was approved on April 28, 2023. He argued this is the earliest he could

¹⁰ See section 10(5) of the EI Act and *Paquette v Canada (Attorney General)*, 2006 FCA 309 and *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹¹ The law says you are disqualified from EI benefits if you voluntarily leave your job without just cause. So if you quit your employment, the Commission investigates the reason for the separation from employment and makes a decision on whether to approve the claim or impose a disqualification on the claim.

have been expected to file his Reports, and that he had good cause for his delay starting from April 28, 2023.

[21] The Tribunal's Rules of Procedure allow me to ask the Commission for information¹².

[22] In light of the Appellant's testimony and submissions, and the Commission's failure to identify the period of the delay, I sent a notice to the Commission asking it provide information and documents related to the administration of the Appellant's claim prior to September 5, 2023, when he asked to antedate his late Reports¹³.

[23] And I specifically asked the Commission to confirm the date the Appellant's claim was approved¹⁴.

[24] The notice was sent to the Commission on March 26, 2024 and it had until April 9, 2024 to provide the requested information. When there was no response from the Commission by April 16, 2024, I extended the deadline to April 30, 2024¹⁵.

[25] The Commission did not respond by the extended deadline, so I proceeded to make my decision.

[26] I accept the Appellant's testimony and make the following findings of fact:

- After the Appellant applied for EI benefits the Commission investigated the reason for the Appellant's separation from employment and decided he couldn't be paid EI benefits because he quit his job. This meant his claim was denied.
- He asked the Commission to reconsider that decision.
- His claim was under review during the reconsideration process.

¹² See section 53 of the Social Security Tribunal Rules of Procedure.

¹³ GD10

¹⁴ See GD10-2.

¹⁵ GD11

- Upon reconsideration, the Commission changed its initial decision that he couldn't be paid EI benefits. This meant his claim was approved.
- The decision to approve his claim was made on April 28, 2023¹⁶.

[27] In support of these findings, I note the Appellant made an affirmation to tell the truth in his testimony and that he answered my questions sincerely and in a way that was spontaneous and forthright. I also note that his testimony was consistent with what he told the Commission when he was first interviewed about his request to antedate his Reports: he said his claim wasn't approved until late April, after an initial denial and subsequent reconsideration¹⁷.

Issue

[28] Did the Appellant have good cause for his delay in filing his Reports to claim EI benefits?

Analysis

[29] For his Reports to be antedated (or backdated), the Appellant must prove he had good cause for his delay in filing the Reports throughout the entire period of the delay¹⁸.

[30] To show good cause, the Appellant must prove he acted as a reasonable and prudent person would have acted in similar circumstances¹⁹. In other words, he has to show he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

¹⁶ When he made his antedate request, the Appellant said his claim wasn't finalized until April 30, 2023 (at GD3-15). During his reconsideration interview, he said his claim was approved on April 28, 2023 (at GD3-22). At the hearing, the Appellant testified that his claim was approved before he left for Croatia and repeated the April 28, 2023 date. In the absence of confirmation from the Commission, I accept April 28, 2023 as the date the Appellant's claim was approved.

¹⁷ See GD3-16.

¹⁸ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act. The Appellant must prove this on a balance of probabilities. This means he has to show it is more likely than not that he had good cause for the delay in filing his Reports.

¹⁹ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[31] The Appellant must also demonstrate he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law²⁰. This means he has to show he tried to learn about his rights and responsibilities as soon as possible and as best he could. And if he didn't take these steps, then he must prove there were exceptional circumstances that explain why he didn't do so²¹.

[32] The Appellant must show he acted this way for the entire period of the delay²².

What is the period of the Appellant's delay?

[33] The law says the period of delay begins on "the earlier day" requested and ends on the day the claim was actually made²³.

[34] The Appellant asked to have his Reports antedated to February 12, 2023²⁴ and to be paid benefits from the start of his claim on February 5, 2023.

[35] But his first Report (to be paid benefits for the week of February 5 – 11, 2023) wouldn't have been accepted on February 12, 2023 because his application for EI benefits was only filed on February 11, 2023 and his claim was under review. It was under review because he'd quit his job, *then* there was a negative decision on his claim (the initial denial), *and then* his claim was under review again when he asked for reconsideration.

[36] In these circumstances, the Appellant's Reports wouldn't have been accepted until his claim for EI benefits was approved²⁵, and that didn't happen until April 28, 2023.

²⁰ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

²¹ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

²² See *Canada (Attorney General) v Burke*, 2012 FCA 139.

²³ Section 10(5) of the EI Act.

²⁴ See GD3-15.

²⁵ There are 2 general statements in the online application form about Reports:

"To prove your eligibility and receive any payment you may be entitled to, you are required to complete bi-weekly reports. Failure to do so may result in a loss of entitlement and payment."
(GD3-11)

[37] So I won't consider February 12, 2023 as "the earlier day" for his antedate.

[38] The law says you have up to 3 weeks to make a claim to be paid for a week of unemployment²⁶.

[39] In the Appellant's case, those 3 weeks can only run from April 28, 2023 because that is the earliest possible date he could have submitted a Report to claim benefits for the week of February 5 - 11, 2023 on his initial claim.

[40] This means the Appellant's first Report was due **by not later than May 19, 2023**, because that date is 3 weeks after his claim was approved on April 28, 2023. After May 19, 2023, the Appellant's Reports are considered late.

[41] The Appellant tried to submit his Reports on September 5, 2023. His account was blocked, so he made his antedate request. But he didn't file his Reports until October 20, 2023²⁷.

"After you apply for EI benefits, you must start completing bi-weekly reports using the Internet or Telephone Reporting Service as soon as you receive your Access Code in the mail. If you are eligible for benefits, no payments can be issued to you until you have submitted bi-weekly reports." (GD3-12)

But when there is a negative decision on your claim (such as a disqualification) and you ask for a reconsideration of that decision (so that your claim is under review) – as happened in the Appellant's case, you cannot file your Reports.

So I believe the Appellant when he says none of the Service Canada representatives he spoke with when his claim was initially denied (for voluntarily leaving his job without just cause) *or* during the reconsideration process told him he was obligated to complete Reports while waiting to see if his claim would be approved or not. I also believe that when he asked if there was anything he needed to do in the meantime, he was told "No". As long as there was a negative decision on his claim and it was under review, the Service Canada agents were correct that there was nothing he needed to do.

But once his claim was approved on April 28, 2023, the Appellant had 3 weeks to file his Reports and get caught up to the reporting date.

²⁶ Unless there have been 4 consecutive weeks without any claims (see sections 26(1) and (2) of the EI Regulations).

²⁷ See GD3-17 and GD3-18. The Appellant testified that it "took another month or so" after his antedate request for him to do his Reports for the period February 6, 2023 to September 2, 2023.

[42] The Commission doesn't identify the period of the Appellant's delay anywhere in the reconsideration file or its submissions in response to the appeal²⁸.

[43] But the law says the delay runs from the earlier date requested until the date the claim was made, and a claim can only be made with the filing of a Report.

[44] I therefore find that May 19, 2023 is the "earlier day" for purposes of determining the period of the Appellant's delay. This was the reporting deadline (the last possible date) for submitting the claim report for the first pay period on his initial claim. Said differently, the Appellant only needed to ask for his Reports to be antedated to May 19, 2023 for them to be considered on time.

[45] This means the Appellant's delay runs from May 19, 2023 (the earlier day) until October 20, 2023 (the day he filed his Reports). This is a delay of 22 weeks.

How does the Appellant explain his delay?

[46] When he made his antedate request, the Appellant explained his delay in filing his Reports as follows²⁹:

- He wasn't aware he had to make Reports.
- His claim was initially denied, and he had to ask for a reconsideration. He had many conversations with multiple Service Canada representations. No one told him that he needed to complete his Reports.
- His claim wasn't approved until late April 2023.
- He left Canada on May 1, 2023 and returned September 1, 2023.
- His phone was on airplane mode while he was outside of Canada, so he never received any messages because his Canadian phone number was inactive.

²⁸ See paragraphs 17 to 27 above.

²⁹ See his antedate request at GD3-15 and his antedate interview at GD3-16

- He was unable to log into his My Service Canada account (MSCA) because of the text message code security system. To log in to his account, a code would have to be sent to his cellphone's Canadian number, but he couldn't access that because he was using a local (European) SIM card.
- When he returned to Canada, he logged into his account and saw his claim was approved.

[47] After his antedate request was denied, the Appellant told the Commission that³⁰:

- He didn't submit his Reports because he was unsure his claim would be approved.
- He had multiple conversations with Service Canada representatives while he was waiting for his claim to be approved, and no one told him he needed to complete his Reports while waiting for his claim to be approved.
- He received the letter with his access code but didn't see the instructions in the letter reminding him to submit his Reports.
- He didn't log in to his MSCA account, check the Service Canada website, or go to his local Service Canada office to inquire.
- Prior to leaving Canada, he'd been calling Service Canada to check the status of his claim and didn't know he needed to complete his Reports while waiting for his claim to be approved. The Service Canada representatives he spoke with should have reminded him to complete his Reports.
- He assumed he couldn't submit his Reports until a decision was made on his claim and he was approved for benefits.

³⁰ See his Request for Reconsideration at GD3-20 and his reconsideration interview at GD3-22.

- His claim was approved on April 28, 2023, but he left Canada without knowing this. Then he couldn't access his MSCA account because his phone was inactive until he returned.

[48] In his Notice of Appeal, the Appellant said³¹:

- He got a letter at the beginning of his claim with an access code. He put the access code in but didn't realize he was supposed to start doing his Reports from that day forward.
- He had more than 5 phone calls with Service Canada trying to get his claim for EI benefits approved.
- Not once did a Service Canada representative say he had to be doing his Reports even though his claim wasn't approved yet. He repeatedly asked if there was anything he needed to do while he waited for his claim to be approved and was advised, "No".
- This is his first time applying for EI benefits³². He didn't notice the requirement on the application form that he was expected to file Reports³³.

[49] At the hearing, the Appellant testified that:

- When he quit his job in November 2022, he had another job lined up to start 2 weeks later. But that job fell through, so he was unemployed and looking for work.
- He applied for EI benefits in February 2023, after his mother told him to apply.

³¹ See GD2-5.

³² See GD5-1.

³³ See GD5-1.

- He asked to have his initial application antedated to coincide with his last day of work in November 2022. This antedate request was denied, and his claim was started as of February 2022.
- The Commission immediately started looking into why he quit and decided to deny his claim because of the quit. He asked for a reconsideration and then there was more investigation into the quit.
- He was sorting out all of these issues on his claim: his request to antedate his initial application for benefits and proving he was entitled to EI even though he'd quit his job.
- He was "going back and forth" with the Commission by phone every week because his claim was under review and he was fighting the denial.
- He wasn't checking his MSCA account because he was "doing everything with the Commission by phone".
- The Commission posted a message in his MSCA account on April 28, 2023 saying his claim was approved. But he didn't see this message because he wasn't checking his MSCA account. He was expecting to get a phone call from the Commission saying they'd made a decision on his reconsideration and his claim was approved.
- While he was waiting for his claim to be approved, he was running out of money.
- He was renting a basement apartment from his cousin, and realized he wouldn't be able to pay the rent for May. He believed his cousin would have told him to leave if he couldn't pay his rent.
- About 2 weeks before the May rent was due, his uncle in Croatia offered him a place to stay and chance to earn some money by working on his farm.

- He decided to go to Croatia to stay with his uncle because he didn't want to be "homeless". He purchased a plane ticket and had less than \$400 to his name when he left Canada for Croatia on May 1, 2023.
- As far as he knew, there was still no decision on his request for reconsideration. He'd called Service Canada a couple of days before leaving Canada and was told there was still no decision.
- This made him think his claim for EI benefits wasn't going to be approved.
- He didn't find out his claim had been approved until after he returned to Toronto on September 1, 2023 and logged in to his MSCA account to see what was going on with his claim. That's when he saw it had been approved on April 28, 2023.
- He called Service Canada and was told he'd have to do his Reports to be paid, and that he'd have to make another antedate request because they were late.
- He made the antedate request, but it "took another month or so" to work out access for him to submit his Reports. He eventually submitted them by phone.

[50] I asked the Appellant why he didn't start filing his Reports when he received the letter with his access code? He answered:

- He didn't read the whole letter.
- When he got the letter, he tried to log in with the code to make sure it worked.
- After that, he phoned Service Canada and asked what the next step was.
- That call led to a lot more phone calls with Service Canada about backdating his initial application and why he quit his job back in November 2022.
- These calls led to more calls when he asked for reconsideration of the Commission's decision to deny his claim.

- The phone calls with Service Canada continued right up until a couple of days before he left for Croatia.
- Not once was he told he should be filing his Reports while he waited for his claim to be approved.

[51] I also asked the Appellant why he didn't check his MSCA account while he was in Croatia? He answered:

- His Canadian phone number was "down", and he couldn't receive texts.
- This meant he couldn't get the security code to log into his MSCA account because that code would be sent by text to his Canadian phone number.
- He was using a European SIM card for local cellphone and internet service.
- He couldn't phone Service Canada from Europe because a long-distance call like that would have been expensive.
- He lived with his uncle, who gave him room and board. He made some money by working on his uncle's farm. When he'd saved up enough money to get on his feet again, he went back to Canada.
- He logged in to his MSCA account shortly after he returned.

Issue 1: Did the Appellant do what a reasonable and prudent person would have done in similar circumstances?

Short answer

[52] No, he did not. The Appellant didn't act reasonably and carefully just as anyone else would have if they were in a similar situation.

My findings

[53] To prove good cause for his delay throughout the 22 weeks between May 19, 2023 and October 20, 2023, the Appellant must show he acted as a reasonable and prudent person in his circumstances would have throughout that period.

[54] The Appellant's circumstances during the delay were:

- He was a first-time claimant when he applied for EI benefits on February 11, 2023. He'd received an initial letter from the Commission with his access code and successfully used this code to log in to his MSCA account.
- He didn't log in to his MSCA account again until September 5, 2023.
- He'd been unemployed since quitting his job in November 2022.
- He'd had multiple phone calls with Service Canada representatives about whether his claim would be approved given that he'd quit his job and still didn't know the answer.
- He was aware the Commission had investigated why he quit³⁴, knew his claim had been denied because of the quit, and was still waiting for a decision on his reconsideration request to see if he could receive EI benefits.
- His financial circumstances had deteriorated to the point where he'd run out of money, was unable to pay his next month's rent, and had decided to leave Canada to live with his uncle in Croatia and earn some money working on his uncle's farm.
- He left Canada on May 1, 2023 and returned on September 1, 2023.

³⁴ The law says that if you voluntarily leave your job without just cause, you are disqualified from receiving EI benefits.

- He didn't phone Service Canada or log in to his MSCA account while he was in Croatia. Nor did he do research online or try to contact the Commission by E-mail.
- He didn't find out his claim was approved on April 28, 2023 until he logged in to his MSCA account again on September 5, 2023.
- He filed his Reports by telephone on October 20, 2023.

[55] To summarize, from May 19, 2023 to September 4, 2023 (which is the majority of the Appellant's delay), he had no idea what the outcome of his request for reconsideration was and was waiting to find out whether his claim would be approved or whether he was still disqualified for voluntarily leaving his job without just cause. His financial circumstances were so difficult that he decided to leave Canada and was relying on his uncle in Croatia for room and board and to earn money by working on his farm.

[56] I find that a reasonable and prudent person in the Appellant's circumstances would have been checking their MSCA account regularly if they were still waiting for a decision on their reconsideration request and to find out whether their claim was approved or not.

[57] Yet the Appellant didn't check his MSCA account once and made no effort to contact Service Canada for updates or to make enquiries between May 19, 2023 and September 4, 2023.

[58] An MSCA account is the primary way the Commission communicates with claimants. Logging in to an MSCA account is also, generally, faster and more efficient than phoning Service Canada and speaking with a representative.

[59] By May 19, 2023 (the start of the Appellant's period of delay), I find that a reasonable and prudent person in the Appellant's circumstances would have been checking their MSCA account **every single day** for updates on the status of their reconsideration request and their claim.

[60] And if they were outside of Canada, I find that a reasonable and prudent person in the Appellant's circumstances would have maintained their Canadian cellphone service (so they would be able to receive the security code required to log in to their MSCA account) – at least until they saw there was a decision on whether their claim was approved or not³⁵. This is especially true if, as the Appellant testified, they were awaiting a phone call from Service Canada about the outcome of their reconsideration request and whether their claim was approved.

[61] If the Appellant had checked his MSCA account on May 19, 2023, he would have seen the notification the Commission posted in his account on April 28th that his claim was approved. He also would have seen a message to start filing his Reports. And he could have filed his Reports online that same day and they would **not** have been considered late. This would have allowed him to be paid EI benefits for the period before he left Canada³⁶.

[62] If the Appellant had checked his MSCA account on any day during the 2 weeks after May 19, 2023, he would have seen that his claim had been approved. He couldn't have filed his Reports, but he could have contacted the Commission by E-mail or phone call to enquire about what to do next³⁷. I understand that phoning from Croatia might have been expensive, but the Appellant would only have needed to speak with a Service Canada representative **once** after May 19, 2023 to make enquires about what steps he needed to take to be paid EI benefits now that his claim was approved³⁸.

³⁵ Which in the Appellant's case would only have been a short time because his claim had been approved since April 28, 2023.

³⁶ Claimants are not entitled to receive EI benefits while they are outside of Canada unless they come within the limited exceptions allowed in section 55 of the EI Regulations.

³⁷ Since his reports would have been late and he likely would have been locked out of the reporting system. However, a Service Canada representative **could have told him then** what the representative told him on September 5, 2023: he needed to do his Reports and he'd have to make an antedate request because they were late. His antedate request could have been made closer to the date his claim was approved and with a shorter period of delay to show good cause for.

³⁸ See footnote 36.

[63] Instead, the Appellant waited until September 5, 2023 to log in to his MSCA account and contact Service Canada about what to do next. This phone call led him to make this antedate request and, eventually, file his Reports on October 20, 2023.

[64] I find that if the Appellant were acting reasonably and carefully as anyone else in similar circumstances would have, he wouldn't have waited so long to do these things. He would have accessed his MSCA account and/or contacted Service Canada by phone or E-mail at least once in the first 2 weeks of his delay (namely, between May 19, 2023 and June 2, 2023); and, having discovered that his claim was approved, would have filed his Reports to claim benefits going back to February 6, 2023 the same day – either online or via the telephone reporting system.

[65] For all of these reasons, I find the Appellant did **not** act as a reasonable and prudent person would have in similar circumstances throughout the period of his delay (May 19, 2023 to October 20, 2023).

[66] This means he hasn't shown good cause for his delay.

Issue 2: Did the Appellant take reasonably prompt steps to find out about his rights and obligations?

Short answer

[67] No, he didn't. The Appellant didn't try to learn about his rights and responsibilities as soon as possible and as best he could.

My findings

[68] I accept that, as a first-time claimant, the Appellant was unfamiliar with the EI program. But it's well established that ignorance of the process, even coupled with good faith, does not constitute good cause under the law³⁹.

³⁹ See *Attorney General of Canada v. Kaler*, 2011 FCA 266, and *Canada (Attorney General) v. Persiantsev*, 2010 FCA 101.

[69] I also accept that the Appellant had made a personal decision to leave Canada on May 1, 2023 because he was still unemployed, couldn't pay his rent for that month, and had an offer from his uncle in Croatia for room and board and farming work that would allow him to save some money and get on his feet again.

[70] But it wasn't reasonable for the Appellant to delay from May 19, 2023 to September 5, 2023 to take any steps to check on what happened with his reconsideration request and, most importantly, find out whether his claim had been approved and if he could receive EI benefits. Especially when he had an access code and knew how to log in to his MSCA account; and he'd been unemployed since quitting his job in November 2022, had depleted his savings, and had no other sources of income until he arrived in Croatia on May 1, 2023 to work on his uncle's farm.

[71] I find that if the Appellant was trying to learn about his rights and responsibilities as soon as possible and as best he could, he would have logged in to his MSCA account or phoned Service Canada within the first 2 weeks of his delay (namely, between May 19, 2023 and June 2, 2023) to check for an update and (upon being advised his claim had been approved on April 28, 2023) find out what he had to do to get paid on that claim⁴⁰. Especially since he'd been in regular contact with Service Canada for 3 months prior to leaving Canada, following up on his reconsideration request and enquiring about the status of his claim.

[72] But he failed to take any steps to verify his entitlement and his obligation to file his Reports until September 5, 2023.

[73] This shows he did **not** try to learn about his rights and responsibilities as soon as possible and as best she could throughout the period of his delay (May 19, 2023 to October 20, 2023).

[74] And it means he hasn't shown good cause for his delay.

⁴⁰ See footnote 37 above.

Issue 3: Were there exceptional circumstances that excuse the Appellant from taking reasonably prompt steps?

[75] No, there were not.

[76] The EI program expects claimants who wish to receive regular EI benefits to balance their personal responsibilities with actively searching for work and submitting their Reports on time. These things are not considered exceptional circumstances.

[77] The Appellant had been unemployed and searching for work since November 2022. By April 2023, he was running out of money and unable to pay his next month's rent. He decided to leave Canada and live with his uncle in Croatia to save on living expenses and earn some money working on his uncle's farm. His choice to do so is considered managing his personal responsibilities and not an exceptional circumstance.

[78] I see no evidence of anything extraordinary during the period of his delay (May 19, 2023 to October 20, 2023) that prevented him from logging in to his MSCA account or phoning Service Canada to check on whether his claim was approved or completing his Reports.

[79] Being outside of Canada did not prevent him from logging in to his MSCA account or contacting Service Canada by phone or E-mail to understand his rights and obligations.

[80] Nor did his decision to place his cellphone on airplane mode and/or de-activate his Canadian cellphone number and use a European SIM card (thereby restricting himself from receiving texts with the security code necessary to log in to his MSCA account).

[81] The Appellant had phone and internet access while he was in Croatia and failed to utilize either to check on the outcome of his reconsideration request and, most importantly, find out whether his claim had been approved and if he could receive EI benefits – and how to do so. His choice to adjust his cellphone set up to save money is considered managing his personal responsibilities and not an extraordinary factor that

prevented him from logging in to his MSCA account or contacting Service Canada by phone or E-mail during his delay.

[82] I therefore find there were no exceptional circumstances that excused the Appellant from taking reasonably prompt steps to understand his rights and obligations under the EI Act.

Issue 4: What if the outcome of this appeal seems unfair?

[83] The Appellant's claim was initially denied. He asked the Commission to reconsider its decision not to pay him EI benefits and was successful in getting that decision overturned when his claim was approved on April 28, 2023. But he didn't find this out until September 5, 2023. He asked me to consider that he's only asking for EI benefits for the time before he left Canada, which is the time it took to get his claim approved.

[84] I acknowledge the Appellant's disappointment at not receiving EI benefits after being successful on his reconsideration request. And I understand he's only asking to be paid EI benefits for part of the disentitlement period⁴¹.

[85] But the Supreme Court of Canada has said I must follow the law, even if the outcome seems unfair⁴².

[86] The Federal Court of Appeal has said the antedate provisions in the EI Act are not the product of legislative whim but contain a policy that is vital to the efficient administration of the EI program⁴³. The court has also said that antedate is not a right of every claimant, but an advantage for which they must qualify; and it is an advantage that should be applied exceptionally⁴⁴. The obligation to promptly apply for EI benefits

⁴¹ The disentitlement for failing to file his Reports was imposed from February 6, 2023 to September 1, 2023, but the Appellant testified he is only asking for EI benefits from February 6, 2023 to May 1, 2023.

⁴² See *Granger v. Canada* (CEIC), [1989] 1 SCR 141.

⁴³ In *Canada (A.G.) v. Beaudin*, 2005 FCA 123, the court pointed out that antedating a claim may adversely affect the integrity of the system because it gives a claimant a retroactive and unconditional award of benefits without the possibility of verifying the eligibility criteria during the period of retroactivity.

⁴⁴ See *Canada (A.G.) v. Beaudin*, 2005 FCA 123.

and submit Reports to claim EI benefits is seen as very demanding and strict, and this is why the “good cause for delay” test for the exception is in place.

[87] This means the Appellant must satisfy the legal test for his antedate request to be granted. Only then will the Commission be required to accept his Reports as if they had been filed on time and process them for payment.

[88] So, the Appellant must prove he had good cause throughout the entire period of the delay in filing his Reports. He must also show he took reasonably prompt steps to understand his rights and obligations during the period of the delay, or that there were exceptional circumstances that prevented him from doing so.

[89] For the reasons set out under Issues 1, 2 and 3 above, I find the Appellant has not satisfied any part of this test for period of his delay.

[90] This means his Reports cannot be antedated. It also means he’s not entitled to receive the EI benefits he’s asking for (namely, from February 6, 2023 to May 1, 2023).

[91] Finally, I acknowledge the financial difficulties the Appellant has experienced and the stress that led him to briefly relocate to Croatia. I understand his frustration at not being able to receive EI benefits on this claim.

[92] But I can’t make an exception for the Appellant, no matter how compelling his circumstances or arguments may be. I have found the Appellant hasn’t satisfied the legal test for his Reports to be antedated. And I don’t have jurisdiction or discretion to direct the Commission to pay him EI benefits he’s not entitled to. So, the disentitlement on his claim from February 6, 2023 to September 1, 2023 must remain.

Conclusion

[93] The Appellant hasn’t proven he had good cause for his delay in filing his Reports to claim EI benefits for the period February 6, 2023 to September 1, 2023.

[94] This means his Reports cannot be treated as though they were made in time for him to be paid the EI benefits he's asking for⁴⁵.

[95] It also means the disentitlement imposed on his claim from February 6, 2023 to September 1, 2023 must remain.

[96] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section

⁴⁵ Specifically, from February 6, 2023 to May 1, 2023.