Citation: *SZ v Canada Employment Insurance Commission*, 2024 SST 1268

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	S. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (621727) dated October 18, 2023 (issued by Service Canada)

Tribunal member:	Rena Ramkay
Type of hearing:	Videoconference
Hearing date:	March 27, 2024
Hearing participant:	
Decision date:	April 15, 2024
File number:	GE-23-3281

Decision

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

[2] The Appellant hasn't shown 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.[2] It also means she is not entitled to receive employment insurance (EI) benefits.

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on August 15, 2023. She is asking that the application be treated as though it was made earlier, on July 29, 2012.[3] The Canada Employment Insurance Commission (Commission) refused the Appellant's request on August 22, 2023, because it says she didn't prove between July 23, 2012, and August 15, 2023, that she had good cause to apply late for benefits.[4]

[4] The Commission received the Appellant's request to reconsider its decision on September 27, 2023. On October 18, 2023, the Commission wrote to the Appellant to advise her that it was maintaining its decision on the issue of antedate.[5]

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

[6] The Commission says that the Appellant didn't have good cause because she didn't act like a 'reasonable person' would have done to verify her rights and obligations under the *Employment Insurance Act* (EI Act). Specifically, it says the Appellant

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[1] The *Employment Insurance Act* (EI Act) calls a person who applies for EI benefits a "claimant." A person who appeals a decision of the Canada Employment Insurance Commission (Commission) to the Social Security Tribunal (Tribunal) is called an "Appellant."
[2] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application for EI benefits.
[3] Section 10(1) of the EI Act says the benefit period starts on a Sunday. Since the Appellant is applying for EI on Tuesday, July 31, 2012her benefit period, if approved, would start on Sunday, July 29, 2012.
[4] See GD3-17.
[5] See GD3-42. I note the Commission mistakenly wrote the request for reconsideration was received on October 27, 2023, and not September 27, 2023, which was the correct date. Since the Appellant was able to appeal the decision at the Tribunal, I find that the mistake didn't cause either prejudice or harm to the Appellant.

acknowledged she didn't know she could apply for benefits and didn't contact Service Canada to inquire about her rights to benefits. The Commission says the Appellant hasn't provided a valid reason for her 11-year delay in applying for EI benefits. It says the Appellant's claim that her Records of Employment (ROEs) were fraudulent isn't a valid reason for her to not promptly verify whether she was entitled to EI benefits. The Commission also notes the ROE from September 1, 2009, to July 31, 2012, was issued on November 12, 2012, less than four months after the layoff.[6]

[7] The Appellant disagrees and says she discovered serious errors in her ROEs on August 9, 2023. She says the errors misrepresented her employment status and payments. She says she didn't apply for EI benefits before August 15, 2023, because she didn't know these ROEs existed. She says she believed she was employed during the month of August 2012 because she was under a continuing contract. The Appellant says the delay is the employer's fault, not hers, and the Commission should be investigating the employer for issuing false ROEs and for issuing the ROEs three years' late.

Matters I considered first

The Appellant's motion for bias

[8] An interlocutory decision was previously issued in this file. The Appellant's motion for bias and request that I recuse myself from hearing her appeal was dismissed in that decision with reasons.[7]

The Appellant wasn't at the hearing

[9] The Appellant wasn't at the hearing. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.[8]

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[6] See GD17-1.
[7] See Interlocutory decision dated March 18, 2024, at GD44-1 to GD44-19.
[8] Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

[10] The Tribunal sent the Appellant information about the date and time of the hearing on March 4, 2024, and again on March 18, 2024.[9] The Tribunal also sent a notice of hearing on March 18, 2024, coded as document GD45. These notices were sent to the email address the Appellant provided to the Tribunal.

[11] I think that the Appellant got the notice of hearing because I see no evidence that the three emails setting out the date and time of the hearing weren't successfully delivered. In addition, the Appellant successfully sent documents to the Tribunal and responded to documents sent by the Tribunal through email.

[12] Based on the above, I am of the opinion the Appellant received notices of the hearing and was aware of the date and time of her hearing but chose not to appear. So, the hearing took place when it was scheduled, but without the Appellant.

The Appellant asked me to postpone the hearing multiple times

[13] The Appellant sent the Social Security Tribunal (Tribunal) two submissions on December 11, 2023, and December 14, 2023. The first was a 57-page document that provided background to the employment she held, salary scales, and the employer's remuneration policy. In the first submission she also stated that her employer had altered Personnel Action Forms, misclassified her, mistreated her, and falsified Records of Employment (ROEs).[10] The second submission called for the Tribunal to conduct an investigation into the false ROEs and her employer's violation of the *Employment Insurance Act* (EI Act). She also asked for a hearing postponement until all errors are fixed and requested a corrected ROE.[11]

[14] I scheduled a case conference to be held by phone on January 11, 2024. The objectives of the case conference were to determine that the issue under appeal was antedate, clarify the Tribunal's jurisdiction, and discuss the next steps in the appeal.[12]

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[9] The Appellant was provided with information about the hearing date and time in the notification of a case conference on her motion of bias at GD41. In the summary of the case conference at GD43, she was again provided the date and time of the hearing.
[10] See GD05.
[11] See GD06.

On January 9, 2024, the Tribunal sent the Appellant and the Commission a notice of hearing for February 6, 2024.

[15] Before the case conference was held, the Appellant sent the Tribunal six more submissions. The contents are briefly summarized below.

- In GD09 the Appellant called for an investigation into her employer's false and forged documents, her misclassification, falsifying hours, withholding earnings, and the correction of ROEs from 2008-2009, 2009-2012, 2014, and 2017. She requested an order against her employer for violating the provisions of the *Employment Standards Act* and the EI Act.
- In GD10 the Appellant asked that the case conference be postponed until her employer answered her questions about her salary and altered Personnel Action Forms. She argued that having the employer's answers would support judicial or procedural economy.
- In GD11 the Appellant said section 52(5) of the EI Act gives the Commission the authority to investigate or impose a penalty for her employer knowingly providing false or misleading information and failing to issue a timely ROE. She asked that the "respondent" (meaning her employer) answer questions about why it delayed in issuing her ROEs.
- In GD12 the Appellant made objections and offered corrections to some of the records in the GD03 Reconsideration File, the GD04 CEIC Representations, and the GD07 Supplementary Representations submitted by the Commission. She referred to the Commission's authority under section 39 of the EI Act to impose a penalty on the employer, arguing that the 72-month limitation period applies because the Appellant made her claim on August 15, 2023.
- In GD14 the Appellant indicated a small correction to GD12.
- In GD15 the Appellant argued she acted reasonably in her circumstances and the disentitlement imposed by the Commission isn't justified. She asked that the appeal be put on hold until the Commission produces its call logs with the

employer. The Appellant also said the employer is responsible for the delay and she can't be blamed for the employer's three-year delay in issuing ROEs.

[16] The case conference was held on January 11, 2024, with the Appellant and the Commission in attendance.[13]

[17] On January 17, 2024, I advised the Appellant that the hearing would not be postponed as I didn't find a fair hearing on the issue of antedate would be compromised if call logs between the Commission and the Appellant's employer weren't produced.[14]

[18] In GD19, the Appellant reiterated her request for call logs from the Commission on January 16, 2024. She cited "*S.G. v Canada Employment Insurance Commission* (2020-03-29)" as an example of the Commission providing all its records of its conversations during the investigation after a hearing upon request."[15]

[19] I reviewed the decision identified by the Appellant in GD19 in which the Tribunal Member requested that "the Commission provide all records of its conversations with the **Claimant** [emphasis added]."[16] In the case before me, since the Commission provided two records of its conversations with the Appellant in its Reconsideration File, I didn't find it necessary to request these records.

[20] On January 17, 2024, the Appellant said she was re-submitting her January 12, 2024, letter. The Tribunal did not receive any submission dated January 12, 2024, from the Appellant. The January 17, 2024, submission, coded GD20, again asked for a postponement and the Commission's phone logs with the employer, noting these were relied upon as evidence in other appeals heard at the Tribunal and the Appeal Division (AD) won't consider new evidence because the AD doesn't conduct *de novo* hearings. She provided nine Tribunal decisions in support of her request for call logs between the Commission and the employer.[17]

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[13] The case conference summary was issued January 12, 2024, and can be found at GD16.
[14] See GD18.
[15] See GD19-2.
[16] See *SG v Canada Employment Insurance Commission*, 2020 SST 562, at paragraph 4.
[17] See GD20-7 to GD20-8.

[21] I informed the Appellant on January 19, 2024, that the hearing would go ahead as planned on February 6, 2024, as there was nothing new in her submissions of GD19 and GD20 to change my decision not to postpone the hearing.[18] I wasn't satisfied the Appellant had shown how the Commission's phone logs with the employer were relevant to the law on antedate.[19]

[22] The Appellant sent a submission on January 19, 2024, requesting a postponement of the February 6, 2024, hearing for reasons of:

- Undisclosed documents;
- Unable to respond to evidence; and
- Seeking legal advice and seeking counsel.[20]

[23] I advised the Appellant on January 23, 2024, that I would postpone the hearing for 30 days so she could explore obtaining legal advice and counsel. But I was not delaying the hearing for any other reasons. I reiterated the role of the Tribunal, the legal test for antedate, and I reviewed the Tribunal decisions submitted by the Appellant, which I found weren't relevant. I also advised the Appellant that I would no longer respond to any further requests to ask the Commission for its call logs with her employer, nor any further Tribunal decisions she believes support her position about the call logs. I wrote that if she feels this information is relevant, she may speak to it at the hearing.[21]

[24] The Appellant and the Commission were sent a new notice that the hearing would be held on March 7, 2024.[22]

[25] The Appellant submitted a document on January 24, 2024.[23] She requested a postponement of the "February 7, 2024" hearing until after witnesses were added to the

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[18] See GD21.
[19] See GD3-15 to GD3-16, and GD3-39.
[20] See GD22.
[21] See GD23.
[22] See GD24.The Notice of Hearing was sent January 24, 2024
[23] See GD25

appeal file; the Commission's submissions from December 5, 2023, onwards were officially excluded from her appeal file; and she had spoken with a lawyer.

[26] On January 29, 2024, I advised the Appellant that her hearing had already been postponed to March 7, 2024, to allow her to seek legal advice and/or counsel. I said the Tribunal doesn't have the authority to compel witnesses, if that was what she was asking. I said I would not exclude the Commission's representations from the file, and that the Appellant can identify errors and omissions she sees in its representations and rebut the Commission's arguments and evidence at the hearing. I advised the Appellant that any further submissions should be made at the hearing on March 7, 2024, and that the hearing would not be rescheduled unless the Appellant shows extraordinary circumstances, or I believe it is in the interests of natural justice to do so.[24]

[27] The Appellant sent a submission to the Tribunal on January 26, 2024, requesting a copy of the case conference recording held on January 11, 2024. The recording was sent to her on January 31, 2024.

[28] On January 29, 2024, the Appellant requested a postponement of the "February 7, 2024" hearing, repeating reasons she had already provided.[25] She also requested a specific location at which she wanted the in-person hearing held.

[29] On February 9, 2024, I advised the Appellant there was only one location in her area that accommodated Tribunal hearings and we could not hold the hearing at the location she requested. She was asked to advise the Tribunal by February 26, 2024, if she preferred a different form of hearing. Otherwise, the hearing would proceed on March 7, 2024, at the time and location written in the notice of hearing.[26]

[30] In GD30, the Appellant requested a postponement of the March 7, 2024, hearing.[27] She said she had been communicating with the Commission for a few weeks and has provided information in writing to the Commission for its investigation into the

[24] See GD26.
[25] See GD28.
[26] See GD29.
[27] This request was made on February 9, 2024

matter of her employment misclassification. She stated her request for a postponement would not cause prejudice to the other party/parties.

[31] On February 16, 2024, the Appellant was informed her request for a postponement had been refused because a previous adjournment had been granted and exceptional circumstances weren't established. I noted that the Appellant was advised in GD26 that her hearing would only be rescheduled if she showed extraordinary circumstances or I believed it is in the interests of natural justice to do so, and, in my view, nothing in her GD30 submission met these criteria.[28]

[32] The Appellant sent a submission, coded GD32, on February 16, 2024, again requesting a postponement and that the Tribunal exclude the Commission's submissions from the appeal file. In the submission, the Appellant repeated some arguments and said, "The audio recording of the General Division hearing on January 11, 2024, clearly indicates the Tribunal member already believed I did not have good cause for the delay during the entire period of the delay." And the Appellant noted that "the employer has just provided evidence and will provide evidence to me; I need time to review the evidence and/or consult with a new expert."[29]

[33] On February 20, 2024, I responded to the Appellant, noting she had raised an allegation of bias against me and that it would be addressed as a preliminary matter at the March 7, 2024, hearing. I advised the Appellant that, under section 43(3) of the *Social Security Tribunal Rules of Procedure*, I may only reschedule a hearing if she proves, on a balance of probabilities, that the postponement is necessary for a fair hearing. While she said she received evidence from her employer that she needed to review, she didn't provide enough information to show that the evidence was such as to make it necessary to postpone the hearing for procedural fairness. I gave her until February 23, 2024, to provide details about the evidence itself and its relevance to the appeal. I also asked the Appellant to indicate how long a postponement she is

[28] See GD31.
[29] See GD32 at paragraphs 5 and 6, respectively.

requesting and why that amount of time is necessary to provide the parties with a fair hearing on the issue of antedate.[30]

[34] In GD34, submitted on February 20, 2024, the Appellant repeated earlier reasons for a postponement and added that she had an appointment with the IPC (*sic*) on February 21, 2024, regarding the evidence the employer provided and will provide to her. She didn't provide further information about the evidence. She said she asked the Commission to investigate the issues of misclassification and independent contractor status on February 19, 2024. She requested a three-month delay for the hearing.

[35] On February 26, 2024, I informed the Appellant I would not postpone the hearing as she didn't provide enough detail for me to determine the relevance of the additional evidence to the issue of antedate. I said the Appellant would have the opportunity to explain further at the hearing on March 7, 2024, and I would ask questions then in order to understand the matter more clearly. I advised the Appellant that, if I determine more time is necessary, I can adjourn the hearing.[31]

[36] On February 26, the Appellant sent the Tribunal a request that the case be put on hold. She repeated earlier arguments for the postponement. She also requested that the Tribunal change the hearing from in-person to on-line. She asked that the hearing be delayed until:

- The Commission's investigation records and evidence are provided;
- She has reviewed the Commission's evidence or investigation notes prior to a hearing;
- A new investigation is concluded;
- She provides additional evidence that shows she had good cause for the delay; and
- The employer provides new evidence.[32]

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[30] See GD33.
[31] See GD35.
[32] See GD37. Please note that the GD37 actually preceded the GD36 response, but they are miscoded in the file. The Appellant also submitted GD39, in which she asked to correct two typos in the GD37 document.

[37] On February 28, 2024, I refused the Appellant's request to reschedule the hearing, since a previous adjournment was granted, and exceptional circumstances weren't established. I advised that the hearing would change from in-person to videoconference, as she requested. I repeated that the following will not be addressed further until the hearing:

- Her allegations of Tribunal member bias
- Her disagreements with the Commission's evidence and submissions
- Call logs that the Commission might have from calls with her employer related to the antedate claim
- Additional evidence about her employer's actions that relate to her antedate claim

I also informed the Appellant that I would not be responding to her submissions outside of extraordinary circumstances arising or where I am of the view that a written response is required. Otherwise, her concerns will be discussed at the hearing.[33]

[38] A new notice of hearing with the change from in-person to videoconference was sent on February 28, 2024. The hearing date of March 7, 2024, and start time of 1:00 p.m. (EST) remained the same.[34]

[39] On February 28, 2024, the Appellant submitted a request that the Tribunal member remove herself from the case, that the hearing of March 7, 2024, be cancelled, and that she be treated equally under the law according to section 15 of the *Canadian Charter of Rights and Freedoms* (Charter). This is known as asking me to recuse myself from hearing the appeal. The Appellant's request is based on her allegation that I am biased.

[40] On March 4, 2024, a notice was sent to the Appellant and the Commission that the March 7, 2024, hearing would be converted to a videoconference to exclusively hear the Appellant's evidence on her allegations of the Tribunal member's bias and her

[33] See GD36. Please note that this document was written after receiving GD37, which was incorrectly coded.
[34] See GD38.

request that I recuse myself from hearing her appeal.[35] Because the Appellant made a recusal request based on allegation of bias, I am required to respond. I provided the Appellant with the test to prove a reasonable apprehension of bias. I also advised that the date of the hearing on the merits of the antedate appeal would be rescheduled for March 27, 2024, by videoconference, and that either myself or another member would hear the appeal, depending upon my decision on the Appellant's allegation of bias and recusal request.

[41] At the March 7, 2024, videoconference I waited 30 minutes for the Appellant, and she didn't join the case conference. The Commission attended the videoconference and indicated it did not have any submissions on bias and didn't have any objections with me continuing to hear and decide the appeal.[36]

[42] The Appellant re-submitted the document coded GD40 on March 7, 2024. This submission was coded GD42 and was taken into account when I made my decision on the Appellant's motion of bias at GD44 on March 18, 2024.

[43] The Appellant asked for a copy of the Commissioner's evidence prior to the hearing in the submission coded GD46. She says the Appeal Division can't accept new evidence that wasn't in the General Division and that she can't go into a hearing without knowing what evidence will be presented.

[44] In submission GD47, sent on March 22, 2024, the Appellant reiterated that she needs a copy of the Commission's agent's evidence and/or telephone log notes to review and respond to before scheduling a hearing. She reiterated that she believed the Tribunal member was prejudging the situation and had repeatedly named the Commission's submissions as "evidence", while refusing her request to have a copy of its records. And the Appellant re-submitted the document coded GD46 on March 22, 2024. This was coded GD48.

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[35] See GD41.
[36] See the summary of the case conference at GD43.

[45] The Appellant noted in her submission GD49, dated March 26, 2024, that the Tribunal member repeatedly used the expression of the Commission's submissions and evidence but has not given her access to the evidence. She finds it "incomprehensible" to let her have no access to the Commission's evidence prior to a hearing.

[46] Since documents GD42, GD46 and GD48, GD47, and GD49 didn't raise any new issues or extraordinary circumstances, and I didn't believe a postponement was in the interests of natural justice, I proceeded with the hearing as scheduled.

Additional arguments raised by the Appellant aren't included in this decision

[47] The Appellant submitted a lot of information about what she says are falsified ROEs and personnel action forms (PAFs) from her employer, incidents she says occurred at her workplace while she was working there, detail on her employer's classification and payment policies, and timelines of her interactions with her employer after August 15, 2023. She has asked for investigations into false ROEs issued by her employer in 2008 to 2009, 2009 to 2012, 2014, and 2017.[37] She has also provided information from the period prior to July 29, 2012.

[48] I have not addressed her arguments related to this information in my decision. I am not able to consider them because they are outside of the scope for the legal test for antedate, which is the issue under appeal before me. The court has said I don't need to address arguments that are outside of my mandate.[38]

[49] The Appellant said her appeal submissions can be summarized as three ROEs from September 2008 to April 2009 and September 2012 to December 2013.[39] The law allows me to look only at the issue before me, which is the Appellant's appeal of the Commission's refusal to grant her antedate request to July 29, 2012.[40] This means my authority is limited to deciding whether the Appellant's claim for EI benefits can be

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[37] See GD6-5.
[38] See *Kuk v Canada (Attorney General)*, 2023 FC 1134, at paragraph 46.
[39] See GD30-3.
[40] See section 113 of the EI Act.

antedated to July 29, 2012, and I won't consider the Appellant's claims about the other two ROEs in making my decision.

Issue

[50] Can the Appellant's application for benefits be treated as though it was made on July 29, 2012? This is called antedating (or, backdating) the application.

Analysis

[51] To get your application for benefits antedated, you have to prove these two things:[41]

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, and

b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

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

[53] To show good cause, the Appellant has to prove she acted as a reasonable and prudent person would have acted in similar circumstances.[42] In other words, she has to show she acted as reasonably and as carefully just as anyone else would have if they were in a similar situation to hers.

[54] The Appellant has to show she acted this way for the entire period of the delay.[43] That period is from the day she wants her application antedated to the day she actually applied. So, for the Appellant, the period of the delay is from July 29, 2012, to August 15, 2023.

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[41] See section 10(4) of the EI Act.
[42] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[43] See *Canada* (*Attorney General*) *v Chalk*, 2010 FCA 243; and *Canada* (*Attorney General*) *v Carry*, 2005 FCA 367.

[55] The Appellant also has to show she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.[44] This means 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.[45]

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

[57] The Appellant says she had good cause for the delay because she didn't learn until August 9, 2023, that her employer issued a false ROE for the period around July 2012, which is when she would like her claim antedated.[46] She says she didn't know her employer submitted a shortage a work record beginning July 29, 2012. So, she didn't apply for EI benefits earlier because she wasn't aware her employer had ended her employment at that time.

[58] The Appellant says she worked from July 29, 2012, to September 2, 2012, because she believed she had a continuing contract from September 1, 2011, through to August 31, 2012. She says she found out later in 2012 she wasn't paid from July 29, 2012, to September 2, 2012.[47]

[59] The Appellant says she recently discovered that she was paid $5,760 for August to September 2012.[48] So she says the end date of July 31, 2012, on her ROE does not reflect facts. To support her argument, the Appellant submitted a copy of a Job Detail form indicating a change to her job and the fees her employer paid her from August 3, 2012, to September 1, 2012, as a one-time payment.[49]

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[44] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[45] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[46] See GD9-7.
[47] See the Commission's record of a call with the Appellant on August 21, 2023, at GD3-15.
[48] See GD11-3; GD12-10 to GD12-11; and GD20-3.
[49] See GD12-4.

[60] The Appellant explains that she didn't look online to see if her employer issued a ROE until August 2023. She says she didn't contact a customer service agent or visit a Service Canada centre before August 15, 2023, to learn what she needed to do to collect benefits.[50]

[61] The Appellant says the Commission hasn't addressed the employer's failure to provide timely ROEs. She says she can't be blamed for not applying for benefits on time when the employer took over three years to issue a ROE. She says it wasn't until August 9, 2023, that she learned her employer issued the ROE for the period of September 1, 2009, to July 31, 2012, when she obtained the ROE at a Service Canada centre.[51] The Appellant says she was going through the ROEs at that time because she was dealing with the employer and looking to get compensated for what they did to her.[52]

[62] The Appellant says she promptly took necessary steps as soon as she became aware of the ROEs, and she has acted as a reasonable person would have done in a similar situation.[53]

[63] The Commission says that the Appellant hasn't shown good cause for the delay because she didn't act as a reasonable person in her situation would have to learn about her rights and obligations under the EI Act. It says the Appellant failed to demonstrate that anything prevented her from applying for EI benefits during the 11- year delay from July 29, 2012, to August 15, 2023.[54]

[64] The Commission says the Appellant's ROE for the period from September 1, 2009, to July 31, 2012, was issued November 13, 2012, less than four months after the

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[50] See the Commission's record of its October 11, 2023, phone call with the Appellant at GD3-39. I note that there are errors in the file regarding some dates. Instead of July 24, 2012, to September 2, 2012, the Service Canada representative wrote '2023' for what I think should be 2012. The representative also wrote '2023' in the last line of the record, which I think should also be 2012. In both cases I think that 2012 is the correct year because the information in the record shows the Appellant and the Service Canada officer were discussing events that happened in 2012.
[51] See GD6-3.
[52] See GD3-15.
[53] See GD15-3 to GD15-4.
[54] See GD4-4.

shortage of work, showing that it wasn't three years' late. If the Appellant had applied immediately after she stopped working, the Commission says it could have assisted her to obtain the ROE at that time to establish a claim.[55]

[65] The Commission says it is the Appellant who has the responsibility to inquire about her rights and responsibilities and request EI benefits. It says the employer's delay in submitting the ROE isn't relevant because the issue under review is whether the Appellant had good cause for the delay.[56]

[66] The Commission points out that while the Appellant seems to want the Commission to investigate and act on the erroneous ROEs and falsified employment information provided by her employer, the Commission hasn't made a decision regarding this in the current appeal and the issue under appeal is antedate. Furthermore, the time limit within which the Commission could investigate the Appellant's allegations of false or fraudulent information on the ROEs has expired.[57]

- **My findings**

[67] I find that the Appellant hasn't proven she had good cause for the delay in applying for benefits. I think a reasonable and prudent person would have tried to learn about their entitlement to benefits and their responsibilities under the law sooner than the Appellant did.

[68] The obligation and duty to promptly file an EI claim is very demanding.[58] The test for good cause is strict.[59] The courts have told us many times that a claimant's lack of knowledge or ignorance of the law isn't enough to show good cause.[60] Case law, that is

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[55] See GD17-1.
[56] See GD17-1.
[57] See GD7-1 where the Commission references sections 39, 40, and 52(5) of the EI Act, which are listed at GD4-6 and GD4-7. Section 40(b) states that penalties cannot be imposed if 36 months have passed since the day on which the act or omission occurred. Section 52(5) gives the Commission 72 months within which to reconsider a claim if it believes a false, misleading statement or representation has been made in connection with that claim. Since the Appellant is requesting an antedate of her claim to July 29, 2012, the time limit expires 36 months (section 40) or 72 months (section 52(5)) from that date.
[58] See *Canada (Attorney General) v Albrecht*, A-172-85.
[59] See *Canada (Attorney General) v Kaler*, 2011 FCA 266, at paragraph 4.
[60] See, for example, *Canada (Attorney General) v Innes*, 2010 FCA 341; *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Trinh*, 2010 FCA 335.

decisions of the courts, has also decided good cause wasn't found when a claimant was waiting for an amended record of employment from their employer.[61] The tests and principles in the courts' decisions, which I must adhere to, guide me in making my decision.

[69] The appeal file doesn't have the ROEs. The Appellant says her employer made mistakes on the ROEs and she wants them investigated. I have considered the Appellant's arguments. However, whether the ROEs are correct or not isn't relevant to whether she acted as a reasonable person in the same position as hers would have acted. This means the information in the ROEs, whether or not correct, isn't information I can rely on to decide whether the Appellant has met the test to have her initial claim antedated.

[70] The Appellant says the employer is at fault for issuing the ROEs three years late. The Commission says the ROE for the period from September 9, 2009, to July 31, 2012, was issued on November 13, 2012.[62] I see no evidence that the Appellant disputes November 13, 2012, as the date the ROE was issued. Since the ROE is issued when there is an interruption of employment, I would expect the Appellant's employer to issue the ROE some time after July 31, 2012. A date of issue on November 13, 2012, would be a four month, not a three year, delay.[63]

[71] I don't accept the Appellant's statement that her employer is to blame for her delay in applying for benefits because it didn't issue a timely ROE. I find that it was primarily up to the Appellant to get information from the Commission about her entitlement to benefits on July 29, 2012. And the evidence shows the Appellant made no inquiries about her claim for EI benefits and her rights and responsibilities throughout

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[61] See *Canada (Attorney General) v Chan*, A-185-94.
[62] See GD17-1.
[63] The Appellant referred to two different ROEs at GD2A-11, one for the period of September 1, 2009, to July 31, 2012, which I consider in this decision. The other ROE covers the period from September 2, 2008, to April 31, 2009, which isn't before me to decide since the appeal is an antedate to July 29, 2012. I think it is possible the Appellant is referring to the ROE from 2008 to 2009 as being three years late because it was issued on November 13, 2012.

the entire period of time for which she asks for an antedate, from July 29, 2012, to August 15, 2023.

[72] In my opinion, the fact that the Appellant didn't know that a ROE had been issued for her employment from September 9, 2009, to July 31, 2012, isn't good cause for the delay in applying for benefits. The Appellant has a responsibility to learn about EI and request it promptly when she wants to receive benefits. The Commission could have helped her to get the ROE if she had applied soon after her separation from work. And, if the ROE was incorrect at that time, the Commission could have worked with the Appellant to get a correct one.

[73] The Appellant indicates that she applied for benefits in 2016, so there is evidence she had some experience with the EI system.[64] Yet, the Appellant didn't look online, call Service Canada, or visit a Service Canada centre to inquire about her eligibility for benefits until August 15, 2023. I can't find that the Appellant promptly took steps, as soon as she was without an employment income, to learn about her rights and responsibilities under the EI Act.

[74] The Appellant gave conflicting information about whether or not she was paid by her employer from July 29, 2012, to September 3, 2012. On the one hand, the Appellant says she became aware that she wasn't paid for the period between July 29, 2012, and September 2, 2012, some time later in 2012.[65] When the Commission later asked the Appellant if she remembered when she learned she wasn't going to be paid, she said she didn't remember.[66] On the other hand, the Appellant says she discovered later that she was in fact paid during that period.[67]

[75] In my view, a reasonable person would have tried to learn about their rights and responsibilities to EI when they realized they weren't receiving income. The Appellant said she realized later in 2012 that she wasn't being paid from July 29 to September 3, 2012. This means she knew in 2012 that there was a problem with her employment

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[64] See GD12-3.
[65] See GD3-15.
[66] See GD3-39.
[67] See GD12-10 to GD12-11; and GD20-3.

income. And she didn't try to learn about EI benefits when she became aware that something was wrong with her employment income in 2012. In these circumstances, I find the Appellant hasn't shown she acted as a reasonable person would have to find out about her eligibility for EI.

[76] I don't find that the Appellant has established exceptional circumstances for the delay in making her claim for EI benefits between July 29, 2012, and August 15, 2023. I see no evidence that there was anything preventing her from contacting the Commission to see what, if any, options were open to her, if she didn't receive employment income between July 29, 2012, and September 3, 2012.

[77] While I acknowledge the Appellant has concerns about her employer's actions, and she believes that her employer's actions may be part of the reason she delayed applying for benefits, this doesn't constitute good cause for the Appellant's delay. This is because the Appellant was aware as early as 2012 there were issues with her income, and she did not take any steps until August 2023 to find out about her entitlement to EI benefits. The responsibility to take 'reasonably prompt steps' to determine her entitlement to EI benefits is the Appellant's, and not her employer's.

[78] While the Appellant may choose to place the blame for her inaction on her employer, the test remains what would a reasonable person in the same situation as her do to satisfy themselves as to their obligations and rights under the EI Act.[68] The evidence shows the Appellant was aware as early as 2012 that there was a problem with her income and that she may have been without income from July 29 to September 3, 2012.

[79] The Appellant's only explanation for her delay is the actions taken by her employer. She didn't look into how her employer's actions affected her benefits until long after 2012. In my view, a reasonable person who became aware of problems with their income would not have waited 11 years to find out about their rights and obligations under the EI Act. There is no evidence of exceptional circumstances during those 11 years that would have prevented the Appellant from finding out about her

[68] *Canada (Attorney General) v Burke*, 2012 FCA 139.

rights and obligations under the EI Act. This means the Appellant has not established that she had good cause for her delay in applying for EI benefits.

[80] While both parts of the test for antedate must be met in order to antedate a benefits claim, since the Appellant hasn't shown good cause for the entire period of the delay, I find it isn't necessary to determine whether she qualified at the earlier date.

Conclusion

[81] The Appellant hasn't shown that she had good cause for the delay in applying for benefits throughout the entire period of the delay from July 29, 2012, to August 15, 2023.

[82] The appeal is dismissed.

Rena Ramkay
Member, General Division – Employment Insurance Section