



Citation: *RW v Canada Employment Insurance Commission*, 2025 SST 78

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

# **Decision**

**Appellant:** R. W.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (696110) dated October 11, 2024  
(issued by Service Canada)

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**Tribunal member:** Paula Turtle

**Type of hearing:** In person

**Hearing date:** December 3, 2024

**Hearing participant:** Appellant

**Decision date:** January 6, 2025

**File number:** GE-24-3683

## 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 claiming Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's claims can't be treated as though they were made earlier.

## Overview

[3] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.<sup>1</sup> Usually, you make claims by submitting online reports to the Canada Employment Insurance Commission (Commission) every two weeks. There are deadlines for making claims.<sup>2</sup>

[4] The Appellant applied for benefits under the work-sharing program on November 25, 2020. He thought he ticked off the box that meant he didn't have to complete reports every two weeks. But he made a mistake. He didn't tick off that box. So, he was supposed to complete reports. And he didn't do this. So, he didn't get EI benefits.

[5] The Appellant assumed he was getting benefits. He didn't check his bank account. So, he didn't know that he wasn't getting benefits.

[6] In the summer of 2023, the Appellant was hospitalized. He needed money. He used his savings. In October, he was running low on money. He checked his bank account and realized he didn't get any benefits for the benefit period that started on November 7, 2020.

[7] He went to Service Canada in November 2023. And an agent told him he needed to ask that his claims be antedated. He did this. And he didn't hear anything from Service Canada. So, he asked again on April 4, 2024, for his claims to be antedated.

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<sup>1</sup> See section 49 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See section 26 of the *Employment Insurance Regulations*.

On June 20, 2024, the Commission told him he wasn't entitled to benefits because he didn't complete reports during his benefit period starting on November 8, 2020.

[8] The Appellant wants his claims to be treated as though they were made earlier, on November 7, 2020. For this to happen, the Appellant has to prove that he had good cause for the delay.

[9] The Commission decided that the Appellant didn't have good cause and refused his request for reconsideration. The Commission says that the Appellant didn't have good cause because he waited more than three years after his benefit period started to see if he was getting benefits.

[10] The Appellant disagrees. He says that he assumed he was getting benefits because he didn't think he had to file reports. He didn't know he made a mistake. And he set up a special bank account for his benefits to be deposited into. He wanted to save that money. So, he didn't check the bank statements.

## **Matter I have to consider first**

[11] The Appellant didn't get the Commission's reconsideration file and its representations before the hearing. Both files were very short. I reviewed them with the Appellant at the hearing. And he wanted to go ahead with the hearing.

[12] But I asked the Tribunal to send the files to the Appellant after the hearing. And I gave him extra time after the hearing to write in with any comments.

[13] The Appellant didn't write in. So, I am making this decision based on what's in the file and what the Appellant told me at the hearing.

## **Issue**

[14] Did the Appellant have good cause for the delay in claiming EI benefits?

## Analysis

[15] The Appellant wants his claims for EI benefits to be treated as though they were made earlier, starting at the beginning of his benefit period on November 7, 2020. This is called antedating (or, backdating) the claims.

[16] To get a claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.<sup>3</sup> 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.

[17] And, 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>4</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.

[18] 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>

[19] The Appellant has to show that he acted this way for the entire period of the delay.<sup>7</sup> That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Appellant, the period of the delay is from November 7, 2020, to November 2023, when he first asked to antedate his claim.

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<sup>3</sup> See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

<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.

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

[20] The Appellant says that he had good cause for the delay because he thought he didn't have to complete reports covering every week that he was eligible for benefits. And because he set up a separate bank account to save all the EI payments he got. He didn't look at the balance in that account.

[21] The Commission says that the Appellant hasn't shown good cause for the delay because he waited more than three years to check to see that he was getting his EI payments.

[22] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits.

[23] The Appellant didn't check his bank balance because he didn't want to know how much money he had saved.

[24] The Appellant got monthly statements from the bank where he thought his EI checks were being deposited. The statements were mailed to his house. He chose not to look at the statements. If he had looked at them, he would have known that he wasn't getting EI benefits.

[25] The Appellant got sick in June 2023. He discovered that his EI benefits weren't in his bank account in October 2023. He went to Service Canada in person on November 30, 2023. And he asked that his benefits be antedated.

[26] He waited for a response to his request. He didn't hear anything. So, he went back to Service Canada on April 4, 2024. This was about four months after he first asked for his benefits to be antedated.

[27] I find that the Appellant didn't do what a reasonable and prudent person would have done to find out his rights and obligations. After he applied for benefits in November 2020, he didn't check to make sure that he was getting benefits.

[28] Things that can go wrong with a claim for benefits. And it is easy to check to see if your benefits are being paid. Especially if they are getting a bank statement every month. It's not reasonable to assume that you are getting your payments.

[29] The Appellant wanted to save as much as he could. So, he didn't want to know how much money was accumulating in the account. But he could have checked his bank statement right after he made his claim, when the payments were due to start. And this wouldn't have interfered with his plan to not know how much he saved.

[30] But the Appellant knew in October 2023 that he hadn't received any benefits. And he didn't act promptly after that.

[31] The Commission says that he didn't ask for his claim to be antedated until April 2024. I accept the Appellant's evidence that he asked for his claim to be antedated on November 30, 2023. I find that he told his story in a straightforward manner. And the antedate request is in writing. And it is dated November 30, 2023.

[32] But the Appellant went to Service Canada on November 30, 2023. This was more than a month after he found out he didn't get any benefits. They were supposed to start three years earlier, in November 2020. To wait a whole month to ask for your claim to be antedated after such a long delay isn't reasonable.

[33] The Appellant's November 30, 2023, antedate request didn't get processed. But the Appellant waited more than four months, until April 4, 2024, before he went back to Service Canada to ask about it.

[34] So, there was another delay between November 30, 2023, and April 4, 2024.

[35] I find that the Appellant didn't check to make sure his benefits were being paid after he applied in November 2020. This means he didn't act as a reasonable and prudent person would have to find out his entitlements. And then, after he found out he wasn't getting his benefits in October 2023, he waited more than a month to ask for an antedate. And after that, he waited four months to follow up on his antedate request.

Each one of these delays shows that the Appellant didn't act promptly to understand his rights and entitlements.

[36] The Appellant got sick in the summer of 2023. And he's still not back at work. He didn't tell me that his illness caused his delays. So, I find that there were no exceptional circumstances that explain why it took so long for him to ask for his claim to be antedated.

## **Conclusion**

[37] The Appellant hasn't proven that he had good cause for the delay in making his claims for benefits throughout the entire period of the delay. This means that his claims can't be treated as though they were made earlier.

[38] The appeal is dismissed.

Paula Turtle

Member, General Division – Employment Insurance Section