



Citation: *CS v Canada Employment Insurance Commission*, 2025 SST 147

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

## **Decision**

**Appellant:** C. S.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (700807) dated December 17,  
2024 (issued by Service Canada)

---

**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** January 24, 2025

**Hearing participant:** Appellant

**Decision date:** February 7, 2025

**File number:** GE-25-85

## Decision

[1] The appeal is dismissed. The General Division 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> You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.<sup>2</sup>

[4] The Appellant established a benefit period for EI regular benefits in December 2019. He claimed EI regular benefits for 2 weeks in July 2020. Now he wants to make additional claims for benefits back to March 22, 2020.

[5] For this to happen, the Appellant has to prove that he had good cause for the delay.

[6] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request. The Commission says that the Appellant doesn't have good cause because it says the Appellant didn't demonstrate that there were exceptional circumstances between the beginning of 2023 and August 2024 that prevented him from asserting his rights toward the Commission.<sup>3</sup>

[7] The Appellant disagrees. The Appellant applied for and received emergency response benefits under the *Canada Emergency Response Benefit Act*. I will call these

---

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

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

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

CERB benefits. Since he was receiving CERB benefits, he didn't make any claims for EI regular benefits until he was laid off from his employment in July 2020. He has now been asked to repay the CERB benefits. He says he's entitled to the EI regular benefits he would have claimed in 2020 had he not received CERB

## Issue

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

## Analysis

[9] The Appellant wants his claims for EI regular benefits to be treated as though they were made earlier, on March 22, 2020. This is called antedating (or, backdating) the claims.

[10] 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>4</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.

[11] 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>5</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.

[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>6</sup> This means that the Appellant has to show that he tried to learn about his rights and responsibilities as

---

<sup>4</sup> See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

<sup>5</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

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>7</sup>

[13] The Appellant must show that he acted this way for the entire period of the delay.<sup>8</sup> That period is from the day he wants his claim antedated to until the day he actually made the claim. Since the system wouldn't let the Appellant make a claim, the delay ends on the day he asked the Commission for an antedate. So, for the Appellant, the period of the delay is from March 22, 2020, to August 19, 2024.<sup>9</sup>

[14] The Appellant says that he had good cause for the delay. He thought he was entitled to CERB benefits so he didn't apply for EI regular benefits—he knew he couldn't receive both. Now he knows he wasn't entitled to CERB benefits, so he'd like to get the EI benefits he was entitled to then.

[15] The Commission says that the Appellant hasn't shown good cause for the delay. It says that at the beginning of 2023 he learned of the Canada Revenue Agency's (CRA) decision that he hadn't been entitled to CERB benefits, but he didn't contact the Commission until August 2024. It says that in waiting so long to contact the Commission he did not behave like a person concerned about inquiring about his rights.<sup>10</sup>

[16] The Appellant has good cause for some of the delay, because there were exceptional circumstances. In 2020, many people were confused about their eligibility for benefits. There was confusion about the benefits themselves, two different benefits were called CERB. Sometimes it was difficult to get information and advice due to high demands. These exceptional circumstances explain some of the delay, but not all.

[17] The Appellant has not shown good cause for the entire period of delay, from March 22, 2020, to August 19, 2024.

---

<sup>7</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>8</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>9</sup> See page GD3-14.

<sup>10</sup> See page GD4-3.

[18] I find that he hasn't shown good cause for the delay between March 22, 2020, when he wants his claim antedated to, and July 19, 2020. This is because the Appellant claimed EI regular benefits for the weeks of July 19, 2020, and July 26, 2020. Since nothing prevented him from claiming EI benefits for those weeks, it's likely that nothing prevented him from making claims from March 22, 2020.

[19] I considered what the Appellant told me. He received CERB benefits during the relevant period. He felt that it was better to get CERB benefits because he didn't know how long the pandemic was going to last, and he wanted to make sure he didn't miss the opportunity to apply for CERB benefits.

[20] However, the duty of care on claimants to determine their entitlement to benefits and ensure their rights and obligations under the EI Act is "both demanding and strict."<sup>11</sup>

[21] The Appellant hasn't met this demanding and strict duty of care because he hasn't shown that he made efforts to determine his entitlement to EI benefits from March 22, 2020, until July 18, 2020.<sup>12</sup> Not knowing that he was entitled to the benefits is not sufficient to establish good cause.<sup>13</sup>

[22] The Appellant hasn't shown good cause for the delay between May 9, 2024, and August 19, 2024.

[23] The Appellant asked for a 3<sup>rd</sup> review of his entitlement to CERB benefits in early 2024. He got CRA's response on May 9, 2024.<sup>14</sup> He thought about further pursuing the matter, but then decided to go to Service Canada for EI benefits. The evidence shows that the first call he made to Service Canada was on August 19, 2024.<sup>15</sup>

---

<sup>11</sup> See *Canada (Attorney General) v Albrecht*, [1985] 1 F.C. 710, and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>12</sup> I have taken into account that he may not have wanted benefits for that entire period because he worked in June 2020.

<sup>13</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

<sup>14</sup> At first, he testified that he got the response in late May or early June 2024, but he later stated that the actual date was May 9, 2024. For the same reasons, I would have also found that he did not have good cause for the delay from early June 2024.

<sup>15</sup> See page GD3-14.

[24] I understand that the Appellant didn't want to "double-dip" and wanted to avoid a situation where he had to repay benefits. But he hasn't shown that he took reasonably prompt steps to determine his entitlement to EI benefits after learning the results of his third review. After a delay of more than four years, he delayed another three months. A reasonable and prudent person would, at the very least, have contacted Service Canada about his entitlement as soon as he received the results from the third review. He did not do this. He waited another three months. And it's more likely than not that a prudent person would have contacted Service Canada in 2023, when he first learned that he might not have been eligible for the CERB benefits he was paid.

[25] I understand that repaying the CERB benefits he received will mean that he didn't receive any benefits for some of the months he was off work in 2020. But that doesn't give him good cause for the delay.

[26] The Appellant hasn't shown that he did what a reasonable and prudent person would have done for the entire period of the delay, and there are no exceptional circumstances to explain the entire delay. So, the Appellant hasn't shown that he had good cause for the entire period of delay.

## **Conclusion**

[27] 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.

[28] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section