



Citation: *JT v Canada Employment Insurance Commission*, 2025 SST 267

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

## **Decision**

**Appellant:** J. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (708408) dated January 23, 2025 (issued by Service Canada)

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**Tribunal member:** Susan Stapleton

**Type of hearing:** Teleconference

**Hearing date:** February 12, 2025

**Hearing participant:** Appellant

**Decision date:** March 5, 2025

**File number:** GE-25-215

## Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he had good cause for the delay in applying for Employment Insurance (EI) benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's claim can't be treated as though it was made earlier, on December 3, 2023.

[3] The Appellant hasn't shown that he was available for work. This means that he can't receive EI benefits from November 10, 2024.

## Overview

[4] The Appellant stopped working on November 30, 2023. He applied for EI regular benefits on November 12, 2024.<sup>1</sup> His claim was made effective November 10, 2024. The Canada Employment Insurance Commission (Commission) decided that the Appellant didn't have enough hours in his qualifying period to establish a claim.<sup>2</sup>

[5] The Appellant wants his claim to be treated as though it was made earlier, right after he stopped working, so he will have enough hours in his qualifying period to establish a claim.

[6] The Commission decided the Appellant's claim couldn't be treated as though it was made earlier, specifically on December 3, 2023, because he didn't have good cause for the delay in applying for benefits.<sup>3</sup>

[7] The Commission also decided that the Appellant wasn't available for work from November 10, 2024, onward.<sup>4</sup>

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<sup>1</sup> See GD3-21.

<sup>2</sup> See GD3-26.

<sup>3</sup> See GD3-41.

<sup>4</sup> See GD3-38.

[8] To get EI regular benefits, a claimant has to be capable of working, available for work, and unable to find a suitable job. It is up to the Appellant to show that he meets these conditions. He has to prove this on a balance of probabilities. In other words, to get EI regular benefits, the Appellant must show that it's more likely than not that he meets the availability requirements under the *Employment Insurance Act (Act)*.

[9] So, I have to decide whether the Appellant has proven that:

- he had good cause for not applying for benefits earlier, and
- he met the availability requirements from November 10, 2024.

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

### **50(8) disentitlement**

[10] In its submissions, the Commission says it disentitled the Appellant under subsection 50(8) of the *Employment Insurance Act (Act)*. Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[11] On a review of the evidence, I don't see any requests from the Commission to the Appellant to prove his reasonable and customary efforts, or any explanations from the Commission to the Appellant about what kind of proof he would need to provide to prove his reasonable and customary efforts.

[12] While not bound by it, I find the reasoning in *TM v Canada Employment Insurance Commission*, 2021 SST 11 persuasive, in that it is not enough for the Commission to discuss job search efforts with the Appellant, instead they must specifically ask for proof from the Appellant and explain to him what kind of proof would meet a "reasonable and customary" standard.

[13] I also don't see any discussion about reasonable and customary efforts during the reconsideration process, or explicit mention of disentitling the Appellant under

section 50(8) of the Act, or any reference to reasonable and customary efforts in the reconsideration decision.

[14] Based on the lack of evidence the Commission asked the Appellant to prove his reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, I find that the Commission did not disentitle the Appellant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

## **Issues**

### **Antedate**

[15] Can the Appellant's application for benefits be treated as though it was made on December 3, 2023?

### **Availability**

[16] Was the Appellant available for work from November 10, 2024?

## **Analysis**

### **Antedate**

[17] To get your application for benefits antedated (backdated), you have to prove these two things:<sup>5</sup>

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

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<sup>5</sup> See section 10(4) of the Act.

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

[19] 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>6</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.

[20] 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 application antedated to, until the day he actually applied. So, for the Appellant, the period of the delay is from December 3, 2023, to November 12, 2024.

[21] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and his obligations under the law. 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>8</sup>

[22] 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.

[23] The Appellant says his application should be backdated, because he qualifies for EI, but the Commission told him he didn't have good reason for his delay in applying for benefits. He paid in to EI his whole life, and rarely had occasion to need it. Now, he truly needs it.<sup>9</sup> The Appellant says he didn't think he qualified to get EI, because he worked on a commission basis. He didn't know EI premiums were being taken off his paycheques. His mother also told him she didn't think he would qualify for EI, and he

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<sup>6</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

<sup>8</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266

<sup>9</sup> See GD2-5.

took her opinion as fact.<sup>10</sup> He talked to another person who worked for the same employer, and they told him to apply because they were approved, so he applied.<sup>11</sup>

[24] The Appellant testified as follows:

- He worked six days a week. The last day he went to work was on December 18, 2023. He had received his last paycheque on November 30, 2023. He was paid once a month.
- He had an issue he wanted to discuss with the employer. He left the employer a message asking him to call him and told him he couldn't go back to work until they talked. But the employer didn't call him back.
- He wasn't aware he was no longer with the company until he applied for EI, because he didn't receive a record of employment (ROE) until then.
- He knew the employer took deductions from his paycheques, but he didn't think he could get EI because he worked on commission.
- His mother told him he couldn't apply for EI because he worked on a commission basis, and he accepted what she told him as fact. If he had checked in to whether his mother was correct, and she found out, she would be very upset with him.
- He talked to a co-worker who was let go right before he stopped working for the employer. The co-worker told him he received EI and encouraged him to apply. He didn't know he could get EI until he talked to this co-worker.
- When he called the Commission, the Commission officer he talked to got upset with him and put him on hold. The Commission officer returned to the call and told him everything was denied. The Commission officer made a snap decision not to backdate his claim.

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<sup>10</sup> See GD3-49.

<sup>11</sup> See GD3-31.

- When he stopped working, he didn't consider whether he could apply for EI, because he didn't think his employment was over. He left messages for the employer asking what was going on, but he didn't get a response. Even when he was looking for other jobs, he thought he was still employed by the employer. Not in the sense that he still worked there, but he thought he was still "on the books."
- He didn't contact the Commission after he stopped working to confirm his assumptions about his eligibility for benefits.
- He has been living on credit, which is now fully extended.
- He paid in to EI his whole life, and feels he is entitled to receive benefits.

[25] The Commission says the Appellant hasn't shown good cause for the delay because he didn't act as a reasonable person in his situation would have, to inform himself of his rights and obligations under the Act. It says that a reasonable person in the Appellant's situation would have examined his pay records, clarified his deductions with the employer, or asked the Commission for information regarding the insurability of his work.<sup>12</sup>

[26] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits between December 3, 2023, and November 12, 2024. I find that he didn't act as a reasonable and prudent person would have in similar circumstances.

[27] The Appellant assumed he wouldn't qualify for EI because he worked on a commission basis. However, he didn't contact the Commission directly to confirm this belief. I find that a reasonable person in the Appellant's position would contact the Commission to confirm whether it was in fact the case that he wouldn't be eligible for benefits because he worked on commission. A reasonable person in the Appellant's circumstances would have looked in to whether the deductions his employer took from

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<sup>12</sup> See GD4-5.

his paycheques were EI premiums. A reasonable and prudent person would have applied for EI benefits as soon as possible after leaving his job.

[28] I further find the Appellant didn't take reasonably prompt steps to find out about his entitlement to EI benefits, or what he needed to do to receive them. He didn't make any attempt to find out about his entitlement to benefits until nearly a year after he stopped working, so it can't be said that he did so promptly.

[29] The test for good cause is strict.<sup>13</sup> Good cause is not the same as having a good reason. The Act and the courts give claimants the responsibility to learn about their rights and responsibilities regarding EI as soon as and as best they can.<sup>14</sup>

[30] The court has said that there may be cases where inaction and submissiveness are understandable, but to be considered a valid excuse for delay, the circumstances must be "very exceptional."<sup>15</sup> The court has also said that antedate is an advantage that should be applied exceptionally.<sup>16</sup>

[31] The Appellant didn't provide evidence of any exceptional circumstance that prevented him from learning about his rights and responsibilities in applying for benefits for the entire period of the delay.

[32] I find that the Appellant didn't have good cause for the delay from December 3, 2023, to November 12, 2024, for the reasons outlined above. Since the Appellant does not have good cause for the entire period of the delay, this means his claim cannot start on the earlier date he is requesting.

[33] The Appellant argues that denying his appeal for an antedate would result in an unjust outcome. He argues he should receive benefits because he paid in to EI his whole life. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court has said:

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<sup>13</sup> See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 11.

<sup>14</sup> See *Canada (Attorney General) v Brace*, 2008 FCA 118.

<sup>15</sup> See *Canada (Attorney General) v Caron*, A-395-85.

<sup>16</sup> See *Canada (Attorney General) v McBride*, 2009 FCA 1.

rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.<sup>17</sup>

[34] EI is an insurance program and not a savings account, or guaranteed income support program. As an insurance program, it has specific requirements to qualify for benefits. These requirements are set out in the law as discussed above. While I sympathize with the Appellant's situation, I cannot change the law.<sup>18</sup> Neither I nor the Commission have the discretion to rewrite the legislation or interpret it in a manner that is contrary to its plain meaning.

[35] I don't need to consider whether the Appellant qualified for benefits on the earlier day. Since the Appellant doesn't have good cause, his application can't be treated as though it was made earlier.

## **Issue 2 - Availability for work**

[36] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:<sup>19</sup>

- a) He wanted to go back to work as soon as a suitable job was available;
- b) he made efforts to find a suitable job; and
- c) he didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

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<sup>17</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.

<sup>18</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

<sup>19</sup> See *Faucher v Canada (Employment and Immigration Commission)*, A-56-96 and A-57-96. This decision paraphrases the three factors in plain language.

[37] When I consider each of these factors, I have to look at the Appellant's attitude and conduct for the entire period of the disentitlement.<sup>20</sup> (November 10, 2024, onward).

### **Wanting to go back to work**

[38] I find that the Appellant wanted to go back to work from November 10, 2024.

[39] The Appellant testified that he wanted to work as of November 10, 2024. He said he wanted to work in sales, but he was also willing to consider other types of work. He applied at the hospital. He applied for waste management, even though he has a bad arm, with limited motion. He is willing to give anything a shot. He has been looking for any job he could get and will work any hours.

[40] I believe the Appellant wants to work, and that he has wanted to work from November 10, 2024. I therefore find the Appellant has met the requirements of this factor.

### **Making efforts to find a suitable job**

[41] During a phone call on December 4, 2024, the Appellant told the Commission that after he stopped working in November 2023, he was looking for a few jobs passively at first. But he stopped applying for jobs because he had multiple personal issues.<sup>21</sup>

[42] During the reconsideration process, the Appellant told the Commission that it's really tough for him to get a job because he has a criminal record. He said he lost out on a job opportunity at a furniture store when he disclosed that he had a criminal record. He said he was reaching out to people here and there, but nothing ever panned out. Sometimes if he was talking to somebody that was looking for someone, he would send them a resume. He confirmed that he was not dropping resumes off in person. He was

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<sup>20</sup> See *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

<sup>21</sup> See GD3-32.

asked how many jobs he believed he applied for on Indeed through 2024, and he guessed it to be over 100.<sup>22</sup>

[43] The Appellant testified that he is always looking for work. He made a profile on Indeed and applies for jobs posted there. He applies for jobs and waits to get emails back from employers. He also asks around to family and friends about any places they might know are hiring.

[44] The Appellant testified that since November 2024, he has gotten discouraged and is spending less time looking for work. He said that since November 2024, a lot of his time has been spent on preparing his EI appeal. He feels an injustice was done to him by the Commission, because of how his claim was handled by the first Commission officer he spoke to. He feels the incorrect decision was made because the Commission officer didn't like him and there was a language barrier. He has been focusing on righting this wrong through his appeal to the Tribunal.

[45] I asked the Appellant if he had proof of his job search, and jobs he applied to since November 2024. He said that his phone had updated, and his emails only go back to January 2025. He said he might have applied here and there, but looking for work wasn't his focus at that time.

[46] I find that the Appellant didn't make enough efforts to find a suitable job from November 10, 2024. He testified that he was focused on preparing his appeal to the Tribunal from that time and that he has spent less and less time looking for work. He hasn't shown that he was making sustained efforts to find work from November 10, 2024.

[47] I therefore find the Appellant hasn't met the requirements of this factor.

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<sup>22</sup> See GD3-51.

### **Unduly limiting chances of going back to work**

[48] The Commission says the Appellant's criminal record and transportation issue are evidence of his non-availability for work.

[49] The Appellant told the Commission that he has multiple personal issues, including criminal issues, that he has had to deal with since he stopped working in November 2023. He said that his personal history is a hindrance in getting jobs, and that employers won't hire him because of his criminal history.<sup>23</sup>

[50] The Appellant also told the Commission that he doesn't have a car and no longer has transportation money. He got an offer from Regroup (garbage disposal) and they asked if he could get to Sackville every morning. He said that he couldn't, but if he could get EI, then he would have transportation again. The Commission asked him how he would have been able to commute to work in 2024 if he found a job, and he said that he was using his credit and would have taken an Uber. Then once he got a job, he would have used his income. He confirmed that he can also use public transit, but Uber is sometimes not much more. He said that he ran out his credit near the end of 2024 and could only afford to accept work if he was approved for EI benefits.<sup>24</sup>

[51] The Appellant testified that as of the end of 2024, he has had no money and couldn't even afford to take the bus to work if he got a job. He can't get Income Assistance because his income taxes aren't completed and up to date. So, he has to walk for transportation or ask a friend or his mother for a drive.

[52] The Appellant testified that he doesn't know what jobs do and don't care about him having a criminal record. He feels that they all care. He doesn't have any conditions related to his criminal record that would affect his ability to work in certain jobs. But he believes that there are a lot of employers who won't hire him because he has a criminal record.

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<sup>23</sup> See GD3-32.

<sup>24</sup> See GD3-51.

[53] I find that the Appellant's transportation issue is not a personal condition that he set, that unduly limits his chances of returning to the labour market. It is outside of the Appellant's control that he is financially unable to access any form of transportation.

[54] I also find that the Appellant's criminal record isn't a personal condition that he set, that unduly limits his chances of returning to the labour market. Although the Appellant's criminal record impeded his ability to be hired in one job, and the Appellant testified that he believes his criminal record is an impediment to him getting a job, his criminal record is not a personal condition that he set. It is a condition imposed on him, and the decision of employers not to hire people with criminal records is not something the Appellant can control.

[55] I do, however, find the Appellant set a personal condition that unduly limited his chances of returning to work from November 10, 2024. He testified that by that time, he wasn't focused on looking for work, but on preparing his appeal to the Tribunal. He made the choice not to focus on looking for work because he was choosing to use his time in preparing his appeal. This is a personal condition that he set. This personal condition overly limited his chances of returning to work, because it would be difficult to find work if he wasn't looking for work.

[56] I therefore find the Appellant hasn't met the requirements of this factor.

### **So, was the Appellant capable of and available for work?**

[57] Based on my findings on the three factors, I find that the Appellant has not shown that he was capable of and available for work but unable to find a suitable job.

[58] I find that the Appellant is disentitled from receiving EI regular benefits from November 10, 2024, because he has not shown that he was available for work from that date.

## **Conclusion**

[59] The Appellant hasn't shown that he had good cause for the delay in applying for EI benefits. This means that the his claim can't be treated as though it was made earlier, on December 3, 2023.

[60] The Appellant hasn't shown that he was available for work from November 10, 2024. This means that he can't receive EI benefits from November 10, 2024.

[61] This means that the appeal is dismissed.

Susan Stapleton  
Member, General Division – Employment Insurance Section