Citation: *AB v Canada Employment Insurance Commission*, 2025 SST 414

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (708428) dated January 27, 2025 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	Videoconference
Hearing date:	February 25, 2025
Hearing participant:	Appellant
Decision date:	March 18, 2025
File number:	GE-25-385

Decision

[1] The appeal is dismissed.

[2] The Appellant's antedate request is denied because he hasn't shown good cause for his delay in applying for employment insurance (EI) benefits. He hasn't given an explanation the law accepts, so his application cannot be treated as though it was made on the earlier date he asked for[1].

[3] This means he doesn't qualify to receive EI benefits.

Overview

[4] The Appellant voluntarily left his job at X(X) on December 27, 2023. He applied for EI benefits 45 weeks later – on November 13, 2024.

[5] The Respondent (Commission) decided the Appellant didn't qualify for EI benefits on this application[2]. He needed 665 hours of insurable employment in his qualifying period[3] to establish a claim, and he had 263 hours.

[6] The Appellant then asked to have his claim backdated so his benefits could start as of December 31, 2023 to coincide with his last day of work[4].

[7] This is called antedating a claim. The law says you must show good cause for your delay in applying for benefits if you wish to have your claim antedated to start on an earlier date[5]. There is a specific legal test to prove good cause.

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[1] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.
[2] The Commission's decision letter is at GD3-23.
[3] The Appellant's qualifying period for his application is November 12, 2023 to November 9, 2024.
[4] In this way, the Appellant could qualify for benefits on his application because additional hours from his Record of Employment (ROE) could be considered. If his claim was antedated to December 31, 2023, his qualifying period would be December 31, 2022 to December 30, 2023, and this qualifying period would capture nearly all of the 2,104 hours reported on his ROE for the 52 weeks prior to his last day of work on December 27, 2023 (see GD3-18).
[5] See section 10(4) of the EI Act.

[8] The Appellant said he didn't apply earlier because he had a job in Brazil and didn't need the money at that time[6]. But now he's back in Canada, unemployed, and in need of financial assistance.

[9] The Commission denied his antedate request. It said he didn't prove he had good cause for his delay in applying late[7]. This meant he still couldn't be paid EI benefits[8].

[10] The Appellant appealed that decision to the General Division of the Social Security Tribunal (Tribunal).

Preliminary Matters

A) The Appellant acknowledges he doesn't qualify EI benefits without an antedate.

[11] The Appellant applied for EI benefits on November 13, 2024.

[12] Based on the date of his application, his benefit period would start on November 10, 2024 **if he satisfied the qualifying requirements** in section 7 of the *Employment Insurance Act* (EI Act)[9].

[13] I don't have discretion to disregard or override the qualifying requirements in the EI Act[10].

[14] Unfortunately for the Appellant, he doesn't satisfy the requirement in section 7(2)(b) of the EI Act to qualify for benefits on his application.

[15] Specifically, he doesn't have enough hours of insurable employment in his qualifying period of November 12, 2023 to November 9, 2024[11] to establish a claim. He

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[6] See GD3-45 and GD3-47.
[7] See the decision letter at GD3-49 and the reconsideration decision (verbal) at GD3-50.
[8] See GD3-51 for the reconsideration decision letter confirming his benefit period was **not** established.
[9] All claims for EI benefits start on a Sunday. The Appellant's claim would have started on November 10, 2024 because this is the Sunday of the week in which he applied for benefits.
[10] The Supreme Court of Canada has said I must follow the law and cannot make an exception even if the outcome seems unfair (see *Granger v. Canada (CEIC)*, [1989] 1 SCR 141).
[11] The Appellant's qualifying period is the 52 weeks prior to the start date of his benefit period on November 10, 2024 (pursuant to paragraph 8(1)(a) of the EI Act).

needs 665 hours of insurable employment, and he only has 263 hours that fall within this period. He hasn't worked in insurable employment since his last day of work at X on December 27, 2023[12]; and the Commission determined there were no grounds for an extension of his qualifying period[13]. So the Commission said he can't establish a benefit period (qualify) to receive EI benefits.

[16] The Appellant doesn't dispute the Commission's calculations of the insurable hours and qualifying period for the application he filed on November 13, 2024[14].

[17] I have reviewed them and find them to be in order. Therefore, **I am confirming the Commission's decision** that the Appellant doesn't have enough hours of insurable employment during his qualifying period of November 12, 2023 to November 9, 2024 to establish a claim for EI benefits starting on November 10, 2024[15].

[18] However, if the Appellant's claim is antedated to start on December 31, 2023, his qualifying period would become the 52 weeks prior to *that* date. Since all 2,104 hours of insurable employment reported on his ROE from X fall within this period, he could qualify for EI benefits this way[16].

B) If the Appellant succeeds on his appeal, his claim will be reviewed for voluntarily leaving his employment at X.

[19] When the Appellant made his antedate request, the Service Canada representative he spoke with explained that, if the antedate is approved, his claim would still have to be evaluated on the issues of voluntary leave and availability for work between January 1, 2024 to October 31, 2024[17].

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[12] See GD3-42. See also the Appellant's application for EI benefits at GD3-9.
[13] See GD3-42.
[14] These are set out at GD4-4 to GD4-5. At the hearing, I asked the Appellant if he disputed the Commission's calculations, and he said he did not.
[15] In other words, I am confirming the Commission's decision that the Appellant cannot establish a claim based on the application he submitted on November 13, 2024.
[16] At GD3-45, the Commission calculated the Appellant would need 700 hours of insurable employment in his qualifying period for his claim to start on December 31, 2023. At GD4-2, the Commission says it determined the Appellant had enough hours if an antedate was granted but remained unqualified if the antedate is refused.
[17] See GD3-43.

[20] Whenever a claimant voluntarily leaves their employment, the Commission investigates the reason they stopped working. This is because the law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so18.

[21] The law also says that if you quit your job without just cause, you cannot use the insurable hours and earnings from that job to establish a claim for EI benefits19. You must work new hours of insurable employment since leaving without just cause if you want to establish a claim20.

[22] This means the Appellant must prove he had just cause for voluntarily leaving his job at X on December 27, 2023 – or none of the insurable hours from this employment can be used to qualify for EI benefits. It would be as if he had zero (0) hours of insurable employment that fell within his qualifying period, even with an antedate.

[23] The voluntary leave issue is not before me on this appeal. But the Appellant testified at the hearing that the Commission already approved his separation from employment at X. I saw no evidence of this in the file. Only the Commission's statement that if the Appellant's antedate request is approved, "an evaluation of his voluntary leave is necessary"21.

[24] To help the Appellant better understand his situation, I asked the Commission for clarification22. The Commission confirmed there's been no adjudication on the voluntary leaving issue23. It said that, if the appeal is allowed, it would then have to determine if the Appellant is disqualified from EI benefits for voluntarily leaving his employment at X without just cause24.

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[18] Section 30 of the EI Act.
[19] Section 30(6) of the EI Act. **Just cause exists if you had *no reasonable alternative* to quitting your job when you did.**
[20] Section 30(1)(a) of the EI Act.
[21] See GD3-45.
[22] See GD7-1.
[23] See GD9-1.
[24] See GD9-1.

[25] This means that even if the Appellant qualifies for EI benefits with an antedate, his claim will still need to be reviewed for a potential disqualification due to voluntarily leaving his job at X without just cause.

[26] In post-hearing submissions, the Appellant said he's already provided "multiple document reasons" for leaving X25. That may be true, but the Commission hasn't yet made a decision on the voluntary leave issue.

C) There will also be a review of the Appellant's claim for the period he was outside of Canada.

[27] The law says you cannot be paid EI benefits while outside of Canada unless the purpose of your travel comes within one of the specific exceptions listed in the Employment Insurance Regulations26.

[28] The Appellant left Canada on January 1, 2024 and traveled to Brazil. The purpose of his trip was because he was starting a 10-month paid position at a university in Brazil. He returned to Canada on October 26, 2024.

[29] The outside of Canada issue is not before me on this appeal. But the Appellant didn't know the general rule against receiving EI. He said he wouldn't have asked for his claim to be antedated to December 31, 2023 if he couldn't receive EI benefits starting from then.

[30] To help the Appellant better understand his situation, I asked the Commission for clarification27. Based on its "brief analysis", the Commission said it doesn't seem the Appellant meets any of the exceptions prescribed in the Regulations28. It said that, if the appeal is allowed, it would then have to determine if the Appellant is disentitled to EI benefits because of the time he spent outside of Canada29.

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[25] See GD11-1.
[26] Section 37 of the EI Act and section 55 of the Regulations.
[27] See GD7-1.
[28] See GD9-1.
[29] See GD9-1.

[31] This means that even if the Appellant qualified for EI benefits with an antedate to December 31, 2023 and proved he had just cause for voluntarily leaving his employment at X, his claim will still need to be reviewed for a potential disentitlement for being outside of Canada from January 1, 2024 to October 26, 2024.

[32] In post-hearing submissions, the Appellant listed reasons why he shouldn't automatically be disqualified because of his time outside of Canada30. He can bring these arguments forward if and when the Commission adjudicates the outside of Canada issue. I am only alerting him to the fact the Commission has not done a review of this issue.

[33] At the hearing, the Appellant said he didn't understand what it would mean for his claim if he was disentitled to EI benefits for the weeks he was outside of Canada.

[34] To help him better understand his situation, I asked the Commission how many potential weeks of entitlement there would be if the Appellant's benefit period started as of December 31, 2023?31

[35] The Commission said the Appellant's maximum potential32 entitlement would be 36 weeks of regular EI benefits payable for weeks within a benefit period starting December 31, 2023 and ending January 18, 202533.

[36] This means that if the Appellant were to be disentitled to EI benefits for the entire time he was outside of Canada34, the maximum number of weeks of benefits he might receive would be 10 weeks35, starting from the week of his return to Canada on October 26, 2024 and ending with the expiry of his benefit period on January 18, 2025.

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[30] See GD11-1 to GD11-2.
[31] See GD7-1.
[32] Provided he met all the other qualifying and entitlement requirements, including proved he was available for work and submitted his claimant reports.
[33] See GD9-1.
[34] Assuming he had qualified for EI benefits with an antedate and proven he had just cause for voluntarily leaving his employment at X.
[35] See footnote 32 above.

And to get even these 10 weeks, his claim must first be antedated to December 31, 2023.

[37] The weeks of entitlement issue is not before me on this appeal. But I have taken time to investigate and explain it (and the other preliminary issues) to help the Appellant understand what is involved in the administration of his claim.

[38] I will now turn to the issue I must decide on this appeal.

Issue

[39] Can the Appellant's application for EI benefits be antedated and treated as though it was made on December 31, 2023?

Analysis

[40] I must determine if the Appellant has satisfied the legal test for his claim to be antedated to December 31, 2023. To do this, he must prove 2 things:

a) that he had **good cause** for his delay in applying for EI benefits throughout the whole period of the delay; and

b) that he qualified for benefits on the earlier day[36].

[41] To prove **good cause**, the Appellant must show he acted as a reasonable and prudent person would have acted in similar circumstances[37]. 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.

[42] And he has to show this for the entire period of the delay[38].

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[36] Subsection 10(4) of the *Employment Insurance Act* (EI Act). See also *Canada (Attorney General) v. Kaler*, 2011 FCA 266.
[37] *Canada (Attorney General) v Burke*, 2012 FCA 139 and see section 10(4) of the EI Act.
[38] *Canada (Attorney General) v Burke,* 2012 FCA 139.

[43] For the Appellant, the period of delay is the 45 weeks between December 31, 2023 (the day he wants his claim for EI benefits to start) and November 13, 2024 (the day he applied for EI benefits).

[44] The Appellant must also show he took reasonably prompt steps to understand his entitlement to EI benefits and obligations under the law[39]. This means he has to demonstrate that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If he didn't take these steps, then he must show there were exceptional circumstances which explain why he didn't do so[40].

[45] To succeed on his appeal, the Appellant must prove it is more likely than not that he had good cause throughout his 45-week delay in applying for EI benefits[41].

Issue 1: Has the Appellant shown good cause for his delay?

The short answer:

[46] No. The Appellant hasn't shown good cause throughout the entire 45 weeks he delayed in applying for EI benefits.

The evidence:

[47] The Appellant told the Commission he had good cause for his delay because[42]:

- He had no intention of applying for EI after he quit his job on December 27, 2023.
- Issues in his personal life led him to leave Canada on January 1, 2024 to work at a university research lab in Brazil until October 31, 2024.

[39] *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[40] *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[41] The Appellant has to prove good cause on a balance of probabilities. This means she must prove it is more likely than not.
[42] See GD3-46 and

- He had a paid position as a postdoctoral research fellow from January 1, 2024 to October 31, 2024.
- He didn't apply for EI earlier because he had a job and didn't need the money.
- He hoped to get his previous job back when he returned to Canada, but that didn't work out.
- So since October 31, 2024, he's been living off his savings and actively looking for work while also considering self-employment options.
- He applied for EI benefits on November 13, 2024 because he was unable to return to his old job or find other work and needs financial assistance.
- He didn't know there was a time limit to apply for EI and not be penalized.

[48] In his Notice of Appeal, the Appellant said he "had to declare bankruptcy" because of the gravity of his financial situation and asked the Tribunal to review his claim on "compassionate grounds"[43].

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

- His delay was due to exceptional circumstances beyond his control.

His circumstances prior to leaving Canada

- Starting in March 2023, he experienced significant medical and mental health challenges as a result of his marriage breakdown.
- He began seeing a heart specialist, went on anti-depressants and was told to avoid stress.
- He decided he needed a stress-free environment so he could focus on his health.

[43] See GD2-12.

- Between April and November 2023, he started looking into doing some research at a university. A colleague invited him to work in his lab at Federal University of Sao Carlo in Brazil.

- He asked his employer if he could “take a sabbatical”.

- The employer said “No” but led him to believe “the door would be open” when he got back.

- By December 2023, his home life had “crashed” and a mental health specialist encouraged him to go to Brazil, so he decided to go.

- He accepted an appointment at the university from January 1, 2024 to October 31, 2024.

- He resigned from his job and arranged for a long-stay VISA.

- His last day of work was December 27, 2023 and he left Canada on January 4, 2024.

His circumstances in Brazil

- When he arrived in Brazil he was busy looking for an apartment and dealing with some health issues.

- The first 3 months were “very complicated” for him. He had to go to a police station to apply for a Brazilian identity number (SIN) in order to open a bank account and sign a lease. There was also “paperwork” he had to do for the university.

- He also had to take a translator to every appointment because “everything was in Portuguese”. So it took a lot of time to settle these things.

- For the first 3 months (January, February and March), he was focused on his health and adjusting his diet and exercise routines to Brazil.

- He didn't have the "state of mind to think about EI".
- His "scholarship" money from the university "didn't come through" at first.
- During the first 3 months, he was living on his savings and credit cards until he received his first payment at the end of April[44].
- After that payment, the university decided not to pay him because he didn't have "repatriation insurance", which it said was a condition of further pay.
- This type of insurance was too expensive for him. It took some time for him to arrange a policy the university would accept.
- He eventually got paid for May and June, but then he didn't get paid in July.
- In August, they fixed the pay system. He was then paid "monthly" in September and October.
- He spent the first 3 months of his research appointment working remotely and doing some "literature review". He didn't start going into the lab until April. His hours were "flexible", and he didn't go to the lab every day.
- The work involved doing experiments, analyzing the data and discussing results with colleagues over the phone. He also had to prepare a report on his results.
- His last day of work at the university was October 24, 2024.
- Also on October 24, 2024, he learned his former employer was unable to hire him back[45].

His circumstances when he returned to Canada

- He arrived in Canada on October 26, 2024.

[44] The Appellant said he received a lump sum for January, February, March and April "at the end of April".
[45] See GD3-40.

- His monthly pay from the university didn't even cover his credit card payments, so he'd stopped paying them. He had no money and had to stay with a friend.
- He applied for EI benefits and filed for bankruptcy. He's been living on social assistance and loans from friends.
- He has actively looked for work ever since he returned to Canada.
- He also continued to work on the business plan he started while in Brazil to monetize the research work he was doing.

Why he thinks he should be paid EI benefits

- He's honest and a hard worker. He's been working "from Day 1" since he moved to Canada in 2012.
- He wasn't "negligent". He really thought he had a job to come back to.
- He didn't know the laws about EI benefits.

My findings:

[50] The Appellant has **not** satisfied the legal test to prove he had good cause for his delay in applying for EI benefits.

The Appellant didn't behave as a reasonable person would have in similar circumstances.

[51] During the period of the Appellant's 45-week delay from December 31, 2023 to November 13, 2024, his circumstances were:

- His employer turned down his request for a leave of absence[46].
- He quit his job to take a "sabbatical" anyway.

[46] See GD2-11.

- He accepted a 10-month research position in Brazil. There were significant hurdles involved in relocating to Brazil for this limited appointment.

- The "scholarship" money (pay) for this position would be far less than he was earning from his employment[47].

- He had no money coming in at all for the first 4 months he was in Brazil (January to April). He was surviving on his savings and credit cards.

- There were on-going issues with his pay after that. Even after arranging for the costly insurance policy required by the university, he wasn't paid for July until the end of August.

- He was dealing with his own medical and mental health issues.

[52] A reasonable person in the Appellant's circumstances would have taken steps to contact Service Canada for information about how and when to apply for EI benefits **and/or** applied for EI benefits within the first 3 months of their last day of employment[48]. Especially if the appointment to their new position was effective January 1, 2024 and the scholarship money they were expecting "didn't come through" until end of April 2024 and they were relying on their savings and going into debt to survive.

[53] A reasonable person in such circumstances would have contacted Service Canada (by phone or E-mail) to find out the rules around timing of applications for EI benefits. At a minimum, a reasonable person would have researched the EI program online and learned about the application process and the deadlines for applying.

[54] The Appellant told the Commission he didn't apply for EI benefits earlier because he had a job and didn't need the money. But at the hearing, he made it clear that he didn't have on-going employment, but a limited 10-month research appointment for which he was supposed to receive scholarship money. That money didn't come through until nearly 4 months after he started. And when it did come through, it was

[47] In his appeal materials, the Appellant said his annual salary at X was "nearly $90,000" (see GD2-11).
[48] In other words, within 3 months of December 27, 2023.

immediately cut off again for lack of insurance. And he experienced financial hardship because of these issues with his pay.

[55] In his appeal materials, the Appellant said he had "a verbal agreement" with his employer that he could "rejoin the company once I was able to do so"[49]. But the evidence he provided doesn't support this.

[56] In his resignation E-mail on December 13, 2023, the Appellant wrote:

> "I look forward to maintaining positive connections with the X family and hope our paths may cross again after 10 months when I am back. Thank you once again for the opportunities and experiences."[50]

There's no mention of any discussions with the employer (let alone a commitment by the employer) to re-hire the Appellant at the conclusion of the 10-month "break" he was taking to focus on his well-being "while continuing to do research in Brazil"[51]. If there was a "verbal assurance" from the employer **before** he resigned (that he could return to his position after addressing his personal challenges[52]), surely the Appellant would have referred to it in his resignation? Or sent a separate E-mail thanking the employer for such a generous assurance? His failure to do either of these things casts doubt upon the existence of any such assurance.

[57] The Appellant says the employer's E-mail to him on October 24, 2024[53] is evidence of the verbal agreement. I disagree. At best, it shows the Appellant reached out to enquire about "the prospect" of returning to work, and that his contact had been "seeking traction" to hire him back[54], without success. There's no reference whatsoever by the employer to having previously agreed to re-hire the Appellant.

[58] I believe the Appellant hoped the door might still be open for him to work at X down the road. But I don't accept there was any assurance (verbal or otherwise) to

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[49] See GD2-11.
[50] See GD3-41.
[51] See GD3-41.
[52] As the Appellant stated in his Request for Reconsideration at GD3-27.
[53] See GD3-40.
[54] See GD3-40.

rehire him after he resigned. So if the Appellant chose to rely on such an assurance, he wasn't acting as a reasonable person would have done in his circumstances.

[59] A reasonable and prudent person in these circumstances wouldn't have waited 45 weeks to find out how and when to apply for EI benefits. Especially if they were aware of the EI program[55], having to survive on their savings for months and facing significant uncertainty about getting paid for the work they were doing – not to mention an employer who had turned down their request for a leave of absence and declined to confirm their job would be there 10-months later. A reasonable person would have recognized the need to take steps to get their claim for EI benefits lined up in case their new position turned out to be untenable and they had no income coming in.

[60] There's no suggestion the Appellant didn't have access to phone or internet service while he was in Brazil, so he could have contacted Service Canada by phone or E-mail. He also could have done some research on Service Canada's website. If he had, he would have seen the information about how it's essential to apply for EI benefits as soon as you are separated from your employment. There's also information on the website how you can apply for EI benefits and then report your earnings if you work while on claim.

[61] The Appellant's failure to do these things means he didn't act as a reasonable person in his situation would have throughout the period of her delay.

The Appellant didn't take reasonably prompt steps to understand his entitlement to EI benefits and his obligations under the law.

[62] The courts have said this is a requirement for an antedate[56].

[63] The Appellant is essentially arguing that:

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[55] See GD3-27.
[56] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266. The courts have also repeatedly held that ignorance of the law is not good cause for a delay, nor is reliance on unverified information or assumptions: see *Canada (Attorney General) v Kaler*, 2011 FCA 266, C*anada (Attorney General) v. Trinh*, 2010 FCA 335, and *Canada (Attorney General) v. Rouleau*, A-4-95.

a) He had a lot of stressful things going on in his life and shouldn't be penalized for failing to apply for EI benefits sooner; and

b) He didn't know there was a timeframe to apply benefits. If he'd known, he'd have applied sooner.

[64] Neither of these arguments excuse the Appellant from his personal responsibility to find out about how **and when** to apply for EI benefits.

[65] It was incumbent on him to verify his rights with Service Canada as soon as possible and as best he could. Yet he waited 45 weeks after leaving his job without once contacting Service Canada about ***when*** to apply for EI benefits or what to do in his uncertain circumstances. Nor is there any evidence he researched Service Canada's website at any point. This means he was not trying to learn about his rights as best he could.

[66] I acknowledge the Appellant's testimony that he didn't know there was a deadline for applying for EI benefits. But the courts have said that good faith and ignorance of the law do not in themselves constitute a valid reason to justify the delay in applying[57].

[67] The courts have also said that a delay in applying for benefits based on an incorrect and unverified assumption[58] will **not** constitute good cause for delay for purposes of the EI Act[59]. These cases mean the Appellant had an obligation to verify his understanding about the EI program and the deadlines for applying for benefits in a timely manner.

[68] A reasonable and prudent person in the Appellant's circumstances would have contacted Service Canada within 3 months of their last day of work on December 27,

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[57] See footnote 56 above. See also *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry* 2005 FCA 367 and *Mauchel*, 2012 FCA 202.
[58] For example, an assumption about eligibility or the need for the employer to issue a final Record of Employment or, as in the Appellant's case, that there were no deadlines for applying".
[59] See *Howard v. Canada (Attorney General)*, 2011 FCA 116, *Canada (Attorney General) v. Innes*, 2010 FCA 341, and *Shebib v. Canada (Attorney General)*, 2003 FCA 88. For cases specifically involving waiting for an ROE see *Canada (Attorney General) v. Chan*, A-185-94; *Canada (Attorney General) v. Brace*, 2008 FCA 118; and *Canada (Attorney General) v. Ouimet*, 2010 FCA 83.

2023 to determine if there were deadlines for applying for EI benefits. By failing to do so, the Appellant wasn't trying to learn about his rights as best he could.

[69] This means he hasn't proven he took reasonably prompt steps to understand his right to claim EI benefits and the rules for doing so, as is required for an antedate.

There was nothing preventing the Appellant from contacting Service Canada throughout the period of his delay.

[70] I see no evidence the Appellant was **prevented** from telephoning or E-mailing Service Canada or applying for EI benefits.

[71] The Appellant testified that he was working remotely for the first 3 months of his appointment and that he consulted with colleagues by phone. He was also communicating with his former employer by E-mail prior to returning to Canada. From this evidence, I conclude the Appellant was ***not*** prevented from making phone calls or sending E-mails or accessing the internet throughout the period of his delay. I therefore find he could have contacted Service Canada to enquire about applying for EI benefits and the timing of the application process prior to November 13, 2024.

[72] He also could have done some basic research online at Service Canada's website. Even if he'd gone online and just looked at the application form he would have seen that claimants are encouraged to apply as soon as they are separated from their employment.

[73] I acknowledge the Appellant's testimony about his medical and mental health challenges. I agree he had a lot of stressful things going on in his life at the time, some of which were beyond his control (such as his heart condition) and some of which may have been brought on by himself by moving to Brazil and having to set up a whole new life there[60].

[60] The Appellant testified that his doctor told him not to leave.

[74] But there's no evidence the Appellant's medical or mental health issues **prevented him** from contacting Service Canada by phone or E-mail or from applying for EI benefits throughout the period of his delay.

[75] Nor did these issues prevent him from making arrangements to live outside of Canada (finding a place to live, applying for Brazilian ID, setting up a bank account, signing a lease, finding insurance and sorting out pay issues), or from actively working on his research project at a university, or from starting a business plan to monetize his research.

[76] The Appellant may have felt he was under an undue amount of stress with the difficult things he had to manage, but the preponderance of evidence shows he still could have phoned or E-mailed Service Canada to enquire about applying for EI benefits and the deadline for doing so prior to November 13, 2024.

[77] It is indeed unfortunate he didn't do so, as getting his claim started sooner could have eased the financial, if not the personal, stress he experienced upon his return to Canada on October 26, 2024.

[78] In summary, none of the reasons for the Appellant's delay are exceptional circumstances that excuse him from applying for EI benefits promptly or explain why he didn't take steps to understand his rights and obligations under the EI Act sooner. Especially when claimants are expected to look for work and attend to personal matters while on claim as part of their normal course of life.

[79] Nor is the Appellant's belief in a verbal assurance from the employer an exceptional circumstance that excuses his delay or failure to take steps to learn about EI benefits. There is no evidence showing **the employer agreed** (verbally or otherwise) to re-hire the Appellant at the end of his research appointment in Brazil. The mere hope his job would be there will not be enough to establish an exceptional circumstance that prevented him from acting as required for an antedate.

[80] I therefore find the Appellant has not proven there were special circumstances that explain why he didn't take reasonably prompt steps to understand his rights and obligations under the EI Act.

Issue 2: What do my findings mean for the Appellant?

[81] The Appellant must prove he had good cause throughout the entire period of his delay in applying for EI benefits.

[82] This means he must show he acted as a reasonable person in his circumstances would have ***and*** that he took reasonably prompt steps to understand his rights and obligations during the period of the delay – or that there were exceptional circumstances which prevented him from doing so.

[83] This is the legal test for an antedate. And it doesn't depend on whether the Appellant worked hard and contributed to the EI program for many years or whether he feels he's being treated unfairly in light of the stressful things he was dealing with at the time.

[84] I have found the Appellant hasn't satisfied any part of the legal test for the entire period of his delay. This means his claim for EI benefits cannot be antedated[61].

[85] I acknowledge the Appellant's difficult financial circumstances. But the Supreme Court of Canada has said I must follow the law, even if the outcome seems unfair[62]. This means I can't make an exception for the Appellant, no matter how compelling his circumstances may be. And I don't have jurisdiction to direct the Commission to pay him EI benefits he's not entitled to.

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[61] I don't need to rule on whether the Appellant qualified at the earlier date (December 31, 2023) because he hasn't satisfied the first part of the test for an antedate.
[62] See *Granger v. Canada* (CEIC), [1989] 1 SCR 141.

Conclusion

[86] The Appellant is **not** entitled to antedate his claim for EI benefits. This is because he hasn't proven he had good cause for his delay in applying for EI benefits throughout the entire 45-week period of the delay.

[87] This means his claim cannot be treated as though it was made on the earlier date he requested.

[88] The Appellant cannot be paid EI benefits on the application he submitted November 13, 2024. This is because he doesn't have enough hours of insurable employment during his qualifying period of November 12, 2023 to November 9, 2024 to establish a claim for EI benefits starting on November 10, 2024.

[89] The appeal is dismissed.

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