Citation: *BG v Canada Employment Insurance Commission*, 2025 SST 734

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (402189) dated May 26, 2020 (issued by Service Canada)

Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	In writing
Decision date:	July 11, 2025
File number:	GE-23-3474

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 applying for benefits. This means that the Appellant's application can't be treated as though it were made earlier.[1]

Overview

[3] The Appellant applied for Employment Insurance (EI) sickness benefits on February 27, 2020.[2] He wants his application to be treated as though he made it earlier, on April 26, 2011.[3]

[4] The Canada Employment Insurance Commission (Commission) refused his request.

[5] I have to decide whether the Appellant has proven that he had good cause for not applying for benefits earlier.[4]

[6] The Commission says that the Appellant didn't have good cause. It says that it exercises a degree of leniency when reviewing delayed claims for sickness benefits. But the real reason the Appellant didn't apply earlier was because he thought he wouldn't qualify, which the courts say isn't good cause for the delay.[5]

[7] The Appellant says that he had good cause for the delay. He initially delayed because he was pursuing other benefits, then he reasonably believed he didn't qualify. Despite his EI experience, he didn't know about obscure antedating provisions, or that

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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] See pages GD3A-3 to GD3A-21. The date is on page GD3A-19.
[3] See antedate request dated March 2, 2020, on page GD3A-24. See also, date of antedate under the "Issues" heading.
[4] Mine is the second decision of the General Division on this issue. The first decision was appealed by the Appellant to the Appeal Division. The Appeal Division returned the appeal to a different member of the General Division for reconsideration.
[5] See page GD4A-4.

he could extend his qualifying period. And most of the time, his decision-making ability was impaired by his mental health conditions and disability.

Matter I have to consider first

– Form of hearing

[8] The hearing proceeded in writing because that is the Appellant's preference.[6]

[9] In his written submissions, he said I could contact him with written questions, and if absolutely necessary, I could arrange a telephone or video conference. He suggested that the opportunity for clarification should be the same in a written process as for an oral hearing.[7]

[10] But a hearing in writing isn't the same as an oral hearing. A hearing in writing is a decision based on the evidence in the file.

[11] In any event, the facts in this file are not complex and the Appellant has had an opportunity to explain his position. Having reviewed the file, I did not have any questions that required clarification.

Issue

[12] Can the Appellant's application for benefits be treated as though it was made on April 26, 2011? This is called antedating (or, backdating) the application.

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[6] This was discussed during a case conference held in Tribunal file GE-23-2574. See summary of case conference coded as RGD7 in that file. See also RGD7 in this file where the method of proceeding was confirmed.
[7] See page RGD33-48. See also "Section 3 - Hearing/Language Question" on page GD2-15. See also page GD34-2 and RGD5-4.

– **Date of the antedate**

[13] The Appellant asked the Commission to antedate his claim to April 26, 2011.[8] He wants me to consider whether his claim can be antedated to "2011, or the latest, to mid 2013."[9]

[14] I have the authority to look at reconsideration decisions.[10]

[15] The Commission's initial decision was that his claim couldn't start on April 24, 2011, because he hadn't proven that between April 24, 2011, and March 2, 2020, he had good cause to apply late for benefits.[11]

[16] The Commission refers to April 24, 2011, because that is the Sunday of the week containing April 26, 2011, and all benefit periods start on Sundays.

[17] Upon reconsideration, the Commission maintained its initial decision. This is the reconsideration decision the Appellant appealed to the General Division.

[18] Since the Commission's decision was whether the claim can be antedated to April 24, 2011, that is the only decision I can review.

[19] Yet, to manage appeals fairly and efficiently, I have to take a broad approach to my jurisdiction.[12]

[20] So, in deciding the issue, I also considered whether he has shown good cause for the delay starting at another date between April 26, 2011, and mid 2013.

[21] If I had found that he had good cause from another date, I would have asked for submissions about whether he qualified on that other date. Given my decision, it wasn't necessary to do this.

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[8] See page GD3A-24. He noted on his antedate request that he might change the date later.
[9] See page RGD33-3. See also Notice of Appeal page GD2-14, where the Appellant refers to an antedate back between April 27, 2011, and early March 2012. On page GD34-2, he states that he doesn't want an antedate to April 26, 2011, but to late August 2011, or maybe April 2012.
[10] I refer to decisions the Commission makes under section 111 of the EI Act.
[11] See initial decision letter on page GD3A-27.
[12] Such an approach was taken by the Tribunal in *P.M. v Minister of Employment and Social Development*, 2021 SST 92.

Analysis

[22] To get your application for benefits antedated, you must prove these two things:[13]

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.

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

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

[24] To show good cause, the Appellant must prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[14] 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.

[25] The Appellant must show that he acted this way for the entire period of the delay.[15] 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 April 26, 2011, to February 27, 2020.**

[26] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[16] This means that the Appellant must 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.[17]

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[13] See section 10(4) of the EI Act.
[14] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[15] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[16] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.
[17] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[27] 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.

What the Appellant argues

[28] The Appellant says that he had good cause for the delay. His arguments include:

- There is no requirement that claimants must contact Service Canada or the Commission, or look at the Service Canada website, for an antedate to be granted. You can act reasonably and prudently without doing these things.
- Some of the delay was due to his mental health and disabilities. These were severe from early 2011 to 2013, and continued to interfere with his behaviour, memory and reasoning until 2020, even though his functioning improved.[18]
- Applying the "reasonable person test" is discriminatory and contrary to the *Bill of Rights*, the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.[19]
- There should be a lenient approach when determining if a claim for special benefits can be antedated.[20]
- The Commission applies the *Employment Insurance Act* (EI Act) unfairly and arbitrarily. Its administrative policy isn't based on the EI Act, *Employment Insurance Regulations* (EI Regulations) or policies. Its policy lets many claimants get benefits for four or more weeks without showing good cause. Bureaucrats aren't supposed to write laws – they are meant to enforce and manage the laws.[21]

[18] See page RGD33-5. He says that he wasn't thinking straight before February 2012. See page GD35-18, para 67.
[19] See page RGD33-5.
[20] See page RGD33-5.
[21] See page RGD33-6.

- The Commission applies precedents, including *Mauchel*, too broadly. These precedents are likely obsolete given how the internet is an integral part of federal government programs, banking and other things.[22]

- The Commission and Service Canada are negligent and acting in bad faith because they have known since the *Mauchel* case in 2012 that people are likely to rely on the website alone.

- Even if he had called the Commission in 2012, 2013 or later, he likely wouldn't have received the right information.

[29] The Appellant also says that

- The Commission is arbitrarily choosing when to impose strict standards on claimants, and when to be permissive, allowing antedates to people who have no reasonable cause or delay out of indolence.[23]

- He knew his rights and obligations under the EI Act to a high enough standard to make contacting the Commission unnecessary until circumstances did or should have dictated.[24]

- He may have called Service Canada in May or June 2011, but he has no clear memory of doing so. It wouldn't have made a difference because he was completely aware of his general rights and obligations, and would have delayed filing past July 26, 2011, if not far longer because he was pursuing other benefits that could have provided more than the 15 weeks of EI sickness benefits he could get.[25]

- He checked the website during his severance period in 2011 and again around March 2012.[26]

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[22] See page RGD33-6. The Appellant refers to this case: *Mauchel v Canada (Attorney General)*, 2012 FCA 202.
[23] See page RGD33-7.
[24] See page RGD33-7.
[25] See RGD33-8.
[26] See page RGD33-47.

- He knew he wouldn't get any benefits until his severance pay ran out at the end of July 2011.[27]

- At the time, he also believed that he might have more income or become reemployed with his former employer, which would also reduce the amount of benefits payable after July 2011.[28]

- The General Division found that he acted as a reasonable and prudent person when it granted his antedate for EI sickness benefits where the delay was from July 2019 to February 2020.[29] He didn't contact Service Canada during this period, and didn't look at the website.

[30] The Appellant says that his serious mental health issues, which lasted to 2013, and beyond affected his ability to keep track of the last date when he would have been eligible for EI benefits.[30] He says that his written submission (RGD33) is evidence that his mental health and personality don't meet the "reasonable person" standard and show that his disability continues to impact him.[31] He suggests that a "normal" person wouldn't have written his submissions.

[31] He says that he knew his general rights to EI and would benefit from a claim; the only reason for not filing a claim until 2020 was because his disability interfered in 2011 to 2013, when he should have applied, and continued to interfere with his behaviour, memory and reasoning until 2020, even though his functioning improved.[32]

[32] The Appellant says that given the complexities of the legal matters he was dealing with, an EI claim was not a priority because it seemed obvious that he no longer qualified, both from the website and past interactions with the Commission telling him that there were no exemptions.[33]

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[27] See page RGD33-8.
[28] See page RGD33-8.
[29] See page RGD33-7. See also RGD-25.
[30] See page RGD33-9, para 20.
[31] See page RGD33-49, para 202.
[32] See page RGD33-5, para (b).
[33] See page RGD33-9, para 21.

What the Commission argues

[33] The Commission says that the Appellant hasn't shown good cause for the delay.

[34] The Commission accepts that the Appellant's health conditions caused difficulty in his day-to-day life. But it says that they were not so exceptional as to prevent him from:

- enquiring about his rights and obligations
- making an application for EI benefits
- doing what a reasonable and prudent person would have done in similar circumstances[34]

[35] In support of its position, the Commission points out that the Appellant:[35]

- searched for, applied to, accepted and engaged in employment in 2012, 2018 and 2019
- stated more than once that he would have made his application earlier if he had been aware that he was eligible for benefits

[36] It says his multiple petitions to various judicial and semi-judicial bodies shows that he was capable of taking reasonably prompt steps to learn of his rights and obligations.[36] It says that given this level of functioning, his circumstances were not so exceptional as to prevent him from applying for benefits. It adds that his medical condition is ongoing, and it didn't prevent him from applying for benefits after he learned that he might be eligible for benefits.[37]

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[34] See page GD4A-3.
[35] See page GD4A-3 and GD2-17.
[36] See page GD4A-3.
[37] See page GD4A-4.

My findings

[37] I find that the Appellant hasn't proven that he had good cause for the delay in applying for benefits. These are my reasons.

– Why the Appellant delayed

[38] The Appellant delayed for these reasons:

- He received about three months' severance pay and was pursuing disability benefits.[38]
- The initial delay was intentional. Then, when the other matters had settled, he believed that he didn't have enough hours in his qualifying period to qualify for EI benefits.[39]
- His mental health conditions affected his decision-making ability.
- He believed he had a good knowledge of the EI system, and didn't know anything about antedating a claim.
- He didn't see anything on the website to make him believe that he would qualify for benefits. For example, he didn't see anything about antedating a claim or extending a benefit period.
- Given his knowledge of the EI system and what he saw on the website, he believed there was no reason to call Service Canada.

– The Appellant has not shown good cause for the delay

[39] The Appellant did not do what a reasonable and prudent person would have done in the circumstances to find out his rights and obligations.

[40] He did not take reasonably prompt steps to find out his rights and obligations.

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[38] For example, see page RGD33-35, para 136.
[39] See page RGD33-35, para 134. See also his description of his circumstances on page RGD33-40. See also page GD35-17, para 62.

[41] And there were no exceptional circumstances that would excuse him from taking prompt steps.

[42] The Appellant writes:

> …–the only reason for me to not file a claim until 2020 was because my disability interfered in 2011 to 2013, when I should have applied, and it continued to interfere with my behaviour, memory and reasoning until 2020, even though my functioning improved.[40]

[43] I understand that he had and continues to have a mental health illness. But the evidence doesn't show that this was such an exceptional circumstance to excuse him from the almost nine-year delay in applying for benefits.[41]

[44] The Appellant worked for about a year around 2018.[42] I accept that working was a challenge for him, but given that he was able to apply for, accept and work in 2018, shows that nothing prevented him from applying for EI benefits then.

[45] I understand that he didn't know that he could apply then because he didn't know that claims could be antedated.[43] But ignorance of the law, even when coupled with good faith, does not amount to good cause.[44]

[46] I explain my findings in more detail as I address the Appellant's specific arguments throughout this decision.

– **Intentional delay**

[47] The Appellant cites CUB 10737, where the Umpire commended the claimant for looking for another source of income replacement, her automobile insurance, before

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[40] See page RGD33-5, para (b).
[41] I recognize that the delay wouldn't be quite so long if the antedate were only back to mid-2013.
[42] He acknowledges that he successfully held a job in 2018 and 2019, working from June 2018 to July 2019. See page GD35-21, para 79 and para 82. See also page RGD33-5, para (b) where he describes his time working as challenging and stressful.
[43] See page GD3A-12, where he wrote that he realized he should have applied for EI sickness and regular benefits in 2011 and 2012 but didn't understand the rules to antedate a claim and that the qualifying period could be increased.
[44] See *Canada (Attorney General) v Kaler*, 2011 FCA 266; Blanchette v. Canada (Attorney General), 2021 FC 115.

looking to the EI program. It said that her conduct was also reasonable in the circumstances having regard to her health.

[48] The Appellant also relies on the Federal Court of Appeal decision of *Attorney General of Canada v Gauthier*, which is cited in CUB 10737.[45] In that decision, the Federal Court of Appeal said that good cause includes circumstances where it is reasonable for a claimant consciously to delay making a claim.

[49] The Appellant says that it was reasonable for him to delay his application while he fought his insurance company, even though his initial intention was to apply before he lacked enough hours to make a valid claim.[46]

[50] I agree that good cause includes circumstances in which it is reasonable for a claimant consciously to delay making a claim.[47] I considered this in making my decision. But these cases don't help the Appellant because his circumstances are different.

[51] In CUB 10737, the claimant had a car accident on July 31, 1983, and filed her claim on October 3, 1983. She delayed only a few months while dealing with her car insurance. This doesn't compare to the facts before me because the Appellant's delay is measured in years, not months.

[52] In the Federal Court of Appeal decision, the delay was also very short–from June 27, 1982, to August 5, 1982.[48] And, during that time, the claimant had good cause to believe that he was employed. This is not close to the situation before me where the Appellant's delay was years-long and he had no reason to believe that he was still employed.

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[45] See *Attorney General of Canada v Gauthier*, A-1789-83. See also page RGD33-8.
[46] See page RGD33-8 to RGD33-9.
[47] This is what the Court said in *Attorney General of Canada v Gauthier*, A-1789-83. I also considered what the Federal Court of Appeal said in *Howard v Canada (Attorney General)*, 2011 FCA 116. But that case was more about a claimant who didn't want to rely on the government, rather than a claimant making a conscious decision to delay applying for EI benefits for a brief time until other insurance was sorted out.
[48] This is set out in the related CUB decision, CUB 8718.

[53] The Appellant also cites CUB 14665.[49] He seems to rely on this case in support of his argument that any benefits he received did not duplicate EI.[50] The paragraph he quotes is taken out of context.

[54] CUB 14665 is a case where the claimant was injured on January 7, 1986. He received short-term disability insurance until May 1986, and then applied for long-term disability insurance. He found out his application was refused on July 11, 1986. He returned to work and applied for a Canada Pension Plan disability pension. He was told he didn't have to apply for unemployment insurance benefits, as they were then. His CPP disability pension was declined on August 19, 1986. He continued to work until November 1986, when he was laid off. He applied for EI benefits on December 3, 1986. He asked the Commission to antedate his claim to cover the period from May 13, 1986, to July 12, 1986. The Umpire decided that it was not reasonable for the Appellant to delay after July 11, 1986, in seeking information and advice from an Unemployment Insurance Office. The Umpire pointed out that there were no unusual circumstances showing a lack of access to such an office, the claimant only needed to pick up his phone to see if there was something he should do to keep open the possibility of obtaining benefits from when he became capable of working and was unemployed. The Umpire went on to say that in the circumstances there was no excuse for him simply relying on information from random sources. The Umpire said that despite the claimant's knowledge that he couldn't get unemployment insurance benefits with another benefit, his manner of proceeding was not reasonable. The Umpire said that a prudent person in such circumstances would surely file applications for both benefits and see if either materialized.

[55] I agree with the Umpire in this CUB. A prudent person in the Appellant's circumstances would have filed an application for EI benefits while still pursuing other avenues. A reasonable and prudent person in the Appellant's circumstances wouldn't have relied on his previous knowledge, he would have enquired with the Commission to see what he needed to do to keep open the possibility of getting benefits.

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[49] See page RGD33-9, para 22.
[50] See page RGD33-10, para 23.

– Knowing his rights and obligations

[56] The Appellant argues that when considering if he acted like a reasonable person in the "same circumstances," I have to be aware that many of the cases where the antedate is refused, the claimant didn't know any of their rights and obligations because they hadn't applied for EI benefits before.[51] He says that he has applied for EI benefits at least 10 times and had many direct contacts with the Commission between 1977 and 2023. He claims he knew his rights and obligations thoroughly from his 10 successful claims, as well as other claims when he didn't have enough hours to qualify for benefits.[52]

[57] In a 2020 conversation he had with Service Canada, which he recorded and provided as evidence, he stated that he was an experienced claimant and he thought he knew what the rules were. He acknowledged that no one is perfect and knows all the ins and outs, which was one of the reasons he called Service Canada then.[53]

[58] I have taken into account his experience with the EI system.[54] And it doesn't change my finding that a reasonable and prudent person in similar circumstances would have either applied for benefits earlier or would have contacted Service Canada to see if he fully understood the rules. The EI rules are complex, and the EI Act has been amended many times since 1977. A reasonable and prudent person, even one who was involved in the system, would not assume that they knew all the rules of this complex system.

[59] The Appellant also argues that it isn't reasonable to expect claimants to have a full or perfect knowledge of every policy or practice that can benefit them. He says that such knowledge can't be obtained over the phone or in brief meetings with the Commission, because those employees do not always know all the rules, fail to apply them, or fail to tell claimants about them. He says that if he'd contacted the Commission

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[51] See pages RGD33-10 to RGD33-11.
[52] See page RGD33-11, para 29.
[53] This is from the recording coded as RGD05A starting about 11:56.
[54] Besides his experience applying for EI benefits, he says he has been active in federal politics developing policies, attending conventions, and talking to Members of Parliament. See page GD35-19.

in June 2011 to find out his general rights and obligations, he wouldn't have learned anything relevant to his subsequent actions or lack of action.[55]

[60] I agree that it isn't reasonable to expect claimants to have a full or perfect knowledge of the EI system. That is why a reasonable and prudent person would contact Service Canada to find out such information. If the Appellant had done so and had received incorrect or incomplete information, that would have been a circumstance to consider.

[61] I understand that in a decision made by a different member of this Tribunal the member found that he had good cause for a seven-month delay, even though he hadn't contacted the Commission, Service Canada or looked at the website.[56] But even if I accept that he had good cause for those seven months, from July 2019 to February 2020, when I consider all the circumstances, I still find that he didn't have good cause for the entire period of the delay.

– **Information from the Commission**

[62] The Appellant says that on every occasion he applied for EI benefits he was told that there were **no** exceptions to the "52-week rule."[57]

[63] The Appellant is referring to the qualifying period. This is the period before a claim starts in which the required number of hours must be worked to start a claim. The period is usually 52 weeks. Sometimes it is shorter, and it can also be extended.

[64] The Appellant provided evidence that sometimes front-line Service Canada staff give the wrong or conflicting advice.[58]

[65] The courts have found that if the delay is due to a mistake induced by representations from the Commission, there might be good cause for the delay.[59]

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[55] See page RGD33-47 to 48, paras 193 and 196.
[56] See decision in Tribunal file GE-20-1606 starting on page RGD25-5.
[57] See page RGD33-11. In his Notice of Appeal, the Appellant correctly identifies the 52-week period as his qualifying period. See page GD2-14.
[58] See page RGD33-18; See generally Employment Insurance Service Quality Review Making Citizens Central Report from page GD26-58 to GD27-167. A specific example can be found on page GD27-104.
[59] See *Pirotte* v *Canada (Attorney General)*, A-108-76.

[66] The Appellant provided a recording of a telephone conversation he had with a Service Canada officer in February 2025. During that conversation, the Appellant asked if he could rely on the website alone. The officer said yes, that the information on the website is complete and up to date. She focused her comments on the maximum benefit rate, but she also said that it was general information. She added that if the Appellant had questions about what he read online he could always give them a call, and they could give him more detailed information.[60]

[67] But the Appellant didn't delay applying for EI benefits based on this telephone conversation. And the Appellant didn't delay applying because of any specific representations made to him by the Commission about this application. He based his decision not to apply for EI benefits on previous conversations. In short, he didn't apply because he didn't know the law.

[68] As stated above, given the complex nature of the EI system, relying on his experience without further enquiring about whether he qualified for sickness benefits in this particular instance was not the action of a reasonable and prudent person in similar circumstances. The courts are clear that ignorance of the law, even coupled with good faith, isn't good cause for a delay.

– **The requirements in 2011**

[69] The Appellant says that in 2011 there wasn't a requirement that he contact the Commission within four weeks after termination to be within the "reasonable person" standard.[61] He says that this test isn't in the EI Act or EI Regulations, but is an arbitrary and permissive policy set by the Commission which is contrary to the EI Act itself, which allows no delay.

[70] The Appellant is correct that there is no requirement that he contact the Commission within four weeks after termination to be considered a reasonable person.

[60] This part of the conversation starts at about 14:50 of RGD26A. See RGD26-1 for the date of the call.
[61] See page RGD33-7, para 13.

[71] The EI Act says that a claim can be backdated only if he shows that he had good cause for the delay.[62]

[72] The EI Act doesn't say what constitutes good cause, so the courts have developed a legal test that decision makers must follow when deciding if a claimant has shown good cause.

[73] The legal test for good cause is the same today as it was in 2011. The test was established by the Federal Court of Appeal as early as 1985, when the Federal Court of Appeal wrote in the *Albrecht* decision, that:

> In my view, when a claimant has failed to file his claim in a timely way and his ignorance of the law is ultimately the reason for his failure, he ought to be able to satisfy the requirement of having "good cause," when he is able to ***show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act***.[63] [emphasis mine]

[74] The test was further developed by the Federal Court of Appeal in the *Caron* decision, where it wrote:

> …
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> only by demonstrating that ***he did what a reasonable and prudent person would have done in the same circumstances, either to clarify the situation regarding his employment or to determine his rights and obligations under the provisions of the Unemployment Insurance Act, 1971***, can a claimant, who failed to make his claim at the time he ceased to be employed and to receive a salary, establish a valid excuse for his delay and have his application considered retroactively. I suppose there could be cases in which inaction and submissiveness would be

[62] See section 10(4) of the EI Act.
[63] See *Canada (Attorney General) v Albrecht*, A-172-85. The Appellant cited this decision at page GD2-16.

> understandable regardless, but I feel that the circumstances would have to be very exceptional, and anyhow, I do not think that such inaction could remain understandable when it has lasted for over fourteen months, as here.[64] [emphasis mine]

[75] And the Federal Court of Appeal has reaffirmed this test many times since then.[65] It now says that it is settled law.[66]

[76] As to when a claimant must file a claim, section 26(1) of the EI Regulations say that claimants must make a claim for benefits within three weeks after the week for which they want to receive EI benefits.[67] A claimant can't make a claim for benefits until they have made an initial claim (application) for benefits. So, initial claims must be made within three weeks after the week for which they want to receive EI benefits. This has been the law since that section of the EI Regulations came into effect in 1996. It was the law in 2011, the same as it is today.

– **The Commission's policy**

[77] The Appellant says that the Commission applies its policy in an unfair and arbitrary manner, sticking to the strict interpretations of the EI Act when it suits it, but otherwise ignoring it, as the policy isn't based on the EI Act or EI regulations. He says the Commission allows claimants to get benefits for four or more weeks without showing good cause for the entire period of the delay.[68] He says that bureaucrats aren't supposed to write laws but are to enforce and implement them. He points out that they can't write exemptions to the laws, policies or regulations that Parliament or the Minister

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[64] See *Canada (Attorney General) v Caron*, A-395-85.
[65] See *Mauchel* v *Canada (Attorney General)*, 2012 FCA 202; *Bradford* v *Canada Employment Insurance Commission*, 2012 FCA 120; *Canada (Attorney General)* v *Kaler*, 2011 FCA 266; *Canada (Attorney General)* v *Innes*, 2010 FCA 341; *Canada (Attorney General)* v *Scott*, 2008 FCA 145; *Canada (Attorney General)* v *Brace*, 2008 FCA 118; *Canada (Attorney General)* v *Beaudin***,** 2005 FCA 123; *Shebib* v *Canada (Attorney General)*, 2003 FCA 88; *Canada (Attorney General)* v *Ehman*, A-360-95; *Canada (Attorney General)* v *Rouleau*, A-4-95; *Canada (Attorney General)* v *Larouche*, A-644-93; *Canada (Attorney General)* v *Smith*, A-549-92.
[66] See *Canada (Attorney General) v Mendoza,* 2021 FCA 36, para 13.
[67] See section 26(1) of the *Employment Insurance Regulations* (EI Regulations). Note also that an initial claim for benefits must be made before a claimant can file a claim for a week of benefits.
[68] The Appellant says that the Commission has a policy to allow antedates for everyone who applies within a four-week period, regardless of merit. See, for example, pages RGD33-37 and GD35.15. See also "Administrative Rule" on page GD12-8. Additional information about how the Commission decides antedates can be found in GD12, starting on page GD12-24.

didn't intend or authorize. He adds that it is unjust and potentially discriminatory in violation of the *Bill of Rights* and the *Canadian Charter of Human Rights and Freedoms*.[69]

[78] First, I don't have the authority to review or make decisions about the Commission's internal policies or processes, including how it trains its staff.[70]

[79] Secondly, in making my decision I have followed the law - the EI Act, its regulations and binding case law. I do not have any discretion in how I apply the law. I do not follow the Commission's policies.

[80] I must follow the dictates of the Federal Court of Appeal and apply the test strictly and cautiously. Case law from the Federal Court of Appeal tells me that the obligation and duty to file a claim promptly is very demanding and strict. This is why the "good cause for delay" exception is cautiously applied.[71]

– **The website, negligence and bad faith**

[81] The Appellant argues that the Commission is negligent and may even be acting in bad faith because since the 2012 *Mauchel* decision it has known that people are likely to rely on the website alone, and, even today there is no warning that a failure to contact the Commission by phone or in person might prevent them from getting EI benefits.[72]

[82] *Mauchel* is a case where the claimant, Mr. Mauchel, wanted his claim antedated two years. The Federal Court of Appeal found that:[73]

> A reasonable person who relies on the website for information must do more thorough research than Mr Mauchel apparently undertook. A reasonable person would not have been so misled by its initial

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[69] See page RGD33-6, para (e). See also RGD33-7, para 13.
[70] See the Appellant's arguments on page RGD33-38 to RGD33-39. Likewise, I have no authority to direct the Commission as to what should be on its website or to provide fast efficient service. See the Appellant's comments on page RGD33-43, para 171.
[71] See *Canada (Attorney General) v Brace*, 2008 FCA 118. See also *Canada (Attorney General)* v *Kaler*, 2011 FCA 266, as affirmed in *Canada (Attorney General) v Mendoza,* 2021 FCA 36.
[72] See pages RGD33-6, and RGD33-14 to RGD33-17.
[73] See *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

> general statements about eligibility as to be deterred from looking for more specific information relevant to his or her situation.
>
> …
>
> In my view, the website contained enough information to have alerted a reasonable person in Mr Mauchel's position to wonder whether he or she might be eligible for benefits and to contact the Commission to find out or to make an application for benefits. The question is not whether a particular claimant found the information clear and unambiguous, and decided that further search of the website was pointless, but whether a reasonable person would have so regarded it. It is not alleged that the website contained erroneous material.
>
> Since the website does not purport to deal with the specifics of every person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent in response to an enquiry about their eligibility on given facts. That it can now take several days to speak with a Commission agent by telephone does not justify Mr Mauchel's delay.

[83] The Appellant argues that the Commission and the Tribunal interpret precedents like Mauchel too broadly. He says that these precedents are likely obsolete because the internet is now an integral part of federal government programs, banking and other things, unlike in 2013 when the court set these precedents.[74]

[84] The Appellant states that *Mauchel* doesn't say that people should never rely on the website. He says that the website contained enough information for Mr. Mauchel to question his assumptions. But in his case, the website didn't contain enough information for a "reasonable person" seeking sickness benefits to know that there were exceptions to the 52-week rule, or that he shouldn't rely on the website alone for such issues.[75]

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[74] See page RGD33-6.
[75] See page RGD33-15.

[85] The Appellant says that to rely on Mauchel, the Commission must show that the website in 2011 and 2012 had enough information for a reasonable person to know that there were exceptions to the 52-week rule, or that he shouldn't rely on the website.

[86] The Appellant's argument can't succeed.

[87] First, the onus is on the Appellant to prove that he had good cause for the delay – not on the Commission to show that its website contained enough information to apply *Mauchel.*

[88] Secondly, just like in *Mauchel,* the website at the time contained enough information to have alerted a reasonable person in the Appellant's situation to wonder if he might be eligible for benefits and to realize that they should contact the Commission to find out more or make an application for benefits.

[89] Here are three excerpts from the 2011 website and its links as provided by the Appellant:

> **When should I apply?**
>
> You should apply as soon as possible after you stop working, even if your employer has not issued your ROE yet. If you delay applying for benefits later than four weeks after your last day of work, you risk losing benefits.[76]

> **How, where and when to apply**
>
> To find out if you can receive EI benefits, you must submit an application for EI online or in person at your Service Canada Centre, even if you received or will receive money when you become unemployed.
>
> If you are applying for any type of benefits, other than maternity or parental, be sure to apply as soon as you stop working even if you don't have your Records of Employment. **Delaying** in filing your claim for benefits beyond 4 weeks after your last day of work may cause loss of benefits.[77]

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[76] See page GD27-39.
[77] This is from the hyperlink "Applying for EI – general info" on page GD27-31.

Employment Insurance - Digest of Benefit Entitlement Principles

What is the Digest of Benefit Entitlement Principles. To know more...

A supplement to the Digest of Benefit Entitlement Principles - The Index of Jurisprudence

The Content of the Digest of Benefit Entitlement Principles:

Table of Contents

Chapter 1 - Basic Concepts
Chapter 2 - Interruption of Earnings
Chapter 3 - Antedate
Chapter 4 - Week of Unemployment
Chapter 5 - Earnings
Chapter 6 - Voluntarily Leaving Employment
Chapter 7 - Misconduct
Chapter 8 - Labour Disputes
Chapter 9 - Refusal of Employment
Chapter 10 - Availability
Chapter 11 - Sickness Benefits
Chapter 12 - Maternity Benefits
Chapter 13 - Parental Benefits
Chapter 14 - Teachers
Chapter 15 - Fishing Benefits
Chapter 16 - Claim Procedure
Chapter 17 - Reconsideration, Amendment of a Decision, and Error Correction
Chapter 18 - Policy on Penalties
Chapter 19 - Employment Benefits and Support Measures (Part II of the EI Act)
Chapter 20 - Write-Off
Chapter 21 - Evidence or Proof
Chapter 22 - Vacant
Chapter 23 - Compassionate Care Benefits
Chapter 24 - Benefits for the Self-Employed[78]

[bolding and larger text mine]

[90] This information from the 2011 website tells claimants that they have to apply promptly, but if they don't, they might still get benefits. There is also information on the site (through the Digest of Benefit Entitlement Principles – Digest Publications and Amendments (Digest) link) about antedating a claim and extending a qualifying period (under Chapter 1 – Basic Concepts).

[78] This is from the hyperlink on page GD27-31 called "Digest of Benefit Entitlement Principles – Digest Publications and Amendments."

[91] The Appellant argued that the Digest wasn't available in 2011, but the website information he provided shows that it was available.[79] Further, through the Digest, there was also information about antedating a claim and extending a qualifying period.

[92] So, I find that if the Appellant had looked further, he would have known that he could have applied late and that the qualifying period could be extended. This is enough to have prompted a reasonable and prudent person in the Appellant's situation to have contacted the Commission for more information.

[93] My approach to the information on the 2011 website and my findings are in line with the approach taken by the Federal Court in the 2021 decision of *Panariti.* In that case, the court looked at the website and determined that while the claimant acted in good faith in looking at and relying on the website, it supported the Appeal Division's decision. The Appeal Division said that the claimant failed to take the steps of a reasonable and prudent person would have to determine his rights and obligations. Specifically, it said that the claimant ought to have contacted the Commission to determine his entitlement.[80]

[94] I find that no matter what the website states, a reasonable and prudent person would understand that the website couldn't possibly contain enough information to cover every claimant's situation. Such a person would have applied for benefits at the time (if they wanted to get them then), or they would have contacted the Commission to see if it was okay to delay their application.

[95] And despite the Appellant's repeated claims that he knew the law and wouldn't have benefited from contacting the Commission, he clearly did not know the law because he didn't know about antedates or extending a qualifying period.

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[79] For example, see page RGD33-19. See also page GD34-2 where he says that based on his reasonable efforts to research the issue, in late March and April 2012 he concluded that it was too late to apply for EI because he didn't have enough hours.
[80] See Panariti v Canada (Attorney General), 2021 FC 333.

– **Leniency**

[96] The Appellant adds that with special benefits, there is little or no prejudice to the Commission, it is the claimant who is the victim of their own delay, so leniency is supposed to be applied.[81]

[97] The Commission acknowledges that it exercises a degree of leniency when reviewing delayed claims for sickness benefits.[82] The Commission's position seems to be that leniency wasn't appropriate in this case because the Appellant is looking for both sickness and regular benefits, and he declared that he would have applied earlier but for believing that he wouldn't qualify.[83] It argues that ignorance of the law, even if coupled with good faith, isn't enough to establish good cause.[84]

[98] The Appellant says that the Commission and the Tribunal have failed to apply leniency as set out in *de Jesus* v *Canada (Attorney General)*, 2013 FCA 264 or as mentioned in the Commission's own, "Digest of Benefit Entitlement Principles."[85]

[99] The *de Jesus* case was about antedating an application for parental benefits. The Federal Court of Appeal decided that the Umpire in that case failed to consider that in exceptional circumstances inaction can constitute good cause for delay.[86]

[100] The Court said that the nature of the benefits in question is relevant to deciding if a claimant took the steps that a reasonable person in their situation would have taken to inform themselves of their employment insurance entitlements.[87]

[101] I must follow the Court's dictates. But in the Appellant's case, while there may have been exceptional circumstances for some of the delay, he has not established exceptional circumstances for the entire period of delay.

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[81] See page RGD33-5.
[82] See page GD4A-4.
[83] See page GD4A-4.
[84] See page GD4A-4.
[85] *De Jesus v Canada (Attorney General)*, 2013 FCA 264.
[86] In paragraph 41, the FCA cited *Canada (Attorney General) v Caron (1986), 69 N.R. 132 FCA.*
[87] See *De Jesus v Canada (Attorney General),* 2013 FCA 264, para 49.

[102] The delay in *de Jesus* was from September 22, 2008, when his child was born, until July 7, 2009 – less than a year. This isn't the same as the Appellant's delay, which is a delay of almost 9 years. Applying a slightly more lenient approach doesn't mean ignoring the requirement to show good cause for the entire delay.

[103] Finally, since there is no requirement that the Appellant prove his availability for work while receiving sickness benefits, the administrative difficulties of proving claims has not factored into my decision.

– **Medical reasons**

[104] The Appellant says that his mental health problems and disability are major reasons why he didn't apply for benefits earlier.[88] He was absent-minded, he had poor decision-making capacity, he was rarely in good mental health. He provided information from the internet about how depression impacts decision making and memory.[89]

[105] The courts have said that properly supported medical reasons can constitute good cause for delay in making a claim for benefits.[90]

[106] I acknowledge that the Appellant's medical condition affects his behaviour and abilities, including his ability to apply for benefits.[91] The impact of his medical condition has never fully gone away.[92]

[107] And while the Appellant's medical condition may have contributed to his delay in applying for benefits, it is not good cause for the entire period of the delay.[93]

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[88] For example, see page RGD33-23.
[89] See page RGD33-23.
[90] See *Canada (Attorney General) v MacLeod*, 2013 FCA 166, where the Federal Court of Appeal upheld the Umpire's decision that the claimant had established good cause for his five-year delay. See also *Canada (Attorney General) v Roy,* A-216-93, where the court decided that the claimant had good cause when she applied as soon as her illness ended. It said that all circumstances, including illness, must be considered. The delay in this case was from January 14, 1991, to June 28, 1991.
[91] See page GD2-16.
[92] Some medical evidence of his condition can be found starting at page RGD31-5, starting again at page RGD31-37. See also medical evidence starting on page GD3A-66. The most recent medical note dated March 18, 2025, is found on page RGD31-46.
[93] I accept the impact of his mental health problems and disabilities. He describes these on page RGD33-23.

[108] The evidence shows that his medical condition was not such that it would have prevented him from applying for benefits during the entire period of the delay. Despite his medical condition, he worked during the relevant period. Even if working was a challenge, his ability to find employment and work shows that he also had the ability to apply for benefits earlier than he did.

[109] Also, the Appellant pursued other benefits during the period in question, such as disability benefits.[94] This shows that his health conditions didn't prevent him from seeking benefits.

[110] I understand that after the initial period of delay, he didn't know that he might still qualify for EI benefits. But as I said before, not knowing that you could qualify for benefits isn't good cause for not applying.

[111] The Appellant argues that the Commission doesn't consider the full impact of someone's mental health issues, for example, that it may cause them to be antisocial, pessimistic and procrastinate.[95] I see no evidence in the file to support this claim.

[112] There is no merit in the Appellant's argument because the test to determine good cause takes into account a person in similar circumstances – which includes their health status and the impact it has on their ability to apply for benefits.

[113] And besides, I am making the decision now, and I have considered the full impact of the Appellant's medical condition as he describes and as set out in the medical evidence.

– **Constitutionality – the EI Act and its regulations**

[114] I haven't considered the constitutionality of the EI Act or its regulations. To challenge the constitutional validity, applicability, or operability of a provision of the Act,

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[94] He applied for benefits from Manulife in May and December 2011. See page GD35-9 and page GD35-10. See also, for example, Group Benefits, Initial Attending Physician's Statement Group Disability Claim starting on page RGD31-40 and page GD3A-69. See also page RGD33-8, para 15. He also pursued claims through the Human Rights Tribunal of Ontario from 2012 to 2020. See pages GD35-12 and GD35-15.

[95] See page RGD33-25.

its rules, or regulations, the challenger must set out what provision it wants to challenge, the material facts upon which he wants to rely, and a summary of the legal argument.[96]

[115] A tribunal member discussed these requirements with the Appellant during case conferences held in 2020.[97] The Appellant was given the opportunity to make a constitutional challenge. He did not meet the conditions, and the appeal proceeded in the usual manner for non-constitutional issues.[98]

[116] Since then, in my interlocutory decision dated August 28, 2024, I told the Appellant that to make a constitutional challenge he had to file a specific notice.[99]

[117] The Appellant hasn't met the conditions to make a constitutional challenge. Also, the Appellant confirmed that he decided not to pursue a Charter challenge.[100] So, I haven't considered the constitutionality of the EI Act or its regulations.

– **Constitutionality - the reasonable person test**

[118] The Appellant argues that:

> [I]t is discriminatory and contrary to the Bill of Rights, Canadian Human Rights Act ("CHRA"), and the Charter of Rights, for CEIC/SST to apply the "reasonable person test" in this matter, as this test comes from criminal and civil law where the finding of guilt or liability rejects ignorance of the law and also separates the penalties from the initial finding without automatically penalizing in full the person who acted "unreasonably," so any penalty is just and fits the circumstances.[101]

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[96] See section 1(1) of the *Social Security Tribunal Regulations.*
[97] For example, see GD10, GD11, GD13, and GD17. See also Tribunal letter dated March 26, 2021, enclosing Charter Argument Notice and information sheet.
[98] See decision letter dated May 3, 2021, at GD18.
[99] See interlocutory decision dated August 28, 2024, in this appeal file, para 44.
[100] See page RGD14-6, where he writes in the paragraph numbered 1, "Once I decided not to pursue a Charter challenge…" See also page RGD33-24.
[101] See page RGD33-5. See also his submissions on the reasonable person and foreseeability from pages RGD33-11 to RGD33-21. See also arguments starting on page RGD33-24.

[119] The courts say that to establish "good cause" a claimant must demonstrate that he did "what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act."[102] This is the test set by the Federal Court of Appeal to decide if the claimant has proven good cause, and it is the test that I must follow.

[120] The Federal Court of Appeal is clear that antedating a claim continues to be an exceptional mechanism.[103] And I must follow its guidance. I cannot set aside these binding precedents as requested by the Appellant.[104]

[121] The Appellant also refers to a "normal and prudent person."[105] But I've set out the legal test above, and it is not what a normal and prudent person would do.

– **Bias**

[122] The Appellant says that his experience with the Tribunal is that it is biased towards the Commission.[106]

[123] Tribunal members are presumed to be impartial and the person alleging bias must show that a reasonably informed person would think, in the circumstances, the decision-maker would not decide fairly.[107] This is a difficult test to meet.[108]

[124] I have already decided the issue of bias. In my interlocutory decision of August 19, 2024, I decided that the Appellant hadn't proven bias.[109]

[125] The Appellant still hasn't produced any convincing evidence to show that I am biased in favour of the Commission or that I prejudged his appeal. I have taken my time

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[102] See *Blanchette v Canada (Attorney General),* 2021 FC 115, para 28.
[103] See Blanchette v. Canada (Attorney General), 2021 FC 115.
[104] See page RGD33-33, para 121.
[105] See page RGD33-25.
[106] See page RGD33-49, para 203.
[107] See *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at page 394. The Court said the test is, "what would an informed person, viewing the matter realistically and practically–and having thought the matter through–conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."
[108] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.
[109] See decision dated August 28, 2024, in this appeal file, paras 33 to 37.

considering and weighing all the evidence before me. Just because I don't agree with the Appellant doesn't mean that I am biased or prejudiced against him.

[126] So, I find that the Appellant hasn't shown that a reasonably informed person would think that I was biased in favour of the Commission or that I prejudged the appeal.

Qualifying on the earlier date

[127] I don't need to consider whether the Appellant qualified for benefits on the earlier day. Since the Appellant hasn't proven that he had good cause for the delay, his application can't be treated as though it was made earlier.

Conclusion

[128] The Appellant hasn't proven that he had good cause for the delay in applying for benefits throughout the entire period of the delay.

[129] None of the Appellant's reasons for his delay in applying for benefits, including medical reasons, knowledge of the EI system, and pursuit of other benefits, alone or together, are good cause for the entire period of the delay.

[130] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section