Citation: *SK v Canada Employment Insurance Commission*, 2025 SST 700

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	S. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (699465) dated January 15, 2025 (issued by Service Canada)

Tribunal member:	Michael Medeiros
Type of hearing:	Videoconference
Hearing date:	February 27, 2025
Hearing participant:	Appellant
Decision date:	March 11, 2025
File number:	GE-25-463

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that he had good cause for the delay in applying for benefits. In other words, the Appellant hasn't given an explanation that the law accepts. This means that the Appellant's application can't be treated as though it was made earlier.[1]

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on September 11, 2024. He is now asking that the application be treated as though it was made earlier, on June 9, 2024. The Canada Employment Insurance Commission (Commission) has already refused this request.

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

[5] The Appellant says that he had good cause for the delay because he acted as a reasonable person in his unique situation would have acted, which included challenging personal circumstances. He also had issues accessing his record of employment (ROE) because of a problem with his social insurance number (SIN). After he got access, he tried to correct an inaccuracy on the ROE with his employer, which took more time.

[6] The Commission disagrees and says that the Appellant hasn't proven that he had good cause for the delay. The Commission acknowledges the Appellant's personal circumstances. However, the Appellant didn't show concern for his application for EI benefits, nor inquire about his rights and responsibilities in applying for benefits during the period of delay. His SIN number problems were resolved in July 2024, but he didn't apply for EI until September 2024. So, the issue with his SIN doesn't account for the entire period of the delay.

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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.

Issue

[7] Can the Appellant's application for benefits be treated as though it was made on June 9, 2024? This is called antedating (or, backdating) the application.

Analysis

[8] To get your application for benefits antedated, you have to prove these two things:[2]

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).

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

[10] To show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.[3] 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.

[11] The Appellant has to show that he acted this way for the entire period of the delay.[4] 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 June 9, 2024, to September 11, 2024.

[12] The Appellant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[5] This means that

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[2] See section 10(4) of the EI Act.
[3] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[4] See *Canada (Attorney General) v Burke*, 2012 FCA 139.
[5] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

the Appellant has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the Appellant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.[6]

[13] 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.

The Appellant's reasons for the delay

[14] The Appellant says that he had good cause for the delay because he acted as a reasonable person in his unique circumstances would have acted. His circumstances included:

- moving his family to a new province
- settling in a new community (find a family doctor and a new school for his daughter, applying for ID, repairs to his new home)
- caring for his 11-year-old daughter and his disabled wife, including taking his wife to medical appointments
- he had never applied for EI and was unfamiliar with the process
- he had issues with his SIN and ROE (to be discussed in detail below)

[15] The Appellant says that he was looking for work ever since he stopped working on June 5, 2024. He applied for approximately 10 jobs in June 2024. He was determined to find a job and didn't want to "milk the system." But he started thinking about EI since he wasn't getting hired. By the end of June, he was looking at the EI pages on the Canada.ca website. His in-laws said he needed an ROE from his past employer to apply for benefits.

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[6] See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[16] So, on June 28, 2024, the Appellant contacted his employer about his ROE as he hadn't received it. On July 2, his employer responded that his ROE was available online. The Appellant then attempted to access his ROE through his Service Canada online account, but he couldn't because his SIN had strangely expired and/or required to be renewed. He contacted Service Canada by telephone and was assisted by an agent who helped him get his SIN reactivated. The Appellant mentioned to the agent that he was trying to access his ROE because he would like to apply for EI benefits. The agent didn't say anything about being able to apply without an ROE or the need to apply right away.

[17] The Appellant acted diligently to get his SIN reactivated. He reapplied on July 4. He had to resubmit his application on July 12 after Service Canada informed him on July 10 that they couldn't access/read all his supporting documents. Shortly after, he received confirmation that his SIN was activated. He immediately accessed his ROE online and saw that the employer had noted that he quit, which he thought didn't accurately reflect how his employment ended. He had to leave his employment because his employer denied his request to accommodate his need to work outside of Ontario to care for his ill wife. He says that he thought what his employer said on his ROE could impact his ability to get benefits.

[18] On July 22, 2024, the Appellant emailed his employer requesting that his ROE be corrected to reflect the true reasons why he left his employment. On July 23, his employer's human resources department responded, and said that his issue could be corrected with an EI agent. The Appellant emailed his employer again on August 4 making the same request. The employer didn't respond and the Appellant didn't follow-up after that.

[19] The Appellant chose not to contact an EI agent. He says that he expected an explanation and conversation about it from his employer of over 18 years, rather than getting "brushed off" and being told to "go deal with EI."

[20] Sometime around mid-August 2024, he was looking for information about EI on the Canada.ca website. He found nothing about "timelines." The Commission submitted

a screenshot of a webpage under the title “EI regular benefits.”[7] The Appellant says that he didn’t come across that webpage until late August. He says it took many different clicks to get there and it was just a “pre-application FYI page” rather than an application page. It also doesn’t state there is any urgency, and only that you “may” lose benefits. The second paragraph of the webpage says the following:

> Always apply for EI benefits as soon as you stop working. You can apply for benefits even if you haven’t yet received your record of employment. If you delay filing your claim for benefits for more than 4 weeks after your last day of work, you may lose benefits.

[21] The Appellant didn’t apply then as he had a lot going on. His daughter was going to a new school. As soon as she started school, he applied for EI. He had also been hoping to resolve the issue with his reasons for leaving his employment noted on his ROE. He didn’t think an EI agent could change something that his employer wrote. He ultimately had to apply with that ROE because it was all he had, and he figured that his employer wasn’t going to change it.

[22] The Appellant says that he didn’t know there was any urgency to making his application for EI benefits. This was his first time applying for EI. The Service Canada agent he spoke to in July 2024 when dealing with his SIN never said anything about making an application right away. The Canada.ca website didn’t say anything about timelines. A reasonable person in his circumstances would have acted similarly. The Commission already provides a four-week grace period, and his delay isn’t that much longer.

The Appellant hasn’t shown that he had good cause for the entire delay

[23] I find that the Appellant hasn’t proven that he had good cause for the entire delay in applying for benefits. A reasonable and prudent person in similar circumstances would have made further inquires (or applied for benefits) after their employer told them

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[7] See GD7-8.

to take their concerns with the ROE to an EI agent. While his actions were arguably reasonable up to that point (July 23, 2024, is the date of the employer's email response), I can't find that from then to September 11, 2024, he had good cause to delay applying for benefits. Therefore, I can't find that he had good cause for the entire period of the delay.

[24] The Appellant's actions after he stopped working on June 5, 2024, until he received his response from his employer about changing the ROE on July 23, 2024, might be viewed as reasonable. Those actions and their circumstances included:

- He had just moved provinces as of June 6, 2024. His family includes an 11-year-old daughter and a disabled wife that relied on him for care. Settling his family included finding medical care for his wife.

- He was actively looking for work and expected to transition to a new job easily, as he had his whole life.[8]

- He started looking into EI by the end of June and made inquiries of his employer regarding his ROE, which would have been within four weeks of when he stopped working (the Commission's grace period for late applications).

- He thought that a valid SIN was required to apply for EI. Resolving that issue first made some sense.

- He acted diligently in reactivating his SIN.

- He contacted his employer on July 22, 2024, shortly after accessing his ROE to discuss the concern he had with it.[9]

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[8] However, in *Howard v. Canada (Attorney General)*, 2011 FCA 116, the Court said that a delay in applying for benefits based on the expectation of finding employment doesn't constitute "good cause." Therefore, that factor alone wouldn't amount to good cause.
[9] However, in *Canada (Attorney General) v. Chan*, A-185-94 (FCA), good cause wasn't found where a claimant delayed applying for benefits because they were waiting for the amended ROE from their employer.

[25] However, after his employer responded to him on July 23, 2024, he clearly didn't have good cause to delay applying for EI benefits, and there weren't exceptional circumstances that could justify not taking further steps.[10] At that point (or shortly after), the Appellant should have taken his concerns about the ROE to Service Canada and/or simply made his application. As the Appellant put it, his employer had brushed him off with their email and directed him to contact an EI agent. His employer was unlikely to respond positively to his August 4, 2024, follow-up email. And the Appellant didn't follow-up again. In these circumstances, waiting until September 11, 2024, to apply wasn't what a reasonable and prudent person would do.

[26] As of July 23, 2024, the Appellant had everything he needed to apply for EI benefits. His SIN was active and he had access to his ROE. He should have taken whatever concerns he had about his ROE directly to Service Canada, especially when his employer had told him to. In my view, that is what a reasonable and prudent person would do.

[27] And while I accept that the Appellant thought there was no urgency to making his application for EI benefits, that misunderstanding was his own responsibility.

[28] I don't accept the Appellant's submission that it was difficult to get information online about application timelines. The webpage submitted by the Commission (GD-7-8), couldn't be clearer – it says to always apply for EI benefits as soon as you stop working. The webpage also explains that delaying past four weeks could mean you lose benefits. In my view, this webpage is not difficult to access. It is one of the first pages you find when searching for EI regular benefits on the Canada.ca website. The Appellant did find this webpage eventually in late August, but still delayed his application until almost mid-September. He could have also called Service Canada, but never did after his SIN was reactivated.

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[10] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and obligations under the EI Act: see *Canada (Attorney General) v. Kaler*, 2011 FCA 266.

[29] I also don't accept that the Service Canada agent that was helping him with his SIN should have told him about the need to apply for EI right away.[11] The agent was dealing with his SIN and shouldn't be expected to volunteer advice about applying for EI.

[30] I find that the Appellant hasn't shown good cause for the entire period of the delay while considering his unique circumstances. I don't need to consider whether the Appellant qualified for benefits on the earlier day. If the Appellant doesn't have good cause, his application can't be treated as though it was made earlier.

Conclusion

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

[32] The appeal is dismissed.

Michael Medeiros
Member, General Division – Employment Insurance Section

[11] See *Rodger v. Canada (Attorney General)*, 2013 FCA 222, where the claimant didn't ask any specific question, and only made a general inquiry, Service Canada's failure to give explicit directions didn't constitute "good cause."