



Citation: *SK v Canada Employment Insurance Commission*, 2025 SST 792

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 (0) dated June 30, 2025 (issued
by Service Canada)

Tribunal member: Peter Mancini

Type of hearing: Videoconference

Hearing date: July 24, 2025

Hearing participants: Appellant

Decision date: July 31, 2025

File number: GE-25-2065

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant has shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Appellant has given an explanation that the law accepts. This means that the Appellant's claim can be treated as though it was made earlier.

Overview

[3] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.¹ You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.²

[4] The Appellant made his claim after the deadline. He wants it to be treated as though it was made earlier, on June 9th, 2025.

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

[6] The Commission decided that the Appellant didn't have good cause and refused the Appellant's request. The Commission says that the Appellant doesn't have good cause because he did not act as a reasonable person would in his situation. He did not take any action to look into E.I. benefits until September 2024. The Commission says the Appellant was looking for work, and it was only when he couldn't find any that he decided to apply. The Commission says this is not good enough.

[7] The Appellant disagrees and says that he was a care giver to his spouse and daughter, which occupied his time. He says he was unfamiliar with the E.I. system, and he was delayed because he was running into delays with Service Canada to get his

¹ See section 49 of the *Employment Insurance Act* (EI Act).

² See section 26 of the *Employment Insurance Regulations*.

Social Insurance Number, and delays in getting his Record of Employment which he thought was required to apply for benefits.

[8] This is the Appellant's second appearance before the General Division of the Tribunal. When the Appellant was denied his request to antedate his application for benefits by the Commission he filed a reconsideration request. The Commission, after hearing the request maintained its decision to deny benefits, based on its position that the Appellant lacked good cause for the delay.

[9] The Appellant appealed to the General Division of the Tribunal. A hearing was held on February 27th, 2025, and a decision was rendered on March 11, 2025. The General Division denied the Appellant's appeal. The Appellant then appealed to the Appeal Division of the Tribunal.

[10] Leave to Appeal was granted to the Appellant and a hearing was held on June 27th, 2025. The Appeal Division rendered a decision on June 30th, 2025, which allowed the Appeal. The Appeal Division found that the General Division did not consider a fact raised by the Appellant, which was that the Appellant claimed that a reason for the delay in applying for E.I. benefits within the timeline was his responsibility as a care giver for his family. The matter was returned to the General Division to consider that issue.

Issue

[11] Was the Appellant's role as a care giver good cause for the delay in claiming EI benefits?

Analysis

[12] The Appellant wants his claim for EI benefits to be treated as though it was made earlier, on June 9th, 2025. This is called antedating (or, backdating) the claim.

[13] To get a claim antedated, the Appellant has to prove that he had good cause for the delay during the entire period of the delay.³ 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.

[14] And, to show good cause, the Appellant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.⁴ 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.

[15] 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 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

[16] The Appellant has to show that he acted this way for the entire period of the delay.⁷ That period is from the day he wants his claim antedated to until the day he actually made the claim. So, for the Appellant, the period of the delay is from June 9th, 2024 to September 11, 2024.

[17] The Appellant says that he had good cause for the delay because he was preoccupied dealing with his care giving responsibilities.

[18] The Commission says that the Appellant hasn't shown good cause for the delay because he didn't act as a reasonable person would in his circumstances, and that he has to demonstrate good cause for the entire period of the delay.

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

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.

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

⁷ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[19] I find that the Appellant has proven that he had good cause for the delay in applying for benefits because the factual circumstances facing the Appellant were all consuming and took time away from his ability to apply for benefits. I find any reasonable person in his circumstances would have acted in the same way.

[20] The Appellant is a civil engineer who worked and lived with his family in Ontario for several years. His wife was involved in a motor vehicle accident in Ontario, and as a result does not drive. His wife developed anxiety and depression. This resulted in mental health issues that led to agoraphobia, a condition that causes fear of leaving one's home.

[21] As part of her treatment, it was suggested by her physician that the family move to New Brunswick where the Appellant's spouse had family. The Appellant left his job in Ontario, where he worked for over 17 years, and moved the family to New Brunswick in June of 2024. He applied for E.I. benefits on the 11th of September 2024, three months after he left his job.

[22] The Appellant and his spouse have one child (S). S was born healthy but at the age of three suffered a head injury. This has resulted in S having serious complications in life. S suffers from Traumatic Brain Injury, and Chronic neurological and sensory issues, as well as visual processing impairment. She has serious migraines that can be triggered by sound, light or other sensory stimulants. So serious are the migraines that S. has been prescribed adult medication as treatment for her symptoms, even though she is only 11 years old. She requires continuous supervision and environmental management. Prior to the parties move to New Brunswick, S had been attending school virtually for several years. She was going into grade 6 in New Brunswick and was, for the first time, attending public school in person.

[23] In order to properly facilitate his daughter's return to school in September, the Appellant met with the schools officials several times. A "calm room" had to be created at the school, and other accommodations made for S. The Appellant worked with the school for three months to put the accommodations in place. This included risk management and proposing accommodations.

[24] In addition, the Appellant had to introduce S. to public places. She was not used to being around people, to fluorescent lighting, to sounds of traffic and other stimuli that could cause a physical reaction. The Appellant took his daughter to public parks, libraries, and shopping centers in an effort to acclimatize her to public places. This had to be done in short visits, but several times.

[25] In addition to dealing with his daughter's needs, the Appellant was dealing with his family's move from Ontario to New Brunswick. This included finding family doctors and settling into new surroundings.

[26] The Appellant was doing this, essentially on his own. The Appellant's spouse was unable to assist, because of her own preexisting health conditions, which were made worse when she suffered a panic attack as a result of knowing her daughter going to a public school. The Appellant's wife essentially withdrew completely from daily life and responsibilities in the summer of 2024.

[27] The Appellant testified to these facts under oath. He was concerned about protecting the privacy of both his wife and child. He made references to reports from the Sick Kids hospital in Ontario, regarding reports about his daughter. He showed a medical report at the hearing concerning his daughter, confirming her condition.

[28] The hearing was emotional for the Appellant, but despite being emotional, the Appellant provided clear and logical information about the situation his family was facing between June 9th and September 11th, 2024, when his daughter began to attend school. I found him reliable and credible in his testimony. His evidence was detailed and supported by documents quoted and referenced by the Appellant.

[29] Even though it is not before me to decide, the Appellant testified that during this time he was also searching for his social insurance number and record of employment. That evidence has been dealt with in a previous decision.

[30] I note that the delay in applying for benefits is not lengthy. The Appellant left work in June and applied just three months afterwards. This would be the time when the Appellant was settling his family in their new surroundings. I do not find the delay overly

lengthy, and the timing of the application lends credibility to the Appellant's stated reason for the delay.

[31] In their submissions the Commission noted that the number of weeks of benefits available to the Appellant would not be affected by his late application, rather only the start date of the benefits would be delayed. As a result of this I find there is not significant prejudice to the respondent if the Appellant's appeal is successful.

[32] When considering reasons for delay the Tribunal can consider special circumstances, such as stress-related illness and the special nature of a sickness benefits claim⁸. Personal or family circumstances relating to the terminal illness or death of a family member has been found to be good cause for delay⁹. While the Appellant was not dealing with a terminally ill family member, I find that the family circumstances in his case were exceptional, and I find that the cumulative effect of the move to New Brunswick, the illness of the Appellant's spouse, and all consuming need to deal with his daughter's circumstances provide just cause for the Appellant.

[33] The Appellant was facing considerable challenges. These were time consuming and all encompassing. His first priority was getting his family settled in new surrounding and preparing for September. This prevented him from filing for E.I. benefits within the required time period. I find that any reasonable and prudent person would act the same in a similar situation. I find this is good cause for the entire period of delay.

Conclusion

[34] The Appellant has proven that he had good cause for the delay in making his claim for benefits throughout the entire period of the delay. This means that his claim can be treated as though it were made earlier.

⁸ CUB 79827

⁹ CUB 69261

[35] The appeal is allowed.

Peter Mancini

Member, General Division – Employment Insurance Section