



Citation: *HC v Canada Employment Insurance Commission*, 2022 SST 1125

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

## Decision

**Appellant:** H. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (481214) dated June 14, 2022 (issued by Service Canada)

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**Tribunal member:** Nathalie Léger

**Type of hearing:** Videoconference

**Hearing date:** August 24, 2022

**Hearing participant:** Appellant

**Decision date:** August 26, 2022

**File number:** GE-22-2446

## Decision

[1] The appeal is dismissed.

[2] The claimant hasn't shown that he had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the claimant hasn't given an explanation that the law accepts. This means that the claimant's claim can't 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.<sup>1</sup> 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.<sup>2</sup>

[4] The claimant made his claim after the deadline. He wants it to be treated as though it was made earlier, on July 5, 2021.

[5] For this to happen, the claimant has to prove that he had good cause for the entire period of the delay.

[6] The Commission decided that the claimant didn't have good cause and refused the claimant's request. The Commission says that the claimant doesn't have good cause because he did not take any steps to inquire about his rights under the Act. Therefore, he did not act as a reasonable person would have done in the same circumstances.

[7] The claimant disagrees and says that a combination of events resulted in exceptional circumstances justifying his delay in applying for benefits. Furthermore, he was under the impression that EI benefits were only for those who lost their jobs

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<sup>1</sup> See section 49 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See section 26 of the *Employment Insurance Regulations*.

unexpectedly. Since he had a one-year contract, he was under the impression he could not claim benefits.

## Issue

[8] Did the claimant have good cause for the delay in claiming EI benefits?

## Analysis

[9] The claimant wants his claim for EI benefits to be treated as though it was made earlier, on July 5, 2021. This is called antedating (or, backdating) the claim.

[10] To get a claim antedated, the claimant has to prove that he had good cause for the delay during the entire period of the delay.<sup>3</sup> The claimant 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.

[11] And, to show good cause, the claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.<sup>4</sup> In other words, he has to show that he acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[12] The claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.<sup>5</sup> This means that the claimant has to show that he tried to learn about his rights and responsibilities as soon as possible and as best he could. If the claimant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.<sup>6</sup>

[13] The claimant has to show that he acted this way for the entire period of the delay.<sup>7</sup> That period is from the day he wants his claim antedated to until the day he

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

<sup>4</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>5</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

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

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

actually made the claim. So, for the claimant, the period of the delay is from July 5, 2021, to December 3, 2021.

[14] The claimant says that he had good cause for the delay because a combination of several factors explain why he was late in making his claim. First of all, he was under the impression that he could not claim benefits because the end of his employment was the result of his contract expiring. It was not an unexpected event. He only learned while talking to a friend in late November<sup>8</sup> that he could be admissible.

[15] Second, after the end of his employment, he applied on 8 academic positions and got two interviews<sup>9</sup>. These took a lot of time and focus.

[16] Third, he had health issues that made his life more difficult<sup>10</sup>. At the hearing, he agreed that these did not render him incapable to work or to inquire about his rights, but rather made it more complicated for him to concentrate and take the right course of actions.

[17] Finally, the claimant said at the hearing that he had to take care of his mother for a period of two months. She has several health issues that required a lot of time and she needs help with basic activities, like taking a bath or walking.

[18] The Commission says that the claimant hasn't shown good cause for the delay because he took no steps to inquire about his rights until a friend told him to apply in late November. He did not call Service Canada or looked online for information<sup>11</sup>. This is not acting as a reasonable person would.

[19] The Commission also says that "seeking employment, while commendable, is not by itself good cause for a delay in filing<sup>12</sup>. It finally argues that there is no medical note on file proving the claimant was incapable, at any point, of filing a claim. He also

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<sup>8</sup> GD2-6, GD3-18, GD3-19, GD3-23

<sup>9</sup> GD2-6

<sup>10</sup> GD2-6

<sup>11</sup> GD3-54

<sup>12</sup> GD4-4

confirmed in some discussions with the Commission that nothing had really prevented him from making a claim<sup>13</sup>.

[20] I find that the claimant hasn't proven that he had good cause for the delay in applying for benefits because he did not act as a reasonably prudent person would have done in the same circumstances<sup>14</sup>. Ignorance of the law, without exceptional circumstances, is not sufficient to establish good cause<sup>15</sup>.

[21] He also has not shown that he was under exceptional circumstances. The claimant says that the circumstances must be looked at as a whole. He pleads at the hearing that it is the combined effect of all of those that created exceptional circumstances.

[22] Even if I am sympathetic with the situation of the claimant, I cannot agree with this argument. The events he relies on did not happen all at the same time and were not present for the whole period of the delay. For example, while it is commendable that the claimant took care of his mother for a two-month period, this cannot explain his inaction for the nearly 5 months of the delay. Also applying on jobs or moving are both life events that not only apply to a lot of people, and generally do not hinder their capacity to function normally, but that are by essence limited in time and intensity. Therefore, even if I agree that during a certain period of time, exceptional circumstances might have existed, I find they cannot explain the delay in applying for the duration of the delay.

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<sup>13</sup> GD4-4 and 5

<sup>14</sup> *Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

<sup>15</sup> *Blanchette v. Canada (Attorney General)*, 2021 FC 115 at para 28.

## **Conclusion**

[23] The claimant hasn't 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't be treated as though it was made earlier.

[24] The appeal is dismissed.

Nathalie Léger

Member, General Division – Employment Insurance Section