

[TRANSLATION]

Citation: *A. E. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 13

Appeal No: Ge-13-2529

BETWEEN:

A. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Aline Rouleau

HEARING DATE: February 17, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal dismissed

PERSON IN ATTENDANCE

Only the Appellant participated in the hearing held on February 17, 2014.

DECISION

[1] The Tribunal finds that the Appellant failed to show that she did what any reasonable person would have done in the same situation to fulfill her obligations and assert her rights. Therefore, even though she seemed to meet the benefit entitlement conditions on December 23, 2012, she had no good cause under subsection 10(4) of the *Employment Insurance Act* (the Act) to delay making her benefit claim.

TYPE OF HEARING

[2] The hearing was held by teleconference for the reasons set out in the notice of hearing dated January 20, 2014.

ISSUE

[3] Does the Appellant meet the conditions of subsection 10(4) of the Act for making a late initial benefit claim (an antedate request)?

INTRODUCTION – STATEMENT OF FACTS

[4] An initial benefit claim was made on July 11, 2013 (GD3-2 to GD3-10) on the basis of a Record of Employment indicating that the Appellant worked until December 19, 2012, when her employment ended because she retired (GD3-11).

[5] On August 23, 2013, the Appellant requested that her benefit period start on December 23, 2012 (GD3-12 and GD3-13) because she stopped working on December 19, 2012.

[6] The Commission found that the Appellant failed to provide evidence that she qualified to receive Employment Insurance benefits on the earlier day because she did not show that there was good cause for the delay in making her claim throughout the period of the delay, from December 23, 2012, to August 23, 2013 (GD3-17 and GD4-1).

[7] The Commission also determined that the Appellant failed to accumulate the required number of insurable hours in her qualifying period established from July 8, 2012, to July 6, 2013, to receive regular benefits (GD3-14).

[8] The Appellant submitted a request for reconsideration of the decision on antedating her claim (GD3-19 to GD3-25).

[9] After reviewing the facts, the Commission argued that the Appellant did not establish that she qualified to receive benefits on the earlier day because she failed to show that there was good cause for the delay in making her claim throughout the period of the delay (GD3-30).

[10] The Appellant appeals from the Commission's decision (GD2-1 to GD2-19).

APPLICABLE LAW

[11] Subsection 10(4) of the Act stipulates that claimants can claim benefits for a period earlier than the day when they made their claim if they show that there was good cause for the delay in making their claim throughout the period of the delay and that they were qualified to make the claim on the earlier day.

EVIDENCE

[12] The evidence in the file indicates the following:

- (a) The Appellant's explanations for the delay in making her claim are in Exhibits GD3-12 and GD3-13 and GD2-1 to GD2-19.
- (b) The Commission's decision following the review affects the antedate request (GD3-30). The submissions to the Tribunal (GD4-1 to GD4-5) set out the Commission's position on the criteria for entitlement to benefits on the earlier day.
- (c) The employer stated (GD3-33) that the Appellant worked part-time and worked approximately 340 insurable hours a year, and that from December 26, 2010, to December 25, 2011, the Appellant worked 763.5 hours of insurable employment (GD3-35).
- (d) The Record of Employment submitted in support of the benefit claim (GD3-11) indicates that from December 21, 2011, to December 19, 2012, the Appellant worked 804 hours of insurable employment.

[13] The evidence submitted at the hearing by means of the Appellant's testimony indicated the following:

- (a) The Appellant repeated the circumstances of her case, as demonstrated by the documents in the file. She noted differences in dates in the facts in the Commission's submissions.
- (b) She stated that she had many problems at work.
- (c) She stated that Commission displayed an arrogant attitude and that the officers should not have prejudices.

SUBMISSIONS OF THE PARTIES

[14] The Appellant stated the following:

- (a) She delayed making her claim because she did not know that she was entitled to submit a benefit claim. She did not think of Employment Insurance. It was co-workers who informed her about Employment Insurance, and she then started the process.
- (b) When she was informed that her contract with the employer would not be renewed, her life was disrupted and her health was affected, as demonstrated by the medical certificate indicating a stress condition that resulted in unstable pressure issues and heart palpitations.
- (c) Her employer never gave her the relevant information on Employment Insurance and never sent her a letter informing her that she could receive Employment Insurance benefits. Her Record of Employment was provided electronically.
- (d) She had always worked and paid into Employment Insurance. She had not left her job since 2004. The Commission failed to take into account all the explanations that she had given since July 11, 2013.
- (e) The Commission's position is not a valid argument and its decision was made without giving the matter proper consideration. She argued that the Commission's decision is the result of her decision to assert her rights because, according to her, she is entitled to receive benefits.

[15] The Respondent Commission argued the following:

- (a) The Appellant had to show that she did what any reasonable person would have done in the same situation to fulfill her obligations and assert her rights under the Act.
- (b) The Appellant failed to show that she was entitled to receive benefits on the earlier day because she did not show that there was good cause for the delay in making her benefit claim throughout the period of the delay.

(c) The Appellant was not entitled to receive benefits on the earlier day because she was working part-time and the file shows that she accumulated 804 insurable hours in her last two years of employment.

(d) Page GD4-3: [Translation] “... *the claimant cannot be entitled to receive regular benefits as of December 23, 2012, because she accumulated 804 hours of insurable employment in the qualifying period ..., if the Commission granted the antedate request. In addition, the employer informed us that the claimant accumulated 763.5 insurable hours from December 26, 2010, to December 25, 2011 (GD3-35). Therefore she cannot be considered a member of the labour force given that she had held a part-time job since 2004.*”

ANALYSIS

[16] Despite the Appellant’s argument that she would be qualified to receive benefits because she made contributions to the Employment Insurance plan, the Tribunal must note that the payment of benefits does not depend only on having made contributions to the plan, but also on compliance with the conditions set out in the Act and the Regulations to receive the benefits.

[17] Subsection 10(4) of the Act, which allows for the establishment of a benefit period on an earlier day, set outs the following two cumulative conditions: one, that the claimant qualified to receive benefits on the earlier day; and two, that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

[18] The Federal Court of Appeal confirmed [*Canada (AG) v. Read, John*, A-371-93] that claimants must first show that they are qualified to receive benefits on the earlier day and must then show that there was good cause for their delay. If the claimants failed to qualify on the earlier day requested, it is unnecessary to analyze whether there was good cause for the delay in making the claim.

[19] Did the Appellant meet the benefit entitlement conditions on December 23, 2012? The Commission argued that she did not, but its argument on the matter can be described as vague, contradictory and incomplete.

[20] The Appellant made her claim on July 11, 2013, and requested that the claim be antedated to December 23, 2012.

[21] On December 23, 2012, the Appellant's qualifying period was from December 26, 2011, to December 19, 2012, according to the file. The Record of Employment shows that from December 21, 2011, to December 19, 2012, the Appellant accumulated 804 hours of insurable employment. Even though the Tribunal was not provided with the regional rate of unemployment on December 23, 2012, 804 hours is more than the maximum number of hours required according to the rate of unemployment in the qualifying period set out in the table in paragraph 7(2)(b) of the Act.

[22] The Commission argued that according to subsection 7(3), the Appellant was a new entrant or a re-entrant to the labour force given that she held a part-time job (GD4-3). Therefore, she needed to have accumulated 910 hours in her qualifying period.

[23] The Tribunal must make a clarification. The Act does not distinguish between full-time and part-time employment. What must be taken into account is the number of hours of insurable employment accumulated in specified periods. Subsection 7(4) of the Act defines a new entrant or a re-entrant to the labour force as a person who, in the last 52 weeks before their qualifying period, accumulated fewer than 490 hours. In that case, according to subsection 7(3), the person must accumulate 910 hours in their qualifying period.

[24] Since it is established, as a result of her antedate request, that the Appellant's qualifying period was from December 26, 2011, to December 19, 2012, the period of 52 weeks before the qualifying period was from December 26, 2010, to December 25, 2011. In that period, the employer stated that the Appellant worked 763.5 hours of insurable employment, therefore more than the 490 required by subsection 7(4) of the Act. It must

therefore be found that the Appellant was not a new entrant or a re-entrant to the labour force under subsection 7(4) and there is no need to require her to have accumulated 910 hours in her qualifying period.

[25] In view of the foregoing, the Appellant meets the first condition of subsection 10(4) of the Act to request an antedate. The second condition set out in the subsection must now be analyzed.

[26] The Tribunal must determine whether the Appellant had, throughout the period of the delay in making her benefit claim, good cause under the Act for not making her claim earlier. The Appellant must show the Tribunal that she had such good cause, which means that she did what any reasonable person would have done in the same situation to fulfill her obligations and assert her rights under the Act.

[27] The Federal Court of Appeal has already established that good faith and ignorance of the Act are not, in and of themselves, good cause for delay in making a claim, although they do not exclude the existence of good cause if the claimants are able to show that they did what any reasonable person would have done in the same situation to fulfill their obligations and assert their rights. The good causes under subsection 10(4) most often listed to antedate a claim are working full-time, being sick during the period of the delay or taking care of a gravely ill person.

[28] The file shows that the main reason given by the Appellant for her delay in making her benefit claim was that she was unaware that she could submit a claim and that she learned that she could do so through her co-workers. Even though she stated that she did not think of Employment Insurance, nothing prevented her from enquiring about her rights and obligations. It is also well established in law that claimants are expected to take reasonably prompt steps to determine their entitlement to receive benefits and to make sure of their rights and obligations under the Act (*Canada (A.G.) v. Carry*, 2005 FCA 367, 344 N.R. 142 (Carry)). This obligation imports a duty of care that is both demanding and strict. The medical certificate that the Appellant provided does not indicate a medical condition so debilitating

that she could not take any steps or function normally in her daily life. It is conceivable that the Appellant was distressed and depressed in that period, but that fact does not meet the condition set out in the Act and interpreted by the case law.

[29] Lastly, the Tribunal notes that the Appellant's cessation of employment follows an agreement with her employer that she would retire, as indicated in the Record of Employment. The Tribunal notes, without ruling on the fact, that when it is shown that a person is retired or has retired, it is difficult for the person to meet the entitlement criteria set out in the Act.

[30] The Tribunal finds that the Appellant failed to show that she did what any reasonable person would have done in the same situation to fulfill her obligations and assert her rights. Therefore, even though she seemed to meet the benefit entitlement conditions on December 23, 2012, she had no good cause under subsection 10(4) of the Act to delay making her benefit claim.

CONCLUSION

[31] The appeal is dismissed.



Member, General Division

DATE OF REASONS: March 13, 2014