

Citation: *D. H. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 106

Appeal #: GE-14-1879

BETWEEN:

D. H.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Richard Sterne

HEARING DATE: September 16, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal is allowed

PERSONS IN ATTENDANCE

The Claimant, D. H., attended the hearing by telephone.

DECISION

[1] The Tribunal finds that the Claimant did have the 630 insurable hours during a July 2012 to July 2013 qualifying period required to receive employment insurance benefits (EI benefits), pursuant to subsection 7(2) of the *Employment Insurance Act* (Act).

[2] The Tribunal finds that the Claimant did have good cause for delaying his application for EI benefits from July 2013 to January 2014, such that his request for antedating his claim is allowed, pursuant to subsection 10(4) of the Act.

INTRODUCTION

[3] The Claimant was under contract with Areva NP Canada Limited (employer) from July 24, 2012 to December 31, 2013 to develop and present a high voltage technical training program for field personnel.

[4] On January 14, 2014, the employer issued the Claimant's record of employment (ROE) for the period of December 4, 2012 to July 18, 2013, and indicated that the reason for issuing the ROE was Shortage of work/End of Contract.

[5] On January 26, 2014, the Claimant applied for EI benefits.

[6] On January 30, 2014, the Canada Employment Insurance Commission (Commission) advised the Claimant that they were unable to pay him EI benefits because he did not have the required 630 hours of insurable employment to qualify for benefits.

[7] On February 3, 2014, the Commission received the Claimant's application to antedate his claim for EI benefits to July 19, 2013.

[8] On April 2, 2014, the Commission advised the Claimant that his claim for EI benefits could not start on July 19, 2013 because he did not prove that between July 19, 2013 and January 25, 2014 that he had good cause to apply late for EI benefits.

[9] On April 11, 2014, the Claimant filed a request for reconsideration of the Commission's January 30, 2014 and April 2, 2014 decisions, which was denied on April 28, 2014.

FORM OF HEARING

[10] The hearing was by teleconference for the reasons provided in the Notice of Hearing dated July 29, 2014.

[11] The hearing was originally scheduled for August 27, 2014, but was adjourned because the Claimant was not able to attend. The hearing was rescheduled to September 16, 2014.

ISSUE

[12] Did the Claimant qualify to receive EI benefits pursuant to subsection 7(2) of the Act, if his request for an antedate was allowed?

[13] Did the Claimant have good cause to antedate his claim for EI benefits to July 19, 2013, pursuant to subsection 10(4) of the Act?

THE LAW

[14] Subsection 7(1) of the Act:

(1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

[15] Subsection 7(2) of the Act:

(2) An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

(a)) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person:

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

[16] Subsection 7(4) of the Act:

(4) An insured person is a new entrant or re-entrant to the labour force if, during the last 52 weeks before their qualifying period, the person has had fewer than 490

a) hours of insurable employment,

b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;

c) prescribed hours that relate to employment in the labour force; or

d) hours comprised of any combination of those hours.

[17] Subsection 8(1) of the Act:

(1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of:

(a)) the 52-Week period immediately before the beginning of a benefit period under subsection 10(1), and

(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

[18] Subsection 10(1) of the Act:

(1) A benefit period begins on the later of

(a)) the Sunday of the week in which the interruption of earnings occurs, and

(b) the Sunday of the week in which the initial claim for benefit is made.

[19] Subsection 10(4) of the Act:

(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and 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.

[20] Subsection 10(5) of the Act:

(5) A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

EVIDENCE

[21] The Claimant was originally under contract with Areva NP Canada Limited (employer) from July 24, 2012 to October 19, 2012 to compile a technical training program to be used in field project execution.

[22] On December 17, 2012, the Claimant's contract with the employer was revised and extended to December 31, 2013.

[23] On January 14, 2014 the employer issued the Claimant's record of employment (ROE) for the period of December 4, 2012 to July 18, 2013. The employer indicated that the reason for issuing the ROE was Shortage of work/End of Contract.

[24] On January 26, 2014, the Claimant applied for EI benefits.

[25] On January 30, 2014, the Commission advised the Claimant that they were unable to pay him EI benefits. They said that he only had 483 hours of insurable employment between January 27, 2013 and January 25, 2014. However, based on the unemployment rate in his region at the time he filed his claim, he needed 630 hours of insurable employment to qualify for benefits.

[26] On February 3, 2014, the Commission received from the Claimant an application to antedate his claim for EI benefits to July 19, 2013.

[27] On March 28, 2014 the employer issued the Claimant's ROE for the period of July 23, 2012 to November 30, 2012. The employer indicated that the reason for issuing the ROE was Shortage of work/End of Contract.

[28] On April 2, 2014, the Commission advised the Claimant that his claim for EI benefits could not start on July 19, 2013 because he did not prove that between July 19, 2013 and January 25, 2014 that he had good cause to apply late for EI benefits.

[29] On April 11, 2014, The Claimant filed a request for reconsideration of the Commission's April 2, 2014 decision.

[30] On April 24, 2014, the Claimant told the Commission that he had originally been hired by the employer on a three month contract to October 19, 2012. The employer eventually extended his contract until December 31, 2013. The contract stated that he would perform work on an as needed basis.

[31] The Claimant stated that the last day he actually performed work was July 18, 2013. However, he did not apply for EI benefits at that time because he was still under contract under the end of the year, and didn't know when he would be called back and offered work. He said that he contacted the employer often during that period. He did not apply for EI benefits until he received his ROE in January 2014 from the employer that indicated his last date of pay was July 18, 2013. He said that if his claim for EI benefits was antedated until July 19, 2013, he would have enough insurable employment hours during his qualifying period to be eligible for EI benefits.

[32] On April 28, 2014, the Commission advised the Claimant that they had not changed their April 2, 2014 decision regarding an antedate of his claim.

[33] On April 28, 2014, the Commission advised the Claimant that they had not changed their January 30, 2014 decision regarding having enough insurable employment hours during his qualifying period between January 27, 2013 and January 25, 2014 to be eligible for EI benefits.

SUBMISSIONS

[34] The Claimant submitted that:

- a) he thought he was under contract with the employer until December 31, 2013.
- b) he was called in to work on an as needed basis.
- c) he called his employer several times between July 2013 and December 2013 to see when they would be calling him back to work.
- d) he did not apply for EI benefits between July 2013 and December 2013, because he believed that he was not unemployed.

- e) he had the required 630 hours of insurable employment during his qualifying period from July 20, 2012 to July 19, 2013.

[35] The Respondent submitted that:

- a) the Claimant failed to qualify to receive EI benefits pursuant to subsection 7(2) of the E.I Act because he required 630 hours of insurable employment in his qualifying period whereas he had accumulated only 483 hours.
- b) the Claimant failed to show good cause throughout the entire period of the delay in filing his claim for EI benefits.

ANALYSIS

[36] During the hearing, the Claimant said that he had been contracted by the employer for three months from July 24, 2012 to October 19, 2012, to develop a training program for their high voltage electrical staff. His contract was later extended by the employer until December 31, 2013. He said that since he was retired from Hydro One, he was able to work on as needed basis to present the training course.

[37] The Claimant said that after he developed the training course, the employer required him periodically to present it to their personnel. The employer did not like to take their personnel out of the field, so they only required the Claimant periodically to train when their personnel were out of the field.

[38] The Claimant said that the last time that the employer required him to train their personnel was July 18, 2013. However, the Claimant said that at the time he did not know when he would be called back to train the next group as his contract went to December 31, 2013. The Claimant said that he contacted the employer regularly to find out when the next training program was happening.

[39] The Claimant said that he did not look for other work or apply for EI benefits during the period of July 19, 2013 to December 31, 2013, because he was still under contract to the employer. The Claimant said that he did not apply for EI benefits until January 26, 2014,

after he had received his ROE from his employer which indicated that his last day of work was July 18, 2013.

[40] The Tribunal finds that the Claimant thought that he was still employed by the terms of his contract until December 31, 2013, and therefore did not apply for EI benefits. The Tribunal finds that the Claimant did not learn that his last day of work was July 18, 2013 until he received his ROE from his employer in January 2014. His ROE indicated that the reason for issuing the ROE was the end of the contract.

[41] Although the legislation does not define "good cause for delay" jurisprudence has described it as whether the claimant did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations. It is not enough for a claimant to rely on his ignorance of the law as a claimant is generally expected to take positive steps to ascertain his entitlement under the Act.

Canada (AG) v. Albrecht, A-172-85; Canada (AG) v. Carry, 2005 FCA 367; Canada (AG) v. Scott, 2008 FCA 145; Canada (AG) v. Beaudin, 2005 FCA 123; Canada (AG) v. Somwaru, 2010 FCA 336; Canada (AG) v. Innes, 2010 FCA 341

[42] The Tribunal finds that the Claimant did what a reasonable person would have done under similar circumstances as he did not realize that July 18, 2013 was his last day of work because his contract went to December 31, 2013. The Claimant cannot be expected to satisfy his rights and obligations when he didn't realize that July 18, 2013 was his last day of work.

[43] The Tribunal finds that the Claimant was qualified to receive EI benefits on July 19, 2013, because he had the 630 hours of insurable employment required for the qualifying period from July 20, 2012 to July 19, 2013.

[44] The Tribunal finds that the Claimant had good cause for delaying his application for EI benefits until January 2014, because he did not realize at the time that he was unemployed. The Tribunal finds that the Claimant's request for an antedate of his claim for EI benefits to July 19, 2013, is allowed, pursuant to subsection 10(4) of the Act.

CONCLUSION

[45] The appeal is allowed.

Richard Sterne
Member, General Division

DATED: September 16, 2014