

Citation: *C. N. T. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 57

Date: March 31, 2015

File number: GE-14-3882

GENERAL DIVISION – Employment Insurance Section

Between:

C. N. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Joanne Blanchard, Member, General Division – Employment Insurance Section

Heard by Teleconference on March 31, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, C. N. T., attended the scheduled teleconference hearing.

INTRODUCTION

[1] The Appellant established an initial claim for employment insurance benefits on August 4, 2014. The Appellant was employed by Tomo Restaurant from April 25, 2012 to November 3, 2013. On August 15, 2014, the Appellant submitted an antedate request asking that his claim be backdated to November 3, 2013. The Canada Employment Insurance Commission (the « Commission ») concluded that the Appellant did not prove that between November 3, 2013 and August 2, 2014 he had good cause to apply late for benefits (GD3-18).

[2] The Appellant requested a reconsideration of the Commission's decision rendered on August 30, 2014. On September 26, 2014, the Commission informed the Claimant that it had not changed its initial decision regarding the antedate request (GD3-22 and GD3-23).

[3] The Appellant is appealing the Commission's revised decision before the Social Security Tribunal (GD2-1 à GD2-3).

[4] The hearing was held by Teleconference for the following reasons:

- the complexity of the issue under appeal;
- the fact that the Appellant will be the only party in attendance;
- the information in the file, including the nature of gaps or need for clarification in the information; and
- the cost-effectiveness and expediency of the hearing choice.

ISSUE

[5] The Appellant is appealing a denial of antedate request pursuant to Section 10(4) of the *Employment Insurance Act* « the Act »).

THE LAW

[6] Subsection 10(1) of the *Act* states:

(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.

[7] Subsection 10(4) of the *Act* states:

(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.

EVIDENCE

[8] Establishment of an initial claim for employment insurance benefits on August 4, 2014 (GD3-12).

[9] Record of Employment for Restaurant Tomo from April 25, 2012 to November 2, 2013, with an accumulated 2064 hours of insurable employment (GD3-14).

[10] On August 15, 2014, the Appellant submitted an antedate request asking that his claim be backdated to November 3, 2013 (GD3-17).

[11] The Commission concluded that the Appellant did not prove that between November 3, 2013 and August 2, 2014 he had good cause to apply late for benefits (GD3-18).

[12] The Appellant requested a reconsideration of the Commission's decision rendered on August 30, 2014. On September 26, 2014, the Commission informed the Claimant that it had not changed its initial decision regarding the antedate request (GD3-22 and GD3-23).

[13] The Appellant is appealing the Commission's revised decision before the Social Security Tribunal. He feels it is unfair and requests that the Tribunal make an exception. He has financial commitments and requires benefits to cover his living costs (GD2-1 à GD2-3).

[14] The Appellant was contacted by the Commission on September 26, 2014. He stated that he believed he could find employment quickly; therefore, he did not immediately apply for benefits. He borrowed money instead of applying for benefits (GD3-21).

SUBMISSIONS

[15] The Appellant submitted that he waited 2 or 3 months following his lay off thinking he would find another job. He was actively looking for another job. A friend of his told him he had one year to apply for employment insurance benefits. He did not want to resort to applying for employment insurance benefits if it was not necessary.

[16] He has received employment insurance in the past and he had applied within the required timeframe. However, he did not know that he had to apply within a month. He called Service Canada in April, May or June but could not get through. He claims to have reviewed the web site for information. He feels he has a good working knowledge of the English language.

[17] The Respondent submitted that claimants who wish to claim employment insurance benefits for an earlier period must first qualify at the earlier date and then must demonstrate that they had good cause for the entire period of the delay in making their claim.

[18] In the case at hand, the Commission contends that the claimant did not act like a 'reasonable person' in his situation would have done to verify his rights and obligations under the Act. Specifically the claimant did not apply after his last day worked at Tomo Restaurant in November 2013. He applied on August 04, 2014, 9 months after his last day worked. He was supposed to get a job in a few months and he did not apply to receive benefits then while unemployed looking for work neither when this job opportunity failed. Choosing to seek

employment rather than submit a claim immediately while commendable is not by itself good cause for a delay in filing.

[19] The claimant mentioned that a friend told him he had a year to apply. Unfortunately, the claimant did not inquire to the Commission in regards to this information and be guided to what or when to apply. The claimant passed months without any income and he borrowed money. The claimant did not have anything preventing him from applying, or to inquire about it. More so, the claimant had previous claims for which he received benefits. The claimant knew how to proceed to receive benefits; to apply.

[20] In his appeal, the claimant said that he did apply but according to act, he applied late and his reasons to explain his late applying (9 months) are not sufficient for the Commission to commence his claim as he wishes in November 2013.

ANALYSIS

[21] For his initial claim for benefits to be antedated to November, 2013, the burden of proof rests with the Appellant to prove that he qualified for benefits on this date and that he had good cause, throughout the period, for the delay in making the initial claim for benefits.

[22] According to the information provided by the parties, the Tribunal finds that the Appellant would have qualified for benefits as of November, 2013. Therefore, the Tribunal must determine if the Appellant had good cause for the delay throughout the period of the delay.

[23] The existence of good cause is a mixed question of fact and law. The onus for demonstrating good case lies with the Appellant.

[24] The Federal Court of Appeal (FCA) has determined that in order to establish "good cause" a claimant must demonstrate that he or she did what a reasonable and prudent person would have done in the same circumstances, either to clarify the situation regarding their employment or to determine their rights and obligations under the Act. Each case must be judged on its own facts and to this extent no clear and easily applicable principle exists. (*Canada (A.G.) v. Albrecht*, [1985] 1 F.C. 710 (F.C.A.) A-172-85 and *Canada (A.G.) v. Caron*, [1986] F.C.J. No.85 (F.C.A.) A-395-85).

[25] The FCA has further found that 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 Act (*Attorney General of Canada v. Kaler* 2011 FCA 266).

[26] The Appellant's reasons for the delay were that he believed he would find another job in the months following his lay off. He decided to borrow money in order to avoid requesting employment insurance benefits. He was also told by a friend that he had a one-year delay to submit an application for benefits.

[27] Although it is commendable that the Appellant wished to use his own funds rather than seek employment insurance benefits, this does not constitute just cause within the meaning of the Act. Given the Appellant's past experience with employment insurance, the Tribunal finds that a reasonable person would have made other attempts to inquire about his rights and obligations, such as verifying the web site or visiting a Service Canada Center. When his initial job opportunity did not work out in the 2 or 3 months following his lay off, a reasonable alternative would have been to Contact Service Canada to inquire about the various options available to him.

[28] The Federal Court of Appeal has clearly stated that ignorance of the law, or a mistaken understanding of the legal rights and obligations involved, is not "good cause" within the meaning of the Act (*Canada (A.G.) v. Larouche* (1994), 176 N.R. 69).

[29] The Tribunal finds that the Appellant has not demonstrated that he acted as any reasonable person in the same situation would have done, to satisfy himself as to his rights and obligations under the Act. The Appellant has not shown good cause throughout the period from November 3, 2013 and August 2, 2014 for the delay in filing his claim for employment insurance benefits.

CONCLUSION

[30] The appeal is dismissed.

Joanne Blanchard
Member, General Division – Employment Insurance Section