Citation: ***G. B. v. Canada Employment Insurance Commission*****, 2015 SSTGDEI 56**

Date: March 30, 2015

File number: GE-15-355

GENERAL DIVISION – Employment Insurance Section

Between:

G. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Takis Pappas, Member, General Division – Employment Insurance Section

Heard by Teleconference on March 30, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE: G. B., W. B.

INTRODUCTION

[1] The Appellant filed a claim for Employment Insurance benefits on September 2, 2014.

[2] On December 22, 2014 the Appellant requested a reconsideration of the Respondent's decision regarding her failing to qualify to receive Employment Insurance benefits according to section 7 of the *Employment Insurance Act* (the Act). The Appellant also requested that her application for benefits filed on September 2, 2014 be antedated to May 15, 2014 the date she was no longer employed.

[3] On January 16, 2015, the Respondent denied the Appellant's request for reconsideration on both issues, because she only had 729 hours of insured employment in her qualifying period and needed 910 hours and because she did not show good cause throughout the entire period of the delay in filing her claim. The Appellant appealed to the Social Security Tribunal on February 5, 2015.

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

a) the appellant will be the only party at the hearing;

b) the credibility of the parties; and

c) the complexity of the appeal.

ISSUE(S)

[5] Whether the Appellant has sufficient hours of insured employment to qualify for Employment Insurance benefits according to section 7 of the Act.

[6] Whether the Appellant's initial claim for benefits can be considered to have been made on an earlier day pursuant to subsection 10(4) of the Act.

THE LAW

[7] Subsection 7(3) of the Act states that:

(3) An insured person who is a new entrant or a re-entrant to the labour force qualifies to receive benefits if the person

a) had an interruption of earnings from employment; and

b) had 910 or more hours of insurable employment in their qualifying period.

[8] Subsection 7(4) of the Act provides that:

(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

[9] 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).

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

> (1) A benefit period begins on the later of
>
> c) the Sunday of the week in which the interruption of earnings occurs, and
>
> d) the Sunday of the week in which the initial claim for benefit is made.

[11] Subsection 10(4) of the Act sets out the requirements to allow a claimant's initial claim for benefits to be considered as having been made on an earlier day.

[12] For an initial claim for benefits to be antedated to an earlier date, claimants must show that:

a) they qualified to receive benefits on the earlier day; and
b) there was good cause for the delay throughout the period, starting on the earlier day and ending on the day when the initial claim was actually made.

[13] Whether there is good cause to antedate a claim for benefits is a question of mixed fact and law (Attorney General of Canada v. Burke, 2012 FCA 139; Attorney General of Canada v. Innes, 2010 FCA 341; Attorney General of Canada v. Albrecht, A-172-85).

EVIDENCE

[14] The Appellant filed a claim for Employment Insurance benefits on September 2, 2014.

[15] The Respondent notified the Appellant that she failed to meet the minimum requirements to qualify for benefits because she had accumulated 729 hours of the required 910 hours of insurable employment in her qualifying period (GD3-16 to GD3-17).

[16] Following the Appellant's request for reconsideration, the Respondent maintained that she did not have sufficient hours of insurable employment in the qualifying period to establish a claim for benefits. The Respondent also found that the Appellant did not have good cause for the delay in filing her application for benefits.

[17] On December 19, 2014 following her reconsideration request in regards to her delay in filing for benefits the Appellant provided additional information. She stated that she delayed filing because she did not receive her record of employment until August 26, 2014 and was unaware of Employment Insurance procedures (GD3-29 to GD3-31).

[18] At the hearing, the Appellant through her representative stated that the employer did not provide her with any information regarding applying for Employment Insurance benefits. She is not familiar with the Employment Insurance process and does not have experience with the Canadian system.

SUBMISSIONS

[19] The Appellant submitted that:

a) Although her last day of work was May 15, 2014, her record of employment was issued on August 26, 2014 and mailed to her previous address.

b) She never applied for benefits before and did not know there were time-lines involved. She waited for this record and then applied.

[20] The Respondent submitted that:

a) The Appellant accumulated 729 hours of insurable employment in her qualifying period from September 1, 2013 to August 30, 2014. Consequently, the Appellant failed to demonstrate that she qualified to receive employment insurance benefits pursuant to subsection 7(3) (b) of the Act.

b) The Appellant did not act like a "reasonable person" in her situation would have done to verify her rights and obligations under the Act. Specifically she made no contact with the Commission to learn her rights and obligations, and was not prevented from filing in a timely manner.

ANALYSIS

Qualifying for benefits

[21] Subsection 7(3) of the Act provides that:

> (3) An insured person who is a new entrant or a re-entrant to the labour force qualifies to receive benefits if the person
>
> c) had an interruption of earnings from employment; and
>
> d) had 910 or more hours of insurable employment in their qualifying period.

[22] The evidence on the record indicates that the Appellant was a new entrant or re-entrant because she did not have at least 490 hours of labour attachment in the 52 weeks preceding her qualifying period, according to subsection 7(4) of the Act.

[23] According to subsection 7(3) (b) of the Act the minimum requirement for the Appellant to qualify for benefits was 910 hours of insured employment. The evidence on the record indicates that the Appellant accumulated 729 hours in her qualifying period of September 1, 2013 to August 30, 2014.

[24] The Legislation and the Courts are very clear on this issue. The requirements under section 7 of the Act do not allow any discrepancy and provide no discretion.

[25] The Tribunal finds that the Appellant does not have sufficient hours of insured employment to qualify for Employment Insurance benefits.

[26] The Tribunal is supported in this by the Court. In *Canada (AG) v. Levesque*, 2001 FCA 30, Justice Desardins J. A. stated: "The claimant accumulated 594 hours of work instead of the 595 hours required by subsection 7(2) of the *Employment Insurance Act*, S.C. 1996, c. 23. She was short one hour of work in order to fulfill the conditions required by that section if she was to be eligible for unemployment benefits. This requirement of the Act does not allow any discrepancy and provides no discretion. Neither the board of referees nor the umpire could remove the defect from the claim".

Antedate

[27] For her initial claim for benefits to be antedated to May 15, 2014, the burden of proof rests with the Appellant to prove that she:

> a) Qualified for benefits as of May 15, 2014; and
>
> b) Had good cause, throughout the period, for the delay in making the initial claim for benefits.

[28] According to the Federal Court of Appeal (FCA), to show good cause for the delay in making an initial claim for benefits, claimants must show that they acted as a reasonable and prudent person would have done in the same situation to satisfy themselves of their rights and obligations under the Act (*Mauchel v. Attorney General of Canada* 2012 FCA 202; *Bradford v. Canada Employment Insurance Commission* 2012 FCA 120; *Attorney General of Canada v. Albrecht* A-172-85).

[29] 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; *Attorney General of Canada v. Innes* 2010 FCA 341; *Attorney General of Canada v. Somwaru* 2010 FCA 336).

[30] The evidence before the Tribunal indicates that the Appellant did not make any efforts to contact Service Canada to inquire about benefits until September 2, 2014. The Appellant's reasons for the delay were that she never applied before, she was instructed that she needed a Record of Employment in order to apply, did not know there was a time period to apply and looking for commuting options in her new area of residence, X.

[31] The Respondent submitted that the Appellant did not act like a reasonable person in her situation would have done to verify her rights and obligations under the Act. She could have asked Service Canada about how to proceed with her claim. Waiting for a Record of Employment is not considered good cause for delay, as applications are submitted regularly

without a record. Had the Appellant contacted the Commission, this would have been made known to her.

[32] After considering all the evidence from both parties, the Tribunal finds that the Appellant could have inquired with the Respondent to determine her entitlement to Employment Insurance benefits with a visit to her local Service Canada office, a telephone call to Service Canada, or an enquiry through the Service Canada website.

[33] The Tribunal finds on the balance of probabilities that a reasonable and prudent person would not have waited as long as the Appellant did to satisfy herself of her rights and obligations under the Act. Someone that has lost their employment and are in need of financial assistance would have taken steps to inquire with the Commission as to what the steps are in order to establish a claim.

[34] Additionally, the Tribunal finds that the circumstances of the Appellant, in that she delayed in applying because she didn't know that he could have applied back in May 15, 2014 are not exceptional circumstances.

[35] The Tribunal is supported in this finding by the FCA in (*Canada v. Carry*, 2005 FCA 367). In paragraphs 4-5, Justice Linden made clear that a claimant is under a positive obligation to ascertain her obligations under the Act:

> "The Umpire affirmed the decision of the Board on the basis that it was not unreasonable to hold that there was good cause in this case. The jurisprudence of this Court, however, clearly does not permit such a conclusion in this case in that a reasonable person is expected to take reasonably prompt steps to determine her entitlement to Employment Insurance benefits. Ignorance of the law and good faith, the reasons offered for the delay of nine months in this case, have been held to be insufficient to amount to good cause".

[36] The test for an initial claim for benefits to be antedated to an earlier date in subsection 10(4) of the EI Act is a two part test. The evidence must establish that the Appellant passes both parts of the test or fails one or both parts of the test. In this case, the Tribunal found that the Appellant did not prove that she had "good cause" for the entire period of the delay

(second part of the test). Therefore the Tribunal did not make a finding on the first part of the test.

[37] Finally, the Tribunal finds that the Respondent considered all evidence before them before determining whether the Appellant was entitled to benefits.

CONCLUSION

[38] The appeal is dismissed.

Takis Pappas
Member, General Division - Employment Insurance Section