

Citation: *W. W. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 103

Date: June 8, 2015

File number: GE-15-653

GENERAL DIVISION – Employment Insurance Section

Between:

W. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Joseph Wamback, Member, General Division - Employment Insurance Section

Heard by Teleconference on June 4, 2015, Toronto, Ontario.

REASONS AND DECISION

PERSONS IN ATTENDANCE

W. W., the Appellant attended the teleconference hearing.

INTRODUCTION

[1] The Appellant applied for regular benefits and was unable to log on to the system. He applied for a renewal application and the Respondent denied him benefits at that level. The Appellant requested reconsideration and was denied benefits at the reconsideration level. The Appellant filed an appeal with the Tribunal and a hearing was scheduled.

[2] The hearing was held by Teleconference to save all parties time and expense, and to clarify the Appellant's evidence as noted on the Notice of Hearing dated April 23, 2015.

ISSUE

[3] The Appellant is appealing the Respondent's denial of employment insurance benefits because he did not return his reports within the allowable period of time in accordance with sections 10 and 50 of the *Employment Insurance Act* (Act) and section 26 of the *Employment Insurance Regulations* (Regulations)

THE LAW

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

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 Appellant 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.

[5] Subsection 50(1) of the Act:

An appellant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

[6] Subsection 50(4) of the Act:

A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

[7] Subsection 50(10) of the Act:

The Respondent may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of an appellant or a class or group of appellants.

[8] Section 112 of the Act:

(1) An appellant or other person who is the subject of a decision of the Respondent, or the employer of the appellant, may make a request to the Respondent in the prescribed form and manner for a reconsideration of that decision at any time within

(a) 30 days after the day on which a decision is communicated to them; or

(b) any further time that the Respondent may allow.

(2) The Respondent must reconsider its decision if a request is made under subsection (1).

(3) The Governor in Council may make regulations setting out the circumstances in which the Respondent may allow a longer period to make a request under subsection (1).

[9] Section 26 of the Regulations:

(1) Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by an appellant within three weeks after the week for which benefits are claimed.

(2) Where an appellant has not made a claim for benefit for four or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed.

EVIDENCE

[10] The Appellant applied for benefits on May 7, 2014. On July 3, 2014, he tried to process his report for the week of April 20, 2014 using the Internet Reporting Service. The Appellant's attempt failed since the report had to be processed at the latest on May 17, 2014, pursuant to subsection 26(1) of the Regulations (GD3-15).

[11] The Appellant filed a renewal application for benefits on July 3, 2014 and requested to antedate his claim to April 18, 2014. He stated he failed to complete his reports because he was waiting for an online prompt after being notified he qualified for benefits. While checking his status on line he realized he neglected to complete his reports and filed a renewal application. (GD3-25)

[12] The Respondent notified the Appellant on December 1, 2014 that they are unable to pay employment insurance benefits from April 21, 2014 to June 20, 2014 because he did not complete his reports within the allowed time and did not show good cause for being late.

[13] The Appellant requested reconsideration on December 19, 2014 stating that when he realized in July that no benefits had been paid and upon checking his account he realized he had failed to file his reports. He then completed a new application and went to the local EI office for further instructions. He then received benefits Aug. 11th and repaid an overpayment on Oct 8, 2014. Furthermore, he has been diligent in filing his reports to date.

[14] The Appellant advised the Respondent on January 20, 2015 that he was trying to get information from the internet all along but nowhere could he find what he needed to do reports. He did try to inquire with Service Canada by using the information hotline but that he could never get through. He finally went down to the Service Canada office in late May or early June and was told that they were still processing his file and was told to file an antedate request which he did. He felt like there should be some bold lettering on the website to indicate that reports are needed in order to receive payments. He stated that he would and has complied with all requests made of him. He stated that he kept checking all the time and calling to but could not speak to an agent until he went into the Service Canada offices.

[15] The Respondent notified the Appellant on January 21, 2015 that they have reviewed his request for reconsideration and determined that the original decision dated December 1, 2014 will be maintained.

[16] The Appellant filed an appeal with the Tribunal on February 12, 2015.

[17] The Appellant advised the Tribunal that he received the docket, read its content and understands the issues before the Tribunal. The Appellant reiterated his earlier submissions to the Respondent and the Tribunal. He stated that the system is not user friendly and would like to see mandatory instructions in bold letters. The Appellant provided a copy of the Respondent correspondence dated May 7, 2014 stating this is where the instructions were confusing. (GD5-2)

SUBMISSIONS

[18] The Appellant submitted that;

- a) He was not aware there was a time frame in which to complete his reports as it was his first time and he was inexperienced.
- b) He was under the assumption he would be prompted to complete his reports after he received payment. The Appellant assumed he would be able to back date his reports but after unsuccessful attempts he realized this was not possible promoting the submission of a renewal application for benefits.

- c) The language in the correspondence received is different than that of the original statement sent to him on May 7, 2014. The statement he received on May 7, 2014 advised him of his benefit rate, weeks of entitlement and directed him to complete his reports.
- d) It was not irresponsibility that prevented him from completing his reports in a timely manner.

[19] The Respondent submitted that;

- a) Subsection 50(4) of the Act states that a weekly claim for employment insurance benefits must be made within the prescribed time pursuant to subsection 26(1) of the Act. Subsection 10(5) of the Act stipulates that a report that is returned outside the time prescribed shall be regarded as having been made on an earlier day if the Appellant 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. Subsection 50(1) of the Act stipulates that Appellants who fail to fulfill or comply with a condition or requirement under section 50 of the Act are disentitled for as long as the condition or requirement is not fulfilled or complied with.
- b) The Appellant was in fact aware he needed to complete his reports. He admitted he received a statement from the Respondent on May 7, 2014 advising him to complete his reports (GD2-2). The Appellant was never informed to wait until he received payment to begin the report process. The Appellant waited until July 3, 2014 to file his report for the period beginning April 20, 2014 without consultation with the Respondent. He made this decision without consultation. In this case the Appellant failed to prove good cause for the entire period of delay in filing his reports. The Appellant made no attempt to satisfy himself of his rights and obligations under the Act by contacting the Respondent.
- c) The fact remains the Appellant received the Electronic Reporting Insert (GD3-11) after filing his initial claim for benefits. This document is sent automatically when an application for benefits is filed. The Electronic Reporting Insert clearly informed the Appellant that he must submit his first report on or shortly after the due date shown on

the benefit statement he received. Responsibility lies with the Appellant to have read all the information that he received in his application for benefits package as well as all subsequent correspondence sent by the Respondent. Failing that, it was certainly incumbent upon him to make enquiries with respect to his application in a far timelier manner than he did. The Appellant made the decision to wait 8 weeks after he made his application for benefits to submit his reports. Although the Appellant may be inexperienced with the Employment Insurance System; inexperience does not change his rights and obligations under the law to act as a reasonable person by either contacting the Respondent or completing his reports within the designated time frame. .

- d) The Respondent maintains the decision to deny Employment Insurance benefits for the period of April 21, 2014 to June 20, 2014 is correct pursuant to subsection 50(1) of the Act.

ANALYSIS

[20] The issue before the Tribunal is the Appellant's appeal of the Respondent's denial of employment insurance benefits because he did not return his reports within the allowable period of time in accordance with sections 10 and 50 of the Act and section 26 of the Insurance Regulations.

[21] Subsection 10(5) of the Act states:

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 Appellant 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.

[22] Subsection 50(1) of the Act states:

An appellant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

[23] Subsection 50(10) of the Act:

The Respondent may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of an appellant or a class or group of appellants.

[24] Section 26 of the Regulations states:

(1) Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by an appellant within three weeks after the week for which benefits are claimed.

[25] In the Larouche decision (A-644-93), Justice Décary wrote:

"The precedents of this Court are clear: good faith and ignorance of the law do not in themselves excuse a failure to comply with a legislative requirement; a belated appellant must still show that she acted as a reasonable person in the same situation would have done to protect the rights and obligations imposed on him by the EI Act.

[26] The purpose of these requirements was well stated by Justice McNair in CUB 12818:

"The legislative provisions setting out the requirements for making an initial application for benefit have been enacted by Parliament for a special purpose, that is, to ensure the efficient and effective administration of the Unemployment Insurance scheme. The provisions are not meaningless or redundant. Rather, they are the law and must be complied with unless a claimant is able to demonstrate that he had good cause for not doing so."

[27] In the present case the Tribunal finds that the Appellant waited until July 3, 2014 to file his report for the period beginning April 20, 2014 without any consultation with the Commission. In this case he failed to prove good cause for the entire period of delay in filing his reports. The Appellant advised the Tribunal that his internet log-in attempts were kicked out and that was because his first reports were in fact late.

[28] The Appellant made no successful attempt to satisfy himself of his rights and obligations under the Act by contacting the Respondent. He made no efforts throughout the entire delay to

determine what his rights and responsibilities under the Act were. It cannot be said that the Appellant acted as a reasonable and prudent person. The Appellant stated that he was unfamiliar with the process and the system was not user friendly. The Appellant provided the Tribunal with a copy of his benefit statement dated May 7, 2014 (GD5-2) where he stated the instructions were unclear. The Tribunal finds that the benefit statement is clear and unambiguous. The statement in capitalized letters note “IMPORTANT – COMPLETE YOUR REPORTS ON THE INTERNET AT: WWW.SERVICE CANADA.GC.CAEIREPORTING. IF YOU DO NOT HAVE ACCESS TO THE INTERNET, USE TELEPHONE REPORTING SERVICE: 1-800-531-7555”. The benefit statement provides further instructions including the note in capital letters that the Appellant MUST COMPLETE HIS REPORTS ON OR AFTER SATURDAY 03-05-2014, and if he does not have access to the internet to contact the EI telephone information service at 1- 800-206-7218 or by visiting a Service Canada Center.

[29] The Tribunal is unable to accept that a reasonable person in this situation would have continued to delay in filing his reports for benefits for approximately 2 months. The Appellant’s attempt to log in to the internet reporting system in July 3, 2014 failed since the report had to be processed at the latest on May 17, 2014, pursuant to subsection 26(1) of the Regulations. The Tribunal finds that a reasonable person in a similar situation would have checked with Service Canada to satisfy himself as to his exact rights and obligations in regard to this before July 3 of 2014. This he failed to do.

[30] The jurisprudence holds that an appellant has an obligation to take "reasonably prompt steps" to determine his or her entitlement to employment insurance benefits and to ensure his or her rights and obligations under the EI Act: (*Canada (A. G.) v. Carry*, 2005 FCA 367, 344 N.R.) 142 at para. 5 (*Carry*; *Canada (A. G.) v. Larouche (1994)*, 176 N.R. 69 at para. 6 (F.C.A.); (*Canada (A. G.) v. Brace*, 2008 FCA 118; 377 N.R. 228) at para. 12. This obligation imports a duty of care that is both demanding and strict: Albrecht at para. 13. “Ignorance of the law and good faith are insufficient to amount to good cause”: *Carry* at para. 5; (*Attorney General of Canada v. Trinh*, 2010 FCA 335) at paras. 7, 8.

[31] The record discloses no continued effort on the Appellant's part to determine his entitlement or to verify his rights and obligations under the EI Act.

[32] The Tribunal finds that the Appellant did not complete his reports in a timely manner as required by the Act and must dismiss the appeal.

CONCLUSION

[33] The appeal is dismissed.

Joseph Wamback
Member, General Division - Employment Insurance Section