



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. Q. v Canada Employment Insurance Commission*, 2015 SSTGDEI 227

Date: June 22, 2015

File number: GE-15-163

GENERAL DIVISION - Employment Insurance Section

Between:

A. Q.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Dwayne Provo, Member, General Division - Employment Insurance Section

Heard by Teleconference on June 11, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

A. Q. attended the hearing by teleconference.

INTRODUCTION

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

- the complexity of the issue under appeal;

- and the information in the file, including the nature of gaps or need for clarification in the information.

[2] The Claimant made an initial claim for benefits on August 29, 2015.

[3] The Claimant requested that her application for benefits commence on November 1, 2013.

[4] On October 9, 2014 the Canada Employment Insurance Commission's (Commission) decision regarding the Claimant's application for benefits was denied based on the Claimant not having good cause to apply for an antedate of her claim for benefits and insufficient hours of insured employment to establish a claim pursuant to section 7 of the Act.

[5] The Claimant made a request for reconsideration of the Commission's decision on October 22, 2014. The Commission maintained its initial decision.

[6] The Claimant subsequently appealed to the Social Security Tribunal.

ISSUE

[7] The Claimant is appealing the Commission's decision resulting from her request for reconsideration under section 112 of *the Employment Insurance Act* (the Act) regarding:

- (a) the denial of an antedate request pursuant to subsection 10(4) of the Act.
- (b) the Claimant having insufficient hours of insured employment to establish a claim pursuant to section 7 of the Act.

THE LAW

[8] Subsection 7 of the Act states:

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

(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 Hours of Insurable Employment
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

(3) An insured person who is 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 910 or more hours of insurable employment in their qualifying period.

(4) An insured person is a new entrant or a re-entrant to the labour force if, in 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.

(4.1) An insured person is not a new entrant or a re-entrant if the person has been paid one or more weeks of special benefits referred to in paragraph 12(3)(a) or (b) — or, as a self-employed person under Part VII.1, one or more weeks of benefits referred to in paragraph 152.14(1)(a) or (b) — in the period of 208 weeks preceding the period of 52 weeks before their qualifying period or in other circumstances, as prescribed by regulation, arising in that period of 208 weeks.

(5) For the purposes of subsection (4), an hour that is taken into account under any of paragraphs (4)(a), (b) or (c) may not be taken into account under the other.

(6) An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the Agreement Between Canada and the United States Respecting Unemployment Insurance, signed on March 6 and 12, 1942.

[9] Subsection 8(1) of the Act states;

(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(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.

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

(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

[12] The Claimant made an initial claim for benefits on August 29, 2014.

[13] The Claimant requested that her benefit period commence on September 30, 2012.

Evidence from the Hearing

[14] The Claimant indicated that she delayed filing her claim because she was not aware of applying for employment insurance benefits and she was preparing for her final exams.

[15] The Claimant further indicated that she was not aware she could apply for benefits as she was essentially a student in a training program and was not provided with a Record of Employment. The Claimant further indicated that from the time she immigrated to Canada she was always given a record of employment when work ceased but her training course was not considered work.

[16] The Claimant indicated that since immigrating to Canada her only experience with Records of Employment was with 2 previous employers for which she was given records of employment as she was laid off. The Claimant further indicated that in each situation with her previous employers, she did not pursue employment insurance as she found alternate employment or took a training course.

[17] The Claimant indicated that she completed her training at the end of October and started preparing for her final exams in November of 2013.

[18] The Claimant indicated that she was participating in classes which were 8 to 10 hours a day, but the classes ended in October 2013.

[19] The Claimant further indicated that starting in July 2013 she was pursuing the Supervised Training Practice Licence through the College of Physicians and Surgeons of Alberta and Alberta Health Services, as she was offered employment upon receipt of the licence. In addition the Claimant indicated that this licence usually takes 3 to 4 months

and that is why she applied in July 2013 as she knew that her training course was concluding at the end of October and she wanted to be employed as she needed the financial support.

[20] The Claimant indicated that she continued to pursue the Supervised Training Practice Licence and encountered numerous delays. The Claimant indicated that she was very frustrated as she needed some income to survive as she was experiencing financial difficulty and burdened with debt. The Claimant further indicated that she never received her supervised licence, as the process took so long she had already received her permanent licence.

[21] The Claimant indicated that her husband had to travel to Pakistan due to his sister's health.

[22] The Claimant stated that a friend indicated that the Claimant may be eligible for employment insurance as a result of her training course. The Claimant further indicated that she called Service Canada the next day and that she made several attempts that day to speak with someone. The Claimant indicated that she finally was able to connect with a Service Canada representative over the telephone after several failed attempts throughout the day. In addition the Claimant stated that this was when she became aware that a record of employment was submitted to Service Canada and as a result she applied for benefits immediately and filled out the antedate information as advised by the Service Canada representative.

[23] The Claimant further indicated that she was willing and ready to work and that her exam preparation would have fit with any employment as it was on her own time and she really needed the financial support.

[24] The Claimant indicated that she has 2160 insurable hours if her claim is antedated.

SUBMISSIONS

[25] The Claimant submitted that she did not file for employment insurance benefits immediately after her training course ceased as she was unaware that she was accumulating insurable hours as it was a course and it conclude. The Claimant further submitted that she was never provided a record of employment from the training course and that she immediately submitted her EI application upon learning that a record of employment existed.

[26] The Respondent submitted:

(a) that the Claimant was very busy with her training/studies and did not make any efforts in finding out about and protecting her rights and obligations under the Act. All of the reasons that the Claimant has provided are not considered good cause for the delay in filing for benefits. As a result the Commission further submits that the Claimant does not meet the requirements of Section 10(4) of the Act.

(b) that the Claimant did not qualify for benefits on October 9, 2014 because her request to antedate her claim to November 2013, 2013 was denied. The Commission further submits that the Claimant has 318 insurable hours and as a result the Commission maintains that the Claimant failed to demonstrate that she qualified to receive employment insurance benefits pursuant to subsection 7(2) of the Act.

ANALYSIS

[27] The Claimant must prove the existence of a good cause throughout the entire period of the delay by showing that he acted as a reasonable and prudent person in the same circumstances/situation would have acted to ensure compliance with his rights and obligations under the Act.

[28] The possibility of antedating an initial claim under subsection 10(4) of the Act is dependent on two conditions. The Claimant must show that he or she is qualified to

receive the benefit on a date earlier than the application, and that there was good cause for the delay during the complete period of the delay.

[29] Subsection 7(2) states that an insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person has had an interruption of earnings from employment; and has had during their qualifying period at least the number of hours of insurable employment set out in the table in relation to the regional rate of unemployment that applies to the person.

Antedate

[30] The Claimant submitted that she did not file for employment insurance benefits immediately after her training course ceased as she was unaware that she was accumulating insurable hours as it was a course and it conclude. The Claimant further submitted that she was never provided a record of employment from the training course and that she immediately submitted her EI application upon learning that a record of employment existed

[31] The Commission submitted that the Claimant was very busy with her training/studies and did not make any efforts in finding out about and protecting her rights and obligations under the Act. All of the reasons that the Claimant has provided are not considered good cause for the delay in filing for benefits. As a result the Commission further submits that the Claimant does not meet the requirements of Section 10(4) of the Act.

[32] The Tribunal finds that the Claimant was not in receipt of a record of employment from her training course and that from the time that the Claimant immigrated to Canada she was always given a record of employment when work ceased and that since she was taking a course it is very reasonable to see how the Claimant would have been under the impression that she would not have been be eligible for employment insurance.

[33] The Tribunal finds that that while it is true that the Clamant was studying for her final exams, it is also true that she had secured employment upon receipt of her

Supervised Training Practice Licence which was delayed due to complications that were never resolved.

[34] Ignorance of the law and good faith might constitute good cause so long as the claimant was able to establish that he or she had acted as a reasonable and prudent person (Beaudin 2005 FCA 123; Shebib 2003 FCA 88; Rouleau A-4-95; Caron A-395-85).

[35] A Claimant shows good cause for delaying their claim by proving that they acted as a reasonable and prudent person would have in similar circumstances, throughout the entire period of the delay (Burke 2012 FCA 139; Smith A-549-92)

[36] The Tribunal finds that all though the Commission may be accurate in their contention that a Claimant not being aware of employment insurance benefits is not considered good cause for a delay in filing for benefits, it is the Tribunal's finding that the Claimant was aware of employment insurance benefits however as she was taking a training course she did not consider the course to be employment as they were essentially students.

[37] The Tribunal finds that the Claimant acted as a reasonable and prudent person would have in similar circumstances, throughout the entire period of the delay as the Claimant was experiencing financial hardship and considered her training course to be uninsurable as she was a student and did not receive a record of employment at the conclusion of her course.

[38] The Tribunal finds that the Claimant has proven the existence of a good cause throughout the entire period of the delay by showing that she acted as a reasonable and prudent person in the same circumstances/situation would have acted to ensure compliance with her entitlements and obligations under the Act, as the Claimant contacted the Commission on the very next day after she learned that her training course may have resulted in her accumulating insurable hours.

Insufficient Hours

[39] Subsection 7(2) states that an insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person has had an interruption of earnings from employment; and has had during their qualifying period at least the number of hours of insurable employment set out in the table in relation to the regional rate of unemployment that applies to the person.

[40] The Tribunal finds that as a result of its decision to allow the Claimant's antedate appeal, the Claimant did qualify for benefits on November 1, 2013, as the Claimant had accumulated enough hours within the qualifying period, which was established from the 52-week period immediately before the beginning of the benefit period.

CONCLUSION

[41] The Tribunal finds that after taking into consideration all of the evidence provided from the docket and the hearing:

(a) that the appeal regarding the antedate for the entire period of the delay in applying for benefits is allowed.

(b) that the appeal regarding whether the Claimant has sufficient hours of insured employment to establish a claim pursuant to section 7 of the Act, is allowed.

Dwayne Provo
Member, General Division - Employment Insurance Section