

Citation: *T. D. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 120

Date: July 8, 2015

File number: GE-15-1247

GENERAL DIVISION - Employment Insurance Section

Between:

T. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

**Decision by: Michael Sheffe, Member, General Division - Employment Insurance
Section**

Heard by Teleconference on July 6, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing.

INTRODUCTION

[1] The Appellant filed an initial claim for employment insurance benefits (benefits) on November 4, 2014 (Exhibit GD3-12). On March 9, 2015, he received a decision from the Canada Employment Insurance Commission (Commission) denying him an antedate request because it was determined that he had not shown good cause to apply late (Exhibits GD3-18). The Appellant requested reconsideration on February 17, 2015 (Exhibits GD3-20 and GD3-21). On March 9, 2015, the Appellant received a reconsideration decision which upheld the original decision denying him benefits (Exhibits GD3-27 and GD3-28). The Appellant appealed this decision to the Social Security Tribunal (Tribunal) on April 7, 2015 (Exhibits GD2-2 to GD2-4).

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

- a) The complexity of the issue(s) under appeal.
- b) The information in the file, including the need for additional information.
- c) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[3] Whether the denial of an antedate request under subsection 10 (4) of the *Employment Insurance Act* (Act), should be upheld.

THE LAW

[4] Subsection 10(4) of the *Act* states, “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

[5] The Appellant worked from November 21, 2012 to June 3, 2014 at the Shangri-La Hotel (Exhibit GD3-14).

[6] The Appellant advised that he did not apply for benefits sooner because he believed that he was not eligible to receive benefits (Exhibit GD3-16).

[7] The Appellant was also worried that if he received benefits, this might affect the disability benefits his brother was receiving. The two men lived together so that the Appellant could care for his brother (Exhibit GD3-17).

[8] The Appellant wrote a letter which accompanied his appeal to the Tribunal in which he wrote that the Tribunal would have enough power to grant him a more favourable decision, especially because he was caring for his sick brother (Exhibits GD2-6 and GD2-7).

[9] The Appellant advised that because he was dismissed from his previous job, he was finding it difficult to secure another position in the hospitality field. In addition, his brother became quite stressful because of the situation and he was becoming more difficult to care for due to his schizophrenia (Exhibits GD2-8 to GD2-11).

[10] A doctor's note was submitted. It indicated that the Appellant's brother was experiencing stress and anxiety due to the Appellant's dismissal. The Appellant being his brother's primary caregiver for his schizophrenia, and because he was experiencing some financial difficulty, this influenced the Appellant to finally seek benefits (Exhibit GD3-21).

[11] The Appellant applied to the Ontario Works program because of his financial difficulties and he was told by them that he must first apply for benefits. It was at this time that he followed their advice and applied (Exhibit GD2-11).

[12] The Appellant advised that he was also reluctant to telephone Service Canada for advice, because a friend told him that it was difficult to reach a representative on the phone (Exhibit GD3-25).

[13] The Appellant advised during the hearing that until he applied for benefits on November 4, 2014, approximately 21 weeks after he was dismissed, he did not contact Service Canada for advice regarding the procedures to follow to apply for benefits. He also did not contact the benefits provider for his brother, to enquire if his situation would affect the payments his brother would receive.

SUBMISSIONS

[14] The Appellant submitted that the current employment legislation is not sensitive to his unique situation.

[15] The Appellant submitted that there is enough power at the Social Security Tribunal to grant him a more favourable decision especially because the Appellant was caring for his sick brother and that he was unjustly terminated.

[16] The Respondent submitted that the Appellant did not show any good cause why he applied for benefits late.

ANALYSIS

[17] The legal test for good cause is whether the Appellant acted as a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act.

[18] In *Kaler* (2011 FCA 266), the Federal Court of Appeal upheld the principle that ignorance of the law, even paired with good faith, is not enough to establish good cause.

[19] The Federal Court of Appeal in *Shebib* (2008 FCA 88) wrote, “Regrettably, it is often those who have little or no experience with employment insurance benefits and who have the best of intentions who get caught out in the maze of statutory and regulatory provisions that Parliament and the Governor in Council seem to consider necessary to prevent abuse of the employment insurance system. The applicant has acted in good faith and with the best of

intentions. Unfortunately, with the present state of the law, that does not constitute good cause for entitling him to an antedating of his claim for employment insurance benefits.”

[20] The Federal Court of Appeal in *Scott* (2008 FCA 145) upheld the principle, that to demonstrate good cause, it must be shown that a reasonable person in the Appellant’s position would have taken steps to enquire about his rights and responsibilities under the *Act*.

[21] The Federal Court of Appeal in *Howard* (2011 FCA 116), upheld the principle that an appellant who states that the reason that he delayed applying for benefits were because he had been looking for a job while he was living off his savings, and/or he did not want to ask the government for a handout, are not good cause reasons for the delay in applying for benefits.

[22] The Appellant stated that he did not contact Service Canada regarding his own situation for fear that his brother’s disability benefits might be affected. Further, he advised that he believed that because of his situation, he would not be eligible for benefits.

[23] The Appellant did not provide an opportunity, in a timely manner, for the Commission to render a decision regarding his eligibility to receive benefits. He just assumed that he was not eligible.

[24] The Appellant made assumptions which were detrimental to his receiving benefits. He did not check out his assumptions with the Commission to see if he was correct or not.

[25] The Appellant wrote a letter to accompany his appeal to the Tribunal. It indicated that the Tribunal has the power to grant a more favourable decision. However, the Tribunal must follow the same legislation when it renders a decision. The Tribunal has no “special powers” with respect to following the law.

[26] The Federal Court of Appeal in *Knee* (2011 FCA 301) upheld the principle that however tempting as it may be, adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[27] The Member finds that the Appellant did not act as a reasonable person would have done. He did not seek the advice of Service Canada, in a timely manner, regarding the procedures to follow and his rights and responsibilities.

[28] The Member finds that the Appellant's actions of caring for his brother, looking for a job, and living off of his savings may be commendable actions, but he did not follow the necessary procedures regarding applying for benefits in a timely manner and relied upon his own inaccurate assumptions without checking them out with Service Canada.

[29] The Appellant has not presented any reasons why he was prevented from applying for benefits in a timely manner.

[30] The Member finds that the Appellant has not demonstrated good cause for the delay in applying for benefits.

CONCLUSION

[31] The appeal is dismissed.

Michael Sheffe
Member, General Division - Employment Insurance Section