Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *T. D. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 6

Date: January 13, 2016

File number: GE-15-2131

GENERAL DIVISION - Employment Insurance Section

Between:

T. D.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

Decision by: Eleni Palantzas, Member,
General Division - Employment Insurance Section

Heard by Teleconference on November 25, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Mr. T. D., attended the hearing by teleconference.

For training purposes, Social Security Tribunal Member, Ms. Shuang (Helen) Qiao, listened in on the teleconference but did not participate in any way. The Claimant had no objection.

INTRODUCTION

[1] On May 4, 2015, the Claimant made an initial claim for regular employment insurance benefits. On May 8, 2015 however, the Canada Employment Insurance Commission (Commission) denied the Claimant's application finding that he did not have sufficient hours to establish a claim.

[2] On June 1, 2015, the Claimant requested a reconsideration of this decision and further requested that his claim be antedated. The Commission denied his request for an antedate finding that he did not have good cause to have his initial claim for benefits considered as being made on October 19, 2014. The Commission also maintained its decisions regarding his insufficient hours to establish a claim.

[3] On June 30, 2015, the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

[4] The hearing was held by Teleconference for the following reasons: (a) The fact that the appellant will be the only party in attendance. (b) 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.

ISSUES

[5] The Member must decide whether the Claimant had sufficient hours to qualify for employment insurance regular benefits pursuant to section 7 of the *Employment Insurance Act* (EI Act).

[6] The Member must also decide whether the Claimant's initial claim for benefits can be considered to have been made on October 19, 2014 pursuant to subsection 10(4) of the EI Act.

THE LAW

Required Hours

[7] Section 7 of the EI Act sets out the requirements that a claimant must meet in order for benefits to be payable.

[8] Subsection 7(2) states that in order for a claimant, that is not a new entrant or a re-entrant to the labour force, to qualify for benefits, they must show that:

a) They have had an interruption of earnings from employment; and

b) They have acquired, during their qualifying period, at least the number of insurable hours of employment set out in the table provided in the subsection, in relation to their regional rate of unemployment where the claimant normally resides.

TABLE

Regional Rate of Unemployment Insurable	Required Number of Hours of Employment in Qualifying Period
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

[9] Subsection 7(4) of the EI Act stipulates that a new entrant or re-entrant to the labour force is a claimant that, during the last 52 weeks before their qualifying period, 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 the employment in the labour force; or

d) hours comprised of any combination of those hours.

Antedate

[10] Subsection 10 (4) of the EI 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.

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

> (i) they qualified to receive benefits on the earlier day; and
>
> (ii) 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.

EVIDENCE

[12] The Claimant lost his employment on October 16, 2014 due to a shortage of work (GD3- 11). He applied for employment insurance regular benefits on May 4, 2015 (GD3-3 to GD3-10).

[13] The Commission established therefore, that the Claimant's qualifying period was from May 4, 2014 until May 2, 2015 and given that he lives in the economic region of X, ON, where the unemployment rate is 5.6% in the week prior to his application, he required 700 hours of insurable employment to qualify for benefits. It also determined that he had accumulated only 580 insurable hours during his qualifying period and therefore a benefit period could not be established (GD3-13 to GD3-18).

[14] On June 1, 2015, the Claimant requested benefits from October 19, 2014 when he became unemployed. He indicated that he delayed applying for benefits because he had received severance money. He advised the Commission that he delayed in applying because he had receive this severance money, didn't think to apply, and did so two weeks after he was told by other colleagues that they had applied and received benefits (GD3-19, GD3-20 and GD3-22).

[15] The employer advised the Commission that the Claimant received a total of $106, 551.08 which included severance pay and vacation pay (GD3-21).

[16] On June 18, 2015, the Commission advised the Claimant that his request to antedate his claim to October 19, 2014 was denied because he did not show good cause for the entire period

of the delay. Plus, the Claimant was also unable to show that he had sufficient hours to qualify for benefits (GD3-23 to GD3-25).

[17] At the hearing, the Claimant testified that he delayed in applying for benefits because (1) he assumed that because he received severance money he would not qualify for benefits (2) he was not told by his employer and/or union that he could apply and (c) he just did not know that he could apply for employment insurance benefits. He stated that he delayed a further two weeks after finding out that other colleagues had applied because was still unsure whether he would qualify for anything.

[18] Regarding whether he had enough insurable hours to qualify for benefits, the Claimant stated that during his qualifying period he had taken a lot of vacation time (9 weeks) which should be considered insurable earnings. He stated that he would check and provide that information to the Tribunal.

[19] The Claimant submitted that with the vacation time included he has 708.5 hours of insurable employment (GD5). The Tribunal requested that the Claimant provide an explanation of his calculation. He subsequently provided further details noting that week 19 on the record of employment (ROE) is representative of 5 weeks of pay (4 weeks regular pay and 1 week vacation) so 160 insurable hours were not included in the Commission's calculations. In fact, he has 748.5 total hours of insurable employment (GD6).

[20] On December 22, 2015, the Commission responded and conceded on the issue of whether the Claimant had sufficient insurable hours to establish a claim effective May 3, 2015, noting that the Claimant does in fact, have 793 hours of insurable employment during his qualifying period. It wrote: "The Employer … confirmed the monies listed in pay period 19 in Box 15C on the Record of Employment (X) to be wages and vacation pay issued as anniversary vacation pay. The Employer also confirmed the claimant took scheduled vacation from June 30, 2014 to August 2, 2014. Therefore, each week of vacation is credited with 40 hours of insurable employment. In addition to the 200 hours of insurable hours for the vacation period the Employer corrected the insurable hours for week ending June 14, 2014 (pay period ending 14/06/2014) and advised the insurable hours should be 44 hours for this week and not 40 as indicated on the record of employment." (GD7).

SUBMISSIONS

[21] The Claimant submitted that according to his calculations he has accumulated a total of 748.5 hours of insurable employment and should therefore qualify for benefits. He also submits that he has been honest and forthcoming with reasons for not applying on the earlier date of October 19, 2014. He just did not know that he can apply, he was not told by either his employer or his union to apply and he assumed he would not qualify given the severance money he received.

[22] The Commission after reviewing the additional information submitted by the Claimant regarding insurable hours, it concedes the issue of "Benefit Period Not Established" since the Claimant demonstrated that he had sufficient hours within his qualifying period with which to establish a benefit period effective May 3, 2015. Regarding the issue of the antedate, the Commission submits that being unaware of one's rights and ignorance of the law, does not constitute good cause for delay in filing an application for benefits; the Claimant did not prove good cause for the delay as he made assumptions about his eligibility and made no attempts to clarify his misconception with the Commission as would be expected by a 'reasonable person' according to case law.

ANALYSIS

Establishment of Benefit Period

[23] For the Claimant to qualify for benefits, the burden of proof rests on him to show that he (a) had an interruption of earnings from employment; and (b) he had acquired, during his qualifying period, at least the number of insurable hours of employment set out in the table provided in the subsection, in relation to his regional rate of unemployment where he normally resides.

[24] In this case, the Claimant was deemed to not be a new entrant or re-entrant pursuant to subsection 7(4) of the EI Act since he had acquired more than 490 hours of insurable employment in the 52 week period prior to his qualifying period. As a result, subsection 7(2) applies to this claim and the Claimant must meet the minimal requirements set out in the table in paragraph 7(2)(b) of the EI Act.

[25] The evidence shows that the Claimant applied for benefits on May 4, 2015. The Commission indicated that the Claimant lives in the X, Ontario region and that the rate of unemployment in his region at the time that he made his claim was 5.6%. According to the table in subsection 7(2) of the EI Act, the Claimant requires 700 hours of insurable employment to qualify for regular benefits. Initially the Commission calculated the Claimant's insurable earnings at 40 hours/week and determined that he had 580 insurable hours during his qualifying period from May 4, 2014 to May 2, 2015. As a result, the Claimant was advised that that he failed to qualify to receive employment insurance benefits pursuant to subsection 7(2) of the E.I Act.

[26] At the hearing however, the Claimant questioned whether the hours were correctly calculated (specifically in week 19 on the ROE) and put forth his submission (GD6). In response, the Commission contacted the employer and confirmed that the monies indicated in week 19 on the ROE are wages and vacation pay and that the Claimant took a vacation from June 30, 2014 to August 2, 2014. The Commission calculated each week of vacation with 40 hours insurable employment resulting in 200 additional insurable hours. The employer also corrected the insurable hours for week ending June 14, 2014 that should have been 44 hours for that week and not 40 as indicated on the ROE. The Commission concluded that the Claimant had sufficient insurable hours to establish a claim effective May 3, 2015, noting that the Claimant had 793 hours of insurable employment during his qualifying period. The Commission concedes on this issue (GD7).

[27] The Member finds therefore, that the Claimant has demonstrated that he has met the minimal requirements as prescribed in subsection 7(2) of the EI Act and therefore, qualifies to receive employment insurance regular benefits effective May 3, 2015.

[28] Having established that the Claimant has enough hours to establish a benefit period, his request to antedate his claim to October 19, 2014 was considered next.

Antedate

[29] In order for the Claimant's initial claim for benefits to be antedated to October 19, 2014, the burden of proof rests with the Claimant to prove that (a) he qualified for benefits as of October 19, 2014 and (b) he had good cause, throughout the entire period, for the delay in making the initial claim for benefits.

[30] In this case, the Claimant lost his employment on October 19, 2014 but did not apply for benefits until May 4, 2015. Given the submissions of the Commission and the record of employment, the Member finds that the Claimant would have qualified for benefits on October 19, 2014. The issue in dispute therefore is whether the Claimant had good cause for the delay throughout the entire period of the delay from October 19, 2014 until May 4, 2015.

[31] 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).

[32] In this case, the Claimant testified that he delayed in applying for benefits because he assumed that because he received severance money he would not qualify for benefits. He stated that he was forthcoming in admitting that he just did not know that he could apply for employment insurance benefits and even when advised by his former colleagues to apply, he was still unsure of whether he would qualify and delayed a further two weeks. The Claimant further stated that he was not told by his employer and/or union that he could apply.

[33] The Member first considered the Claimant's assumption that he would not qualify for benefits because he received severance monies and that he simply did not know to apply/whether he would qualify for employment insurance benefits. The Member noted that the Federal Court of Appeal has found that a claimant's reliance on unverified information or unfounded assumptions does not constitute good cause (Attorney General of Canada v. Trinh 2010 FCA 335; Rouleau A-4-95). Further, it is well established jurisprudence that ignorance of the law, even when acting in good faith, is not good cause for the delay (Attorney General of Canada v. Kaler 2011 FCA 266; Attorney General of Canada v. Howard 2011 FCA 116; Attorney General of Canada v. Somwaru 2010 FCA 336; Attorney General of Canada v. Innes 2010 FCA 341).

[34] Further, the Federal Court of Appeal has 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 EI 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; Attorney General of Canada v. Burke 2012 FCA 139).

[35] The Member also noted that the onus on the Claimant is not simply to act in a reasonable manner or have 'good reason' for the delay. The onus on the Claimant is to show 'good cause' for the delay in making an initial claim for benefits by showing that he acted as a reasonable and prudent person would have done in the same situation to satisfy himself of his rights and obligations under the EI Act.

[36] In this case, there is no evidence to support that exceptional circumstances prevented the Claimant from making enquiries about his rights and obligations and/or applying for benefits at any time throughout the 6.5 month period of delay from October 19, 2014 until May 4, 2015. In fact, the Claimant admitted that even when he was advised by his colleagues that he should apply, he delayed another two weeks because he was still unsure. The Member agrees with the Commission, that nothing prevented the Claimant from simply making his own enquiries with the Commission directly. The Member understands the Claimant's position that he was also not advised by his employer and/or his union to apply for employment insurance benefits at the time of his unemployment. The Member notes however, that the legislation is written in such a way as to put the onus on the Claimant to explain what steps he took to understand his entitlement and his obligations under the EI Act, to do so promptly, and to account for the entire period of the delay.

[37] Finally, the Member considered that to antedate a claim is an advantage that should be applied exceptionally and with caution (Attorney General of Canada v. McBride 2009 FCA 1; Attorney General of Canada v. Scott 2008 FCA 145; Attorney General of Canada v. Brace 2008 FCA 118).

[38] The Federal Court of Appeal has clearly stressed the importance of subsection 10(4) to the sound and efficient administration of the EI Act. Antedating a claim for benefits may adversely affect the integrity of the system in that it gives a claimant a retroactive and unconditional award of benefits, without providing the Commission the ability to verify the eligibility criteria, on a biweekly basis (as it would require of all other claimants), during the period of retroactivity. Further, a claimant's obligations and failure to fulfill them are difficult

to enforce and sanction when applications for benefits are delayed and the benefits are paid retroactively. Issues such as availability for work, the effect of any earnings and the requirement to make regular and repeated application for benefits, are difficult to administer retroactively, compromising the integrity and fairness of the system (Attorney General of Canada v. Chalk 2010 FCA 243; Attorney General of Canada v. Brace 2008 FCA 118; Attorney General of Canada v. Beaudin 2005 FCA 123).

[39] In this case, the Member finds that the Claimant did not act as a reasonable person would in his situation to apprise himself of his rights and obligations under the EI Act. The Member finds therefore, that the Claimant did not meet the test for good cause under subsection 10(4) of the EI Act in order to have his initial claim regarded as having been made on October 19, 2014.

[40] The Member concludes that the Claimant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the Act.

CONCLUSION

[41] The appeal regarding the establishment of a benefit period is allowed.

[42] The appeal regarding the issue to antedate this claim is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section