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

Citation: *G. F. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 22

Date: February 12, 2016

File number: GE-15-3496

GENERAL DIVISION - Employment Insurance Section

Between:

G. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Richard Sterne, Member, General Division - Employment Insurance Section

Heard by Teleconference on January 18, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, G. F., attended the hearing by telephone.

INTRODUCTION

[1] The Appellant was employed by Schlumberger Canada Limited (employer) in Canada until April 30, 2014.

[2] On April 16, 2015, the Appellant applied for employment insurance benefits (EI benefits).

[3] On May 29, 2015, the Appellant asked the Canada Employment Insurance Commission (Respondent) to antedate his claim for EI benefits to May 1, 2014.

[4] On August 8, 2015, the Respondent advised the Appellant that his claim for EI benefits could not start on May 4, 2014, because he did not prove that between May 4, 2014 and April 11, 2015 that he had good cause to apply late for EI benefits.

[5] On September 2, 2015, the Appellant filed a request for reconsideration of the Respondent's August 8, 2015 decision, which was denied September 28, 2015.

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

a) The complexity of the issue(s) under appeal.
b) The fact that the credibility was not anticipated to be a prevailing issue.
c) The fact that the Appellant would be the only party in attendance.
d) The information in the file, including the need for additional information.
e) 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

[7] Did the Appellant qualify for and show good cause for every day of his delay in making an application for EI benefits, such that it should be antedated to May 1, 2014, pursuant to subsection 10(4) of the *Employment Insurance Act* (Act)?

THE LAW

[8] Subsection 7(1) of the Act:

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

[9] Subsection 7(2) of the Act:

> (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 Number of Hours of Insurable 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

[10] Subsection 7(4) of the Act:

(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.

[11] Subsection 7(4) of the Act:

(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.

[12] 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).

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

(1) A benefit period begins on the later of

(a) the Sunday of the week in which the interruption of earnings occurs, and

(b) the Sunday of the week in which the initial claim for benefit is made.

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

(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.

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

(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.

[16] Subsection 14(1) of the Regulations:

(1) Subject to subsections (2) to (7), an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13), are payable or allocated.

EVIDENCE

[17] The Appellant was employed by the employer in Canada from September 14, 2012 to April 30, 2014.

[18] On April 16, 2015, the Appellant applied for EI benefits.

[19] On April 17, 2015, the employer issued the Appellant's record of employment (ROE) and indicated that the reason for issuing the ROE was code K, Other. The ROE indicated that the Appellant had 3000 hours of insurable employment.

[20] On May 29, 2015, the Appellant asked the Respondent to antedate his claim for EI benefits to May 1, 2014.

[21] On August 8, 2015, the Appellant told the Respondent that he had worked the employer USA in Houston Texas from May 1, 2014 to March 17, 2015, when he was laid off. The Appellant stated that he had applied for US unemployment benefits after he was laid off, but was advised that he was not entitled to US unemployment benefits.

[22] On August 8, 2015, the Respondent advised the Appellant that his claim for EI benefits could not start on May 4, 2014, because he did not prove that between May 4, 2014 and April 11, 2015 that he had good cause to apply late for EI benefits. The Respondent stated that he only had 144 hours of insurable employment between April 13, 2014 and April 11, 2015, however, based on the unemployment rate in his region at the time he filed his claim, he needed 665 hours of insurable employment to qualify for EI benefits.

[23] On August 10, 2015, the Respondent advised the Appellant that they could not pay him either special or regular EI benefits because he only had 144 hours of insurable employment between April 13, 2014 and April 11, 2015, whereas he needed 665 hours of insurable employment to qualify for EI benefits.

[24] On September 2, 2015, the Appellant filed a request for reconsideration of the Respondent's August 8, 2015 decision.

[25] On September 28, 2015, the Respondent advised the Appellant that they had not changed their August 8, 2015 decisions.

SUBMISSIONS

[26] The Appellant submitted that:

a. he had been working for the employer in Canada, before he was transferred to work in the United States until he was downsized on March 18, 2015.

b. he was not eligible for employment insurance in the United States because he is not a US citizen.

c. he had been working in the United States as an Intra Company Transferee and this type of visa does not have an alien ID number.

[27] The Respondent submitted that:

a. his claim for EI benefits could not start on May 4, 2014, because he did not prove that between May 4, 2014 and April 11, 2015 that he had good cause to apply late for EI benefits.

b. he failed to qualify to receive EI benefits because he required 665 hours of insurable employment in the period between April 13, 2014 and April 11, 2015 whereas he had accumulated only 144 hours.

ANALYSIS

[28] Subsection 10(4) of the Act states that 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.

[29] Although the legislation does not define "good cause for delay" jurisprudence has described it as whether the claimant did what a reasonable person in her situation would have

done to satisfy herself as to her rights and obligations. It is not enough for a claimant to rely on her ignorance of the law as a claimant is generally expected to take positive steps to ascertain her entitlement under the Act.

> **Canada (AG) v. Albrecht, A-172-85; Canada (AG) v. Carry, 2005 FCA 367; Canada (AG) v. Scott, 2008 FCA 145; Canada (AG) v. Beaudin, 2005 FCA 123; Canada (AG) v. Somwaru, 2010 FCA 336; Canada (AG) v. Innes, 2010 FCA 341**

[30] During the hearing, the Appellant stated that he had been working for the employer for five years in Alberta, before the employer transferred him to Houston Texas. He said that he worked there for about ten months before he was laid off due to the downturn in the oil and gas industry. He had applied for EI benefits in Texas, but was rejected several times because he was not a naturalized US citizen nor did he possess an Alien Registration Number. He then returned to Ontario, where he applied for EI benefits.

[31] The Appellant said that he had been working in the US legally, because he had a US social insurance number. He said that he had a specific work visa called a L1B which was an intercompany transferee, but with this type of visa the US Government did not issue an Alien Registration Number.

[32] Subsection 7(2) of the Act states that an insured person qualifies for EI benefits if they had an interruption of earnings from employment, and had during their qualifying period at least the number of hours of insurable employment in relation to their regional rate of unemployment.

[33] The Appellant requested that his claim for EI benefits be antedated to May 1, 2014. The Tribunal finds that the Appellant had 3000 hours of insurable employment on May 1, 2014 according to his ROE, and therefore had enough hours to qualify for EI benefits as of May 1, 2014. However the Appellant did not have an interruption of earnings on May 1, 2014, as the Appellant was still working in the United States.

[34] Subsection 14(1) of the Regulations states that an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no

work is performed for that employer and in respect of which no earnings that arise from that employment.

[35] The Tribunal finds that the Appellant did not have an interruption of earnings on May 1, 2014 because he continued to work for the employer, pursuant to subsection 14(1) of the Regulations.

[36] The Tribunal finds that the Appellant did not qualify for EI benefits on May 1, 2014, because he did not have an interruption of earnings, pursuant to subsection 7(2) of the Act.

[37] The Tribunal finds that since the Appellant did not qualify to receive EI benefits on May 1, 2014, his claim for EI benefits is not eligible to be antedated to May 1, 2014, pursuant to subsection 10(4) of the Act.

[38] The Tribunal finds that the Appellant may have had good cause for the delay in applying for EI benefits as he was still working in the United States, however since he did not qualify for EI benefits because he didn't have an interruption of earnings, his request to antedate his claim for EI benefits to May 1, 2014 does not meet the requirements of subsection 10(4) of the Act.

CONCLUSION

[39] The appeal is dismissed.

Richard Sterne
Member, General Division - Employment Insurance Section