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

Citation: *D. A. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 23

Tribunal File Number: GE-15-2852

BETWEEN:

D. A.

Appellant/Employer

and

Canada Employment Insurance Commission

Respondent

and

L. B.

Added Party/Claimant

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: January 28, 2016

DATE OF DECISION: February 15, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant/Employer, D. A. was represented by Mr. John Campbell, Hilborn LLP. He attended the hearing by teleconference. The Claimant, Ms. L. B., advised the Tribunal that she would not be attending the hearing.

INTRODUCTION

[1] On October 21, 2014, the Claimant made an initial claim for regular employment insurance benefits which were allowed effective October 19, 2014. On May 21, 2015 the Claimant requested that her claim be antedated to August 8, 2014.

[2] On May 29, 2014 however, the Canada Employment Insurance Commission (Commission) denied the Claimant's request for an antedate finding that she did not have good cause to have her initial claim for benefits considered as being made on August 13, 2014.

[3] On June 26, 2015, the Appellant (Employer) requested a reconsideration of this decision however; on July 24, 2015, the Commission maintained its decision.

[4] On August 24, 2015, the Employer appealed to the General Division of the Social Security Tribunal (Tribunal).

[5] The hearing was held by teleconference for the following reasons: (a) The complexity of the issue under appeal (b) The fact that the Employer would be the only party in attendance. (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.

[6] On January 11, 2016, the Tribunal received a request from the Employer for an adjournment of the hearing scheduled for January 12, 2016 because they did not receive the docket. The hearing was adjourned to January 19, 2016.

[7] On January 19, 2016, the hearing was adjourned at the outset by the Member noting that the Claimant had not been added as a party to the appeal. The Appellant, Mr. Campbell,

confirmed that the Claimant may not be aware of the hearing. The Member stated that the Claimant will be added to the appeal, the docket will be sent to her and the hearing will be rescheduled. The Claimant was added as a party because she has a direct interest in this appeal as her benefits may be affected by the outcome. Further, as this is a case of an antedate request and the reasons why she delayed in applying on the early date are important to the issue under appeal.

[8] The Tribunal confirmed with the Claimant that she is prepared to participate in the hearing on January 28, 2016 despite the short notice. On January 26, 2016, the Claimant called the Tribunal to advise that she received the appeal docket, that she will not be attending the hearing and that she feels comfortable with the Employer speaking on her behalf.

[9] On January 28, 2016, the hearing was conducted with just the Employer present.

ISSUE

[10] The Member must also decide whether the Claimant's initial claim for benefits can be considered to have been made on August 8, 2014 pursuant to subsection 10(4) of the *Employment Insurance Act* (EI Act).

THE LAW

[11] 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.

[12] 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

[13] The Claimant lost her employment on August 15, 2014 however, applied for employment insurance regular benefits on October 21, 2014 (GD3-3 to GD3-10).

[14] On May 21, 2014, the Claimant requested that her benefit period be established effective August 8, 2014 indicating that she delayed applying for benefits because the Employer issued the record of employment (ROE) late. She attached a letter from the Employer who apologized for the delay in providing the ROE (GD3-11 to GD3-12).

[15] On May 29, 2015, the Commission advised the Claimant that her request to antedate her claim to August 13, 2014 was denied because she did not show good cause for the entire period of the delay between August 13, 2014 and October 20, 2014 (GD3-13).

[16] On June 24, 2015 the Employer requested that the Claimant's request to antedate her claim be approved since her employment ceased on August 15, 2014. The Appellant noted that they filed the ROE late and the Claimant delayed in filing a claim due to factors beyond her control (GD3-14 to GD3-16).

[17] On July 24, 2015, the Commission advised the Claimant that a request for reconsideration has been submitted by the Employer regarding her request for an antedate. She was aware of the request and that in fact; she wanted the reconsideration but thought that the Employer would have to submit it. They filled out the request together. The Claimant stated to the Commission that she does not want the Employer to represent her and that she will represent herself. The Claimant stated that she delayed in applying earlier because she was waiting for the Employer to provide her with the ROE; she thought she had to obtain all the paperwork before applying for benefits. She did not go into the Commission to enquire or consult the website (GD3-17).

[18] The Commission denied the Appellant's request for reconsider by sending the Claimant a letter notifying her that the initial decision will be maintained (GD3-19).

[19] At the hearing, the Employer's representative confirmed that the reasons the Claimant delayed in applying for benefits on the earlier date of August 13, 2014, are (a) due to no fault of

her own, the ROE was sent in late by the Employer (b) she is new to Canada, is confused by the process and just did not know that she could apply for benefits without the ROE (c) she relied on word-of-mouth information in her community that she required the ROE to apply. Upon receipt of the ROE, the Claimant promptly submitted her application for benefits. The Claimant has a marginal income and English is her second language.

[20] The Employer did not know whether any exceptional circumstances existed that prevented the Claimant from applying for benefits on the earlier date. He was provided the opportunity by the end of the hearing day to confirm with the Claimant and advise the Tribunal by fax/email. On January 29, 2016 and February 10, 2016, the Employer made two submissions indicating that the Claimant was experiencing respiratory problems and a choking sensation in the last week of August. During the delay, from the last day of work until she applied for benefits, she had numerous tests performed (September 5, 10 and 24, 2014) in order to determine the cause of her ailment (GD7 and GD8).

SUBMISSIONS

[21] The Employer submitted that the Claimant is eligible for employment insurance benefits as of the date that she ceased her employment on August 15, 2014. The Claimant is a low income contributor to the employment insurance system and due to no fault of her own; she delayed in applying for benefits until October 20, 2014 because her ROE was not issued by them until that time. She is new to Canada and is unfamiliar and confused by the process. Had she not been dealing with her ailment and the stress of an undiagnosed medical condition, she would have had the faculties to pursue her application instead of relying on her peers (GD8).

[22] The Commission submitted that while it is true that the Employer delayed in submitting the ROE, this did not prevent the Claimant from applying for benefits. The Claimant assumed that the ROE was required and did not enquire with the Commission throughout the entire period of the delay and thus, did not do what a ‘reasonable person’ would have done to verify her rights and obligations under the EI Act. The Claimant’s inaction and ignorance of the law does not show good cause for the delay. The Claimant’s medical issues were not presented as reasons for the delay until the hearing. There is no medical evidence to show that the Claimant

was unable to make either an application or an inquiry with the Commission about establishing a claim (GD9).

ANALYSIS

[23] In order for the Claimant's initial claim for benefits to be antedated to August 13, 2014, the burden of proof rests with the Claimant to prove that (a) she qualified for benefits as of August 13, 2014 and (b) she had good cause throughout the entire period of the delay in making the initial claim for benefits.

[24] In this case, the Claimant lost her employment on August 15, 2014 but did not apply for benefits until October 21, 2014. Given the submissions of the Commission and the record of employment (GD2-4), the Member finds that the Claimant would have qualified for benefits on August 15, 2014. The issue in dispute therefore is whether the Claimant had good cause for the delay throughout the entire period of the delay from August 13, 2014 until October 20, 2014.

[25] 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).

[26] In this case, the Employer submitted that the Claimant is a new comer to Canada and English is her second language. She therefore relied on information provided to her by members of her community. Further, due to no fault of her own, the Employer delayed in submitting the ROE. She thought that she had to have all the required documents prior to submitting her application form.

[27] The Member understands the Employer's position that it was not the Claimant's fault that they delayed in submitting her ROE however; the Member notes that the legislation is written in such a way as to put the onus on the Claimant to explain what steps she took to understand her entitlement and her obligations under the EI Act, to do so promptly, and to account for the entire period of the delay. 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 she acted as a reasonable and prudent person would have done in the same situation to satisfy herself of her rights and obligations under the EI Act. In this case, the Member finds that, because the Claimant was new and unfamiliar with the employment insurance system, it is not unreasonable to expect that she make her own enquiries with the Commission. The Claimant stated to the Commission that she did not make any such enquiries (GD3-17).

[28] The Member considered that the Federal Court of Appeal has found that a claimant’s reliance on unverified information or unfounded assumptions does not constitute good cause; verifying the information that she/he had received, is a reasonable expectation and is not good cause for the delay (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).

[29] Case law also supports the principle that a claimant’s inability to obtain an ROE and waiting/delaying one’s application for this reason is not good cause for the delay (Attorney General of Canada v. Brace 2008 FCA 118).

[30] 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).

[31] In this case, the Member finds that there is no evidence to support that exceptional circumstances prevented the Claimant from making enquiries about her rights and obligations and/or applying for benefits at any time throughout the over two month period of delay from August 15, 2014 until October 20, 2014. The Member considered the Employer’s submission that, during the said delay, the Claimant was dealing with an ailment, she had to have numerous tests performed, and she experienced stress due to her undiagnosed condition. He argued that

had the Claimant not been dealing with her ailment and the stress of an undiagnosed medical condition, she would have had the faculties to pursue her application instead of relying on her peers. Although the Member is sympathetic of the Claimant's situation and understands that she was preoccupied with her condition and commensurate tests at the time, the Member does not agree that these were exceptional circumstances that prevented the Claimant from making enquiries with the Commission either directly or through its website. The evidence shows that the Claimant was able to attend tests/appointment and although stressful, these reasons do not account for the entire period of the delay.

[32] 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).

[33] 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).

[34] In this case, the Member finds that the Claimant did not act as reasonable person would in her situation to satisfy herself of her 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 her initial claim regarded as having been made on August 15, 2014.

[35] The Member concludes that the Claimant failed to meet the onus placed upon her 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

[36] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section