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

Citation: *S. S. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 50

Tribunal File Number: GE-15-3310

BETWEEN:

S. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Paul Demers

HEARD ON: March 22, 2016

DATE OF DECISION: April 13, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant was present for the hearing.

INTRODUCTION

[1] The Appellant experienced an interruption of earnings from his employment with Strategy Institute on September 6, 2013.

[2] The Appellant filed an initial claim for employment insurance sick benefits on September 10, 2013 and it was made effective from September 8, 2013. The claimant served the two week waiting period and collected 10 weeks of sick benefits between September 8, 2013 and November 30, 2013.

[3] The Appellant found new work with Digital Internet Group Inc. from November 27, 2013 to February 26, 2014.

[4] The Appellant re-applied for sick benefits on March 11, 2014. His previous benefit period (beginning from September 8, 2013) was reactivated effective February 23, 2014 and he collected another 5 weeks of sick benefits on this claim (from February 23, 2014 to March 29, 2014) which brought his total collection of sick benefits to the maximum 15 weeks.

[5] On May 28, 2015 the Appellant submitted an antedate request to backdate the start of his regular benefits to March 30, 2014. The Appellant explained that he was unaware that he needed to request the conversion of his previous claim from sick to regular benefits.

[6] On July 28, 2015 the Respondent advised the Appellant that his request for an antedate pursuant to subsection 10(4) of the *Employment Insurance Act* (the Act) had been denied because he failed to show good cause for the entire period of the delay in filing his claim.

[7] On August 21, 2015 the Appellant made a request for reconsideration of the Respondent's decision. Following the reconsideration process, the Respondent maintained the original decision on September 1, 2015.

[8] On October 16, 2015 the Appellant appealed the reconsideration decision with the General Division of the Social Security Tribunal (the Tribunal).

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

a) The complexity of the issue(s) under appeal.

b) The fact that the appellant will be the only party in attendance.

c) The information in the file, including the need for additional information.

d) 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

[10] The Appellant is appealing the Respondent's decision regarding the denial of an antedate request pursuant to subsection 10(4) of the Act.

THE LAW

[11] 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

[12] After being hospitalized and collecting the remainder of his sickness benefits (February 23, 2014 to March 29, 2014), the Appellant had gained medical clearance to return to work as of April 1, 2014.

[13] From April 2014 to October 2014 he was available for and actively seeking new employment. He found work and started working on October 27, 2014.

[14] In March of 2015 an agent with Service Canada contacted the Appellant to discuss an issue with a past claim which in turn prompted him to apply for benefits.

[15] On May 28, 2015 the Appellant filed an application to antedate his claim for benefits to March 30, 2014.

[16] On September 24, 2015 the Appellant received a doctor's note indicating that he was unable to submit a claim due to medical conditions.

SUBMISSIONS

[17] The Appellant stated that after his sick benefits ran out he was unaware that he needed to request to convert from sickness to regular benefits. He explained that during his sickness period his social worker had enquired about his benefits and was told that he would not qualify. He also added that he had not enquired himself directly with Service Canada any sooner because aside from believing he did not qualify he was busy looking for work.

[18] He submits that because of his illness and the medication, he was not able to think clearly until March of 2015. At that time he began paying attention to his employment insurance benefits and after speaking to an agent that had contacted him, he followed up with his application and request for an antedate to March 30, 2014.

[19] The Respondent submitted that the Appellant failed to show good cause throughout the entire period of the delay in filing his claim for benefits and that he did not act like a 'reasonable person" would in his situation in satisfying himself of his rights and obligations under the Act.

ANALYSIS

[20] Section 10(4) of the Act is not the product of a mere legislative whim. It contains a policy, in the form of a requirement, which is instrumental in the sound and efficient administration of the Act.

[21] This policy helps to assure the proper administration and the efficient processing of various claims and to enable the Commission to review constantly the continuing eligibility of a claimant to whom benefits are being paid.

[22] For an initial claim for benefits to be antedated to an earlier date, claimants must show that 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.

[23] Antedate is an advantage that should be applied exceptionally (McBride 2009 FCA 1; Scott 2008 FCA 145; Brace 2008 FCA 118; Smith A-549-92).

[24] The issue arising in antedate cases is whether a claimant has established “good cause” for the delay in filing their claim. In order to establish “good cause” a claimant must demonstrate that he or she did what a reasonable and prudent person would have done.

[25] The applicant must prove the existence of a good cause throughout the entire period of the delay by showing that he or she acted as a reasonable and prudent person in the same circumstances/situation would have acted to ensure compliance with his or her rights and obligations under the Act (Persiiantsev 2010 FCA 101; Kokavec 2008 FCA 307; Paquette 2006 FCA 309).

[26] 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).

[27] The Federal Court of Appeal has further 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).

[28] The matter that needs to be decided in this situation is whether the Appellant had good cause and did what a reasonable and prudent person would have done in a similar circumstance.

[29] In this case the Appellant explained that he did not apply any sooner because his social worker had enquired with Service Canada regarding his claim and he was advised that he was not eligible for regular benefits.

[30] Unfortunately, there is no evidence in his file showing any contact to Service Canada by his social worker or that he had ever given permission or authorization for someone to have access to his claim file details. As the Respondent has explained, "due to privacy concerns, the Commission would not have released any specific details regarding the claimant's eligibility for benefits to a third party representative without any documented consent from the claimant, which in this case, is absent from the claim file."

[31] An informal enquiry from his social worker on his "behalf" cannot be perceived as verifiable information as it simply does not allow the Commission to make an actual determination of qualification based on the specifics of the Appellant's situation. While understanding his circumstances, the Appellant should have taken the time to verify himself about his situation with the Commission who has the sole responsibility of administrating the employment insurance legislation.

[32] The Tribunal refers to jurisprudence that has determined that a claimant's reliance on rumors, blind assumptions and unverified information cannot constitute good cause (Trinh 2010 FCA 335; Rouleau A-4-95).

[33] Through his own admission, he at no time informed himself of his rights and obligation with Service Canada which is a key factor when determining if a claimant had just cause. A reasonable person in his situation would have contacted the Commission directly and verified the information he had received. In fact, it was only after an agent had contacted him and explained that he may qualify did the Appellant actually submit an application and try to establish a claim.

[34] During the hearing the Appellant acknowledged to the Tribunal that he knew he should have directed any questions regarding a claim for benefits to the EI department within Service

Canada; however he made no such efforts throughout the entire period of delay to ascertain himself of his rights and obligations under the Act.

[35] He added as well that because of his illness, he could not think or process things clearly until March of 2015. The Tribunal finds this reason as non-credible since he was well enough to search and apply for work during this time. Evidence even demonstrates that he had gained medical clearance to return to work as of April 1, 2014.

[36] The Tribunal considers that if the Appellant was mentally fit and able to return to work, it would suggest that he was capable of assessing different workplace situations and using common logic and rationalization skills to work through these situations. It is therefore not unreasonable for him to also have been capable of assessing his own personal situation in relation to a claim for regular benefits and submitting an application for benefits. Regrettably, he made no efforts to enquire about his eligibility for benefits during the entire period in question.

[37] There is simply insufficient evidence to suggest that the Appellant's medical reasons continued to prevent him from applying for regular benefits throughout the lengthy period of his delay in requesting regular benefits. The Tribunal restates that good cause must be shown throughout the entire period of delay in order for an antedate request to be approved.

[38] Finally, he also explained that he was not aware of the requirements of the Act since he did not know that he needed to request the conversion of sick benefits to regular benefits.

[39] In this regard, it has been said by the Courts that filing a late application for benefits because of ignorance of the law or not understanding one's legal rights and obligations under the Act, does not, in and of itself, constitute "good cause". (Kaler, 2011 FCA 266; Albrecht A-172- 85)

[40] The Tribunal therefore finds that the Appellant failed to show "good cause" in filing his claim late and has not met the legal test of the legislation. In his case, he should have enquired about his rights and obligations after his sick benefits had ended.

[41] Since he did not, his antedate request cannot be approved because “good cause” was not demonstrated throughout the whole period of delay as required by the Act. The Tribunal maintains that the decision complies with the Act and is supported by case law.

CONCLUSION

[42] The appeal is dismissed.

Paul J. Demers

Member, General Division - Employment Insurance Section