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

[TRANSLATION]

Citation: *F. D. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 76

Tribunal File Number: GE-15-4254

BETWEEN:

F. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARING DATE: June 2, 2016

DATE OF DECISION: June 8, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The claimant, F. D., participated in the hearing by teleconference.

INTRODUCTION

[1] The Appellant filed an Employment Insurance claim effective June 1, 2014. On September 21, 2015, the Canada Employment Insurance Commission ("the Commission") notified the claimant that the EI benefits established for his claim could not be paid starting July 5, 2015 because he had not shown that there was good cause for his delay in making his claim for the period from September 26, 2014 to July 4, 2015. On November 16, 2015, the Commission informed the claimant that, in response to his reconsideration request, the decision rendered on the antedate had been upheld. The claimant appealed that decision to the Canada Social Security Tribunal ("the Tribunal") on December 21, 2015.

[2] This appeal was heard by the teleconference form of hearing for the following reasons:

a) the complexity of the issue or issues;

b) the information in the file, including the need for additional information;

c) this method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[3] Can the claimant's claim for EI benefits be antedated to September 26, 2014?

THE LAW

[4] Subsection 10(5) of the *Employment Insurance Act* and ("the Act") provides as follows:

(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.

[5] Section 48 of the Act states:

(1) No benefit period shall be established for a person unless the person makes an initial claim for benefits in accordance with section 50 and the regulations and proves that the person is qualified to receive benefits.

(2) No benefit period shall be established unless the claimant supplies information in the form and manner directed by the Commission, giving the claimant's employment circumstances and the circumstances pertaining to any interruption of earnings, and such other information as the Commission may require.

(3) On receiving an initial claim for benefits, the Commission shall decide whether the claimant is qualified to receive benefits and notify the claimant of its decision.

[6] Section 49 of the Act reads as follows:

(1) A person is not entitled to receive benefits for a week of unemployment until the person makes a claim for benefits for that week in accordance with section 50 and the regulations and proves that

(a) the person meets the requirements for receiving benefits; and

(b) no circumstances or conditions exist that have the effect of disentitling or disqualifying the person from receiving benefits.

[7] Lastly, subsections 50(1) and (4) of the Act add the following:

(1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

EVIDENCE

[8] The evidence in the file is as follows:

a) A pay stub dated September 4, 2014 indicating 58.82 hours of work for the period from August 25 to September 5, 2014 (GD2-6).

b) A statement from the claimant for the period from August 24 to September 6, 2014 in which the claimant states that he had begun working on a full-time basis (GD3-17 to GD3-23).

c) On August 19, 2015, the claimant requested that his claim be antedated to September 26, 2014. He says he reported that he had started to work full time and that he thought that working from Monday to Friday constituted full-time work. His total number of hours of work per week was 29.5. He did not know that he had to continue filing his reports since his claim was closed as he had reported he was working full time. He was continuing to look for work (GD3-25).

d) On September 21, 2015, the claimant informed the Commission that, in completing his report in August 2015, he had indicated that he was working full time. He thought that working from Monday to Friday, without considering the number of hours of work, constituted full-time work. He indicated that he had not tried to reach the Commission because his claim was closed. He said he had looked for information on the Internet but it was not on the first page. He requested the antedate after being informed by an officer that benefits were payable to him during that time (GD3-26).

e) On November 16, 2015, the claimant told the Commission that he had not known he would be entitled to employment insurance if he worked fewer than 35 hours and earned less than 90% of his previous salary. The Commission asked him why he had not made an inquiry, and he answered that he did not know the law and therefore had never questioned the matter. It was when he went to a Service Canada office on an entirely different matter that the officer informed him that benefits he might be payable to him (GD3-30).

[9] The evidence submitted at the hearing in the Appellant's testimony is as follows:

a) The claimant's claim for benefits was valid from the start of June 2014 to June 4, 2015.

b) After two months of benefits, the claimant accepted an employment involving 29.5 hours a week.

c) The claimant reported that he was working full time because he did not know that he could receive EI benefits under Pilot Project No. 18 if he worked fewer than 35 hours a week and received less than 90% of his previous earnings. The claimant was unaware of that pilot project.

d) The claimant had to claim unemployment once again in July 2015. He went to the Service Canada centre to obtain information on his claim and parental benefits. He said he had made the connection with his former claim and understood that he could receive EI benefits under that claim as he was not working full time. He therefore requested that his claim be antedated.

e) The claimant feels the decision is unfair as he was not informed of the pilot project and was not invited to an information session. He emphasized that he had been able to file his claim and reports without being told he could receive benefits if he did not work 35 hours a week or did not receive 90% of his previous earnings.

f) The claimant said that the purpose of the pilot project was to encourage people to accept a job even if it paid less, which he did since there was a difference of only $10 between his employment earnings and the EI benefits he was receiving.

g) The claimant did not look for information on the website because he was able to file his claim and reports.

h) The claimant did not stop filing his reports because the system was shut down but rather because he did not know the pilot project existed.

i) The claimant added that the officer he had consulted did not discuss his case in connection with the former claim but that he himself had made the connection with that former claim and the pilot project. He indicated, contrary to what the Commission said, that he did not do so "by chance" since he went to ask questions about his new claim and made the connection with his situation in his former claim.

SUBMISSIONS OF THE PARTIES

[10] The Appellant made the following submissions:

a) The claimant says he was not informed or invited to an information session to learn about a pilot project in which participants qualified for EI benefits if they had worked fewer than 35 hours a week at a salary less than 90% of what they had previously earned, provided they looked for employment.

b) The purpose and spirit of that pilot project were to encourage and urge claimants to work even if working conditions (salary and number of hours) were less advantageous than those of their previous employment. In his situation, and without being aware of that pilot project, the claimant fell entirely within the scope of its purpose and spirit.

c) The claimant finds the Commission's decision wrong and unfair. He feels punished for having accepted work that paid less than his previous employment.

d) For example, his net salary was $515.76 a week. The net EI benefits he had during the same period were $506 per week. He nevertheless preferred to work five days a week for an income difference of $10 a week to staying on EI, and the consequence was that his antedate request was denied.

e) The claimant explains that he became unemployed after an employment contract with Alsthom Transport Canada terminated at the end of May 2014. He filed an EI claim and began receiving benefits after a two-week waiting period. He looked for work at the same time and signed an employment contract with the École polytechnique starting August 25, 2014. However, that contract was for 29.5 hours a week and paid a much lower hourly wage than what he had previously earned. He was required to work the five working days in the week, from Monday to Friday. When he found a job, he filed an EI report and indicated that he had started working full time (from Monday to Friday). The on-line reporting system did not request the number of hours. It was automatically closed, and he never went back because he did not know he was still entitled to EI benefits if he worked fewer than 35 hours a week.

f) The claimant contends that he acted as a reasonable person would have acted. He continued to accept the situation as it appeared to him and he requested the antedate as soon as he was informed of the pilot project. He did not know he was entitled to benefits as a result of the pilot project.

g) The claimant submits that the Commission made two errors in his case. The first involved the officers who drafted the summary of their conversation in English, whereas the conversation took place in French.

h) The second error was related to the lack of information that the Commission gave him. He stopped filing his reports not because the system was closed, but because

the system did not ask how many hours he was working. There is no such prompt for claimants.

i) At the hearing, the claimant submitted CUB 36384A and indicated that ignorance of the law could not be invoked in his situation. He was not informed of the pilot project. He complied with the spirit of that project since he had accepted an employment involving 29.5 hours and a lower salary. He continued looking for work. He also submitted CUB 56558 and said that it concerned a similar case in which the claimant was unaware that he was entitled to benefits. He said that the social aspect of the *Employment Insurance Act* must be taken into account and not used to avoid paying benefits. He contends that this is consistent with the values promoted by Service Canada.

j) Following the hearing, the claimant submitted CUB 52237, which refers to CUB 11100, and CUB 46079, which refers to CUB 36384A. The claimant also submitted CUB 56558, to which he referred at the hearing (GD5).

k) The pilot project was a temporary measure. Service Canada is responsible for informing claimants about the programs and services offered.

l) The claimant submits that the question in his situation is what is expected of a "reasonable person." Since he was able to file the initial claim for benefits (GD3-3 to GD3-11), to certify the claim (GD3-12 to GD3-15) and to file all the subsequent benefit reports without at any time being made aware of any reference to Pilot Project No. 18, to the 35 hours or to 90% of his previous salary, he continued, as a reasonable person, to accept matters such as the initial EI claim and reports (every two weeks) as they appeared to him. He naturally continued to accept them until his attention was drawn to another reality and to the fact that the information he had was incorrect. Like any reasonable person, he immediately filed his antedate request on the day when, in connection with another matter, he learned from an EI officer about the existence of the pilot project.

m) The claimant stated that the case law was also favourable in cases similar to his. In CUB 36384A, for example, Rouleau J. allowed the claimant's appeal on the ground that the expression, "Ignorance of the law is no excuse," can no longer be invoked as a general principle to dismiss appeals of this nature.

n) The claimant submits that, in his case, the Commission must attach importance to the following factors:

1) the fact that he fell entirely within the scope the purpose and spirit of Pilot Project No. 18, which encouraged people to accept work even if conditions were less advantageous than those of their previous employment and to continue looking for work;

2) the effort he showed in preferring to work five days a week for a minuscule income difference of $10 a week to staying on Employment Insurance;

3) the fact that he continued looking for employment in order to support himself and his family.

[11] The Respondent made the following submissions:

a) Where a claim for benefits, other than an initial claim for benefits, is made four weeks or more after the week for which the benefits are claimed, as provided in section 26 of the Regulations, that claim shall be considered as having been made at an earlier date if the claimant shows that there was good cause for the delay during that period. In other words, the claimant must be able to show that he did what any reasonable person would have done in his situation to satisfy himself as to his rights and obligations under the Act.

b) In this case, the Commission submits that the claim starting June 1, 2014 expired on June 6, 2015. On September 27, 2014, the claimant completed his report for the period from August 24 to September 6, 2014, declaring that he had found full-time employment (GD3-19 to GD3-25). In that case, it was no longer necessary for him to complete any further reports. On August 19, 2015, the claimant filed a request to antedate his claim to

September 26, 2014. The claimant thus waited 46 weeks to make his request and did not act as a "reasonable person" would have acted in his situation to satisfy himself as to his rights and obligations under the Act.

c) Admittedly, since he had reported that he was working full time, the claimant report system stopped allowing him to make further reports. However, the claimant was responsible for requesting a change to his report without delay if he thought it was inaccurate. Furthermore, if the concept of full-time employment was unclear to him, he could have inquired with the Commission and outlined his particular situation, which could reasonably raise questions.

d) The claimant returned several times to Pilot Project No. 18, which ran from August 5, 2012 to August 1, 2015 to encourage claimants to accept work. He submits that he was unaware of that fact and that he did not know that benefits were payable to him while he worked part time. And yet nothing in the file suggests that the claimant took steps to determine whether he qualified for benefits or to inquire about his particular situation. He learned by chance from an EI officer that he would have been paid while working on a part-time basis (GD3-26).

e) The Federal Court of Appeal has re-affirmed that ignorance of the law, even combined with good faith, does not constitute good cause. The legal test in antedate cases is whether the claimant acted as a reasonable person would have acted in his situation to satisfy himself as to his rights and obligations under the Act (*Canada (PG) v. Kaler*, 2011 FCA 266).

f) The claimant submits that, if the on-line reporting system had asked him how many hours he had worked, he would have indicated 29.5 hours, which constitutes part-time work. In the circumstances, the claimant's inaction was unreasonable from the moment the on-line reporting system stopped taking personal particulars into account.

g) The Federal Court of Appeal has confirmed that, since the website does not purport to deal with the specifics of every person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent

in response to an inquiry about their eligibility on given facts (*Mauchel v. Canada (PG)*, 2012 FCA 202).

ANALYSIS

Subsection 10(5) of the Act provides that 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.

[12] Claimants must meet eligibility criteria to qualify for EI benefits. Section 48 of the Act provides that no benefit period shall be established for a person unless the person makes an initial claim for benefits in accordance with section 50 and the Regulations and proves that the person is qualified to receive benefits.

[13] Subsection 50(4) of the Act states that a claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

[14] The claimant filed a request to antedate his claim on August 19, 2015. He states that he reported that he was working full time and completing his reports since he was unaware that, under Pilot Project No. 18, he could receive EI benefits if he was working fewer than 35 hours a week and receiving less than 90% of his previous earnings. He was unaware of the existence of that pilot project when he began work. He says he mentioned that he was working full time, believing that this meant he was working from Monday to Friday. However, as he was working 29.5 hours a week, he thought that was considered part-time work. He said he wanted to receive benefits for the weeks in question, from September 26, 2014 to July 5, 2015, as he was working part time, not full time.

[15] The Commission submits that the claim that became effective on June 1, 2014 expired on June 6, 2015. On September 27, 2014, the claimant completed his report for the period from August 24 to September 6, 2014, stating that he had found full-time employment (GD3-19 to GD3-25). In the circumstances, it was no longer necessary for him to complete further reports. On August 19, 2015, the claimant filed a request to antedate his claim to September 26, 2014.

He thus waited 46 weeks to file his request and did not act as a "reasonable person" would have acted in his position to satisfy himself as to his rights and obligations under the Act.

[16] The Commission states that, since the claimant reported that he was working full time, the claimant report system stopped allowing him to make further reports. However, he was responsible for requesting a change to his report without delay if he thought it was inaccurate. Furthermore, if the concept of full-time employment was unclear to him, he could have inquired with the Commission and outlined his particular situation, which could reasonably raise questions.

[17] In *Albrecht* and *Persiiantsev*, the Court held as follows:

> …when a claimant has failed to file his claim in a timely way and his ignorance of the law is ultimately the reason for his failure, he ought to be able to satisfy the requirement of having "good cause", when he is able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act. (*Canada (A.G.) v. Albrecht*, 1985 FCA 170; *Canada (A.G.) v. Persiiantsev*, 2008 FCA 307)

[18] The claimant said he had not been informed or invited to an information session to learn about a pilot project in which participants qualified for EI benefits if they worked fewer than 35 hours a week at a salary less than 90% of what they had previously earned, provided they looked for employment. He noted that the purpose and spirit of that pilot project were to encourage and urge claimants to work even if working conditions (salary and number of hours) were less advantageous than those of their previous employment. In his situation, and without the claimant being aware of the project, his situation was entirely consistent with its purpose and spirit. The claimant contends that he acted as a reasonable person would have acted. He continued to accept the situation as it was presented to him. He filed an antedate request as soon as he was informed of the pilot project, having previously been unaware that he qualified for benefits as a result of it.

[19] The claimant submitted CUBs 46079 and 52237, in which it is held that ignorance of the law is no excuse and may not be invoked as a general principle. CUB 52237 states:

> In CUB 11100, Justice Muldoon, sitting as an Umpire provides the following guidance for determining if a claimant falls within the description of a reasonable person:
>
> The question then is to determine what is expected of a "reasonable person". Now, a reasonable person is not an anxiety-ridden paranoiac who doubts or disbelieves an apparently authoritative word of advice to the point of seeking to verify that advice again and again, daily or periodically, lest the advice be erroneous. A reasonable person, being initially justified in accepting that apparently authoritative advice, naturally continues to accept unless or until its error or untrustworthiness be brought to his attention. That exactly describes the claimant's course of conduct, which was that of a reasonable person. After all, the original justification does not "rust" or otherwise deteriorate merely because of the effluxion of time, prodigious as it was.

[20] The Tribunal finds that the claimant’s situation differs from that described in the CUB cited as he did not seek to obtain information on the situation in which he found himself. The claimant confirmed that he did not inquire with the Commission about his work involving 29.5 hours a week. He said he had obtained information on parental benefits from the Commission in July 2015 and that, following that conversation, he made the connection with his previous situation and requested the antedate.

[21] The claimant stated that he had looked on the website but that there was no information on the first page. He said that the information was hard to find. The Tribunal also notes that he did not try to obtain more information.

[22] In *Mauchel*, the Federal Court of Appeal confirmed that, since the website does not purport to deal with the specifics of every person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent in response to an inquiry about their eligibility on given facts (*Mauchel v. Canada (AG)*, 2012 FCA 202).

[23] Referring to CUB 56558, the claimant also stated that the social aspect of the Act should be taken into consideration and not used to find a way to prevent the claimant from receiving benefits. He said his situation was consistent with the purpose and spirit of Pilot Project No. 18 since he had accepted work, even though the conditions were less advantageous than those of his previous employment, and had continued looking for work. He had also made an effort by agreeing to work five days a week for a minuscule difference of $10 a week rather than stay on Employment Insurance. Lastly, he noted that he had continued to look for work to support himself and his family (GD5-13).

[24] CUB 56558 states:

> I find that in this case the Board failed to consider the cumulative effect of the reasons given by the claimant for his delay in applying for benefits. Of crucial relevance is the short period of the delay in applying combined with the claimant's personal life crisis following the death his sister the day before his dismissal. He states that he had never applied for employment insurance benefits after working some 26 years, he believed that he did not qualify and that he would find other employment. As soon as he realized he May qualify, he applied. This is not months after he lost his employment but a mere 5 weeks. I find that the claimant has provided reasons for his delay which taken together should have shown good cause for his delay. Taking into consideration the social aspect of the *Employment Insurance Act*, the benefit of the doubt should be given to claimants in such situations rather than use the legislation to find a way to prevent the claimant from receiving benefits.

[25] Once again, the Tribunal finds that the claimant's situation differs from the situation described in the CUB. The claimant did not invoke any personal conditions that might have prevented him from seeking information from the Commission or explained his delay in requesting that his claim be antedated.

[26] Furthermore, although the claimant contends that it was not by chance, he learned, while inquiring about his parental benefits, that he could have received EI benefits as he was working fewer than 35 hours and receiving less than 90% of his previous earnings. He did not try to obtain information relating to his particular situation when the 29.5-hour employment was offered to him. He did not state that his personal situation prevented him from trying to obtain such information but did say that the Commission was responsible for informing him about it. He submitted that the Commission did not discharge that responsibility since he was not notified at any time that his employment did not meet the definition of full-time work and was not invited to an information session.

[27] The Tribunal nevertheless finds that the Court's decision in *Albrecht*, which is also referred to in CUB 56558, cannot be overlooked:

> To the innocent claimant, it is not sufficient to show that he didn't know the rule. He must show that in all circumstances of the case, he acted as a reasonable person. This principle was made clear by the Federal Court of Appeal in Attorney General of Canada v. Albrecht, [1985) 1 F.C. 710. The length of the delay in filing might also be considered. (CUB 56558)

[28] The Tribunal finds that the claimant did not act as a reasonable and prudent person would have acted in the circumstances. The Tribunal also finds that the claimant cannot merely state that he was ignorant of the law but must show that he acted as a reasonable and prudent person would have acted. It is settled case law that ignorance of the law is no excuse for filing a claim for benefits late and that a claimant must show that he or she acted as a reasonable and prudent person would have acted. The claimant made no attempt to determine whether the situation in which he was working 29.5 hours a week constituted full-time employment. He did not try to obtain information on the subject, and, when he did contact the Commission, it was to

ask questions about his parental leave. The claimant did not request information concerning his claim for benefits, which, at that point, had expired.

[29] The Tribunal finds that the claimant did not act as a reasonable and prudent person would have acted in the circumstances. The claimant requested an antedate 46 weeks after reporting that he had resumed full-time work. He made no effort to satisfy himself as to his rights and obligations with regard to his situation and did not ask or seek to understand what full-time work meant under the Act.

[30] The pilot project to which the claimant refers had been in place since August 2012, and even though the claimant was not invited to an information session, he was also not inclined to obtain information on his personal situation. The Tribunal finds that a reasonable and prudent person would have tried to do that. The Commission may have a role as a provider of information, but it cannot respond to the personal situation of every claimant unless it is made aware of it. The Tribunal finds that the claimant cannot be released from his own responsibility to inquire by saying that the Commission should have informed him about his situation or that he should have been "warned" that working fewer than 35 hours a week did not constitute full-time work.

[31] Therefore, based on the evidence and the submissions made by the parties, the Tribunal is not satisfied that the claimant acted as a reasonable and prudent person would have acted in the circumstances.

CONCLUSION

[32] The Tribunal finds that the claimant does not meet the criteria set out in subsection 10(5) of the Act respecting the antedate and that his claim may not be antedated to September 26, 2014.

[33] The appeal is dismissed.

Charline Bourque
Membrer, General Division – Employment Insurance Section