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

Citation: *R. I. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 96

Tribunal File Number: GE-16-1212

BETWEEN:

R. I.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Martin Bugden

HEARD ON: June 28, 2016

DATE OF DECISION: July 21, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, (claimant), Ms. R. I., appeared at the hearing.

The Respondent (Commission) did not attend the hearing.

INTRODUCTION

[1] On December 15, 2015 the Appellant submitted a claim for Employment Insurance benefits.

[2] On December 17, 2015 the Canada Employment Insurance Commission (Commission) verbally notified the Appellant that they could not approve an antedate as she failed to show good cause throughout the entire period of the delay in filing her claim for benefits (GD3-22).

[3] In a letter, dated January 11, 2016, the Commission notified the Appellant that they were unable to pay her either special or regular Employment Insurance benefits. She had 0 hours of insurable employment between December 14, 2014 and December 12, 2015. However, she needed 665 hours of insurable employment to qualify for benefits.

[4] The Appellant filed a Request for Reconsideration which was rejected by the Commission in a letter dated February 18, 2016.

[5] The Appellant subsequently applied to the Social Security Tribunal (the Tribunal).

[6] After reviewing the evidence and submissions of the parties to the appeal, the hearing was held by Teleconference for the reasons provided in the Notice of Hearing dated May 19, 2016.

ISSUES

[7] Issue #1: Whether the initial claim for benefits can be antedated pursuant to subsection 10(4) of the *Employment Insurance Act* (the Act).

[8] Issue #2: Whether the Appellant has sufficient hours of insured employment to establish a claim pursuant to section 7 of the Act.

THE LAW

[9] Subsection 7.1 of the Act states that unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

[10] Subsection 7.2 of the Act states that 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
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

[11] 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.

EVIDENCE

[12] On a Record of Employment (ROE), dated November 25, 2014, the employer, The Bank of Montreal, indicated the Appellant's last day paid was November 14, 2014 when she started a leave of absence (GD3-14).

[13] On December 15, 2015, the Appellant submitted an application for Employment Insurance regular benefits. The Appellant's last day worked for the employer was November 14, 2014.

[14] The Commission determined that the Appellant resided in the economic region of X and the rate of unemployment in that region was 6.9% (GD3-15 to GD3-20).

[15] On a verbal Request to Antedate, dated December 16, 2015, the Appellant submitted that she wished her claim to be antedated to March 29, 2015. She did not apply for benefits because she never thought she would qualify. She thought benefits were for people who were fired or ended their contract. She thought she would not qualify for benefits because she quit her job with The Bank of Montreal (GD3-21).

[16] On December 17, 2015 the Appellant stated to the Commission that she did not know she would qualify for benefits in November 2014 because she quit her job. In December, on the Employment Ontario website, she read that when one is unemployed one can apply for Employment Insurance. She was unemployed. She was relying on her credit to survive and it was getting difficult (GD3-22).

[17] In a letter, dated January 11, 2016, the Commission notified the Appellant that they were unable to pay her either special or regular Employment Insurance benefits. She had 0 hours of

insurable employment between December 14, 2014 and December 12, 2015. However, she needed 665 hours of insurable employment to qualify for benefits.

[18] On a Request to Antedate, dated January 29, 2016, the Appellant submitted that she wished her claim to be antedated to November 14, 2014.

[19] On a Request for Reconsideration, dated January 29, 2016, the Appellant submitted that she disagrees with the decision as, if her case was back-dated to November 14, 2014, she would have insurable hours.

[20] On February 18, 2016 the Appellant stated to the Commission that she was unaware she could apply for Employment Insurance benefits as she quit her employment. Her employer did not tell her she should apply. She called someone in June or July 2015 and asked if there was any program that could help her and she was told "no, only welfare". She cannot remember if it was the provincial or federal government she called. She did not even know about the program; therefore she did not apply in a timely manner (GD3-28).

[21] In a letter, dated February 18, 2016, the Commission notified the Appellant that their decision, on the antedate dated December 17, 2015, and their decision, on the Benefit Period Not Established, dated January 11, 2016, had not changed and both were being maintained (GD3-30).

OTHER DOCUMENTED EVIDENCE

[22] On December 17, 2015 the Commission determined that they could not approve an antedate based on the fact that the Appellant thought she would not qualify. She failed to show good cause throughout the entire period of the delay in filing her claim for Employment Insurance benefits (GD3-22).

[23] The Commission determined that the Appellant's qualifying period was established from December 14, 2014 to December 12, 2014, pursuant to paragraph 8(1)(a)) of the Act (GD3-23).

[24] The Appellant confirmed she had applied for benefits in 2012, and had a claim in 2010. She did not think she could apply this time because she quit (GD3-28).

[25] The Commission determined that the Appellant was not a new entrant or re-entrant because in accordance with subsection 7(4) of the Act she had at least 490 hours of labour force attachment in the 52 weeks preceding the qualifying period. Therefore, the Appellant needed the number of insured hours specified in paragraph 7(2)(b) of the Act (GD4-4).

SUBMISSIONS

[26] The Appellant submitted that:

a) In November 2014 she decided to move to Calgary. She took an unpaid leave of absence from her work.

b) She had interviews and applied everywhere but by March 2015 she had been unable to find anything.

c) Her employer would not extend the leave so she resigned and returned to Ontario.

d) She still could not find work and friends told her about an agency that could help. The agency offers advice to find financial aid including Employment Insurance, welfare, back-to-school, etc.

e) She visited the Service Canada website and started reading. She had quit, she was not laid off or fired so she applied for benefits without a back-date. Service Canada called her and informed her she did not have enough hours but that she could back-date her claim, so she did.

f) That claim was denied as her reason was not convincing enough. She did not know and Service Canada suggested she take it further to the Tribunal. The reason she was declined is not convincing. She thought benefits were for people who were terminated; she would have applied sooner had she known.

g) She reached the opinion that benefits were only for those terminated as she had collected benefits before when her employment was terminated. She thought benefits were just if someone was fired or laid off.

h) She did not contact anyone about benefits. If she did, she does not remember. She just read on-line.

[27] The Respondent submitted that:

Issue #1 - Antedate

a) Claimants who wish to claim employment insurance benefits for an earlier period must first qualify at the earlier date and then must demonstrate that they had good cause for the entire period of the delay in making their claim. In other words, claimants who qualify for and wish to receive employment insurance benefits on an earlier date must demonstrate that they acted as any reasonable person in the same situation would have done, to satisfy themselves as to their rights and obligations under the Act.

b) In the case at hand, the Commission contends that the claimant did not act like a ‘reasonable person’ in her situation would have done to verify her rights and obligations under the Act. Specifically, the claimant delayed approximately 56 weeks in submitting an application for Employment Insurance benefits (GD3-3 to GD3-13, GD3-14). The claimant acknowledged that she did not submit an application for benefits because she did not believe she would qualify, based on her reason for separation (GD3-21, GD3-22, GD3-28, GD2-7). Only when she was informed by an employment counsellor in November 2015, did the claimant submit an application for benefits (GD2-7), but further delayed her application until December 15, 2015 (GD3-3 to GD3-13). If the claimant had questions as to whether her reason for separation would prevent payment of benefits, she could have contacted the Commission to discuss her situation. The claimant in this case did nothing until advised by an employment counsellor in November 2015 (GD2-7).

Issue #2 – Insufficient Hours

c) Subsection 7(2) of the Act stipulates that in order to qualify for employment insurance benefits, an insured person (a) must have experienced an interruption of earnings from employment, and (b) must also have acquired, in her qualifying period, at least the

number of hours of insurable employment set out in the table within that subsection, in relation to the regional rate of unemployment where the person normally resides.

d) In this case, the claimant's qualifying period was established from December 14, 2014 to December 12, 2014, pursuant to paragraph 8(1)(a)) of the Act. (GD3-23).

e) Based upon the facts on file, the Commission determined that the claimant was not a new entrant or re-entrant because in accordance with subsection 7(4) of the Act she had at least 490 hours of labour force attachment in the 52 weeks preceding the qualifying period. (GD3-14) Therefore the claimant needed the number of insured hours specified in paragraph 7(2)(b) of the Act.

f) According to the Table in subsection 7(2) of the Act, the minimum requirement for the claimant to qualify to receive employment insurance benefits was 665 hours based on the rate of unemployment of 6.9% in the X region where she resided (GD3-15 to GD3-20). However, the evidence shows that the claimant had accumulated zero hours of insurable employment in her qualifying period due to her delayed application.

g) Consequently, the Commission maintains that the claimant failed to demonstrate that she qualified to receive employment insurance benefits pursuant to subsection 7(2) of the Act.

ANALYSIS

Issue #1 - Antedate

[28] An initial claim for benefits made after the day when the Appellant was first qualified to make the claim shall be regarded as having been made on an earlier day if the Appellant shows that the Appellant 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] The Tribunal refers to the case law, which clearly established that it is not the length of the delay that should be considered, but the reasons for it (see Canada (Attorney General) v. Rouleau, [1995] F.C.J. No. 1203 (F.C.A.) (QL)). The exceptional nature of the benefit afforded

by antedating a claim supports this finding (see Canada (Attorney General) v. Scott, 2008 FCA 145, paragraph 9; Canada (Attorney General) v. Brace, 2008 FCA 118).

[30] The Appellant has submitted that she did not apply for benefits as she never thought she would qualify. She thought benefits were for people who were fired or ended their contract. She thought she would not qualify for benefits because she quit her job with The Bank of Montreal (GD3-21).

[31] The Appellant further submitted that she did not know she would qualify for benefits in November 2014 because she quit her job. The Tribunal considered the reasons the Appellant provided for the antedate and finds that no evidence was presented with reasons that demonstrated good cause. She did not request the antedate until December 16, 2015.

[32] The Tribunal finds that the Appellant delayed in filing her antedate reconsideration. It was the third time the Appellant had submitted a claim for benefits since 2010; she was experienced with the application process. She could have contacted Service Canada at an earlier date and determined her eligibility for benefits or ascertain her rights and obligations under the Act and then have taken the necessary action. She failed to do so.

[33] The Tribunal finds that the Appellant did not act as a reasonable person would have done to verify her rights and obligations under the Act.

[34] The Tribunal finds that the burden of proof is the Appellant's and she failed to provide such proof.

[35] The Tribunal finds that the Appellant did not show good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

[36] The Tribunal finds that the Appellant did not prove good cause for the entire period of delay between November 14, 2014, when she took a leave of absence from her employment, and December 16, 2015, when she verbally requested an antedate. The antedate request is denied.

Issue #2 – Insufficient Hours (Benefit Period Not Established)

[37] The second issue before the Tribunal is whether or not the Appellant qualified for Employment Insurance benefits.

[38] To qualify for regular benefits an insured person must have experienced an interruption of earnings from employment, and must also have acquired, in her qualifying period, at least the minimum number of hours of insurable employment set out in the table within subsection 7(2) of the Act, in relation to the regional rate of unemployment where the person normally resides.

[39] The Tribunal refers to the case law, which clearly established that being short of the hours required by subsection 7(2) of the Act cannot remove the defect from a claim. This requirement of the Act does not allow any discrepancy and provides no discretion (see Canada (Attorney General) v. Levesque, 2001 FCA 304).

[40] The Appellant submitted an application for Employment Insurance benefits on December 15, 2015. The Tribunal finds that the Appellant's qualifying period was from December 14, 2014 to December 12, 2014 pursuant to subsection 8(1) of the Act.

[41] The Appellant submitted that, in November 2014, she decided to move to Calgary. She took an unpaid leave of absence from her work. She had interviews and applied everywhere but by March 2015 she had been unable to find anything. Her employer would not extend the leave so she resigned and returned to Ontario.

[42] There is 1 ROE in the docket from when the Appellant commenced a leave of absence on November 14, 2014. There is no record of any other ROEs.

[43] The Tribunal considered the Appellant's submissions from her appeal to the Tribunal, her direct testimony and additionally in the docket. The Appellant submissions were consistent. The Commission's submissions were consistent and detailed. The Tribunal finds that, on the balance of probabilities, the Appellant's ROEs were correct as issued and her qualifying period was correctly calculated.

[44] The Tribunal finds that the Appellant was not a new entrant/re-entrant as she had at least 490 hours of labour force attachment in the 52-week period preceding her qualifying period, in accordance with section 7 of the Act (GD4-4).

[45] The Tribunal finds that the Appellant had an interruption of earnings.

[46] In this case, the rate of unemployment was 6.9% in the economic region of X where the Appellant was residing (GD3-15 to GD3-20). The Appellant was required to have a minimum of 665 hours of insurable employment to qualify for benefits.

[47] The Tribunal finds that the Appellant had zero hours of insurable employment in her qualifying period.

[48] The Tribunal finds that the burden of proof is the Appellant's and she failed to provide proof of additional hours of insurable employment.

[49] According to the table in subsection 7(2) of the Act, to qualify for benefits, the minimum requirement was 665 insurable hours of employment in her qualifying period, based on the rate of unemployment of 6.9% in the region where the Appellant resided.

[50] In summary, the Appellant accumulated zero hours of insurable employment in her qualifying period. As there were zero hours of insurable employment, in her qualifying period, a claim for benefits cannot be established. She failed to demonstrate that she qualified for regular or special benefits pursuant to section 7 of the Act.

[51] For all the above reasons the Tribunal finds that the Appellant did not qualify for Employment Insurance benefits for the period in question as she did not have a sufficient number of insurable hours of employment.

[52] The Act is very specific. There is no room for discretion. Levesque, (2001 FCA 304).

[53] The Tribunal finds that the Commission had no discretion but to deny the payment of benefits.

[54] The appeal on this issue has no merit.

CONCLUSION

[55] The Tribunal has sympathy for the Appellant's case, she was very forthcoming with her testimony, but the decision must be based on law.

[56] The Tribunal finds that the Appellant did not prove good cause for the entire period of delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made. The antedate request is denied.

[57] The Tribunal finds that the Appellant had insufficient hours of insured employment to establish a claim pursuant to the Act.

[58] The appeal is dismissed on both issues.

Martin Bugden

Member, General Division - Employment Insurance Section