



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. L. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 97

Tribunal File Number: GE-16-2045

BETWEEN:

S. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: July 20, 2016

DATE OF DECISION: July 21, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Ms. S. L. attended the teleconference hearing.

INTRODUCTION

[1] The Claimant applied for employment insurance regular benefits on August 31, 2009 however; the last day that she worked was on April 28, 2006, some three years earlier. On January 18, 2012, the Claimant requested that her claim be antedated to July 2006.

[2] On February 20, 2012, the Canada Employment Insurance Commission (Commission) denied that Claimant's request to antedate her claim because she did not show good cause for the delay in applying from July 1, 2006 to January 16, 2012.

[3] The Claimant appealed the Commission's decision to the Board of Referees that in turn, denied her appeal on March 26, 2013. The Claimant, dissatisfied with the Board of Referees decision, requested a leave to appeal from the Appeal Division of the Social Security Tribunal of Canada (Tribunal). On February 5, 2015 the leave to appeal was granted and on March 12, 2015, the Appeal Division allowed the Claimant's appeal and the matter was returned to the General Division of the Tribunal for reconsideration.

[4] A hearing was initially held on July 8, 2016 however; at the outset of the hearing the Claimant indicated that she did not have the full docket (misplaced), so the hearing was adjourned. The Tribunal sent the Claimant the docket again. At the hearing on July 20, 2016 it was confirmed that the Claimant did receive the docket in full and that she was ready to proceed. The teleconference hearing was initially scheduled for 10:00 am however; the Claimant erred with the time and called the Tribunal immediately. The Member accommodated the Claimant's request to have the hearing later the same day and which the Claimant attended.

[5] The hearing was held by teleconference given the information in the file, including the need for additional information. Plus, 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

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

THE LAW

[7] 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.

[8] 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

[9] The Claimant was working until April 28, 2006 (AD2-18). She didn't apply for employment insurance regular benefits until August 31, 2009, more than 3 years later (AD2-16). On October 2, 2009 the Commission denied the Claimant's claim because she had zero insurable hours of employment in her qualifying period of August 31, 2008 and August 29, 2009 (AD2- 19).

[10] Approximately, 3.5 years after applying for benefits and being denied, on January 18, 2012, the Claimant requested that her claim be antedated to July 2006. She indicated that she delayed in applying because she did not receive her separation slip at that time, her daughter and mother were ill, she was focused on job searching and then she became ill and had heart surgery in February 2009 (AD2-20). The Claimant also submitted a request for her record of

employment (ROE) form and a copy of her 2006 income tax reassessment as proof of employment in that year (AD2-21 to AD2-23 and AD2-26).

[11] On February 20, 2012, the Commission denied that Claimant's request to antedate her claimant because she did not show good cause for the delay in applying throughout the period of July 1, 2006 to January 16, 2012 (AD2-24).

[12] On February 18, 2013, the Claimant appealed the Commission's decision to the Board of Referees indicating that she did apply for benefits some years ago but was denied because she did not have proof of earnings and because she did not have an ROE. She delayed because (a) she was caring for her ill mother in 2006 who passed away March 13, 2007 (b) she was job searching but was unsuccessful; she lived off of savings but eventually lost her house and had to move (c) her daughter became ill and suddenly died on July 1, 2009 and (d) in 2010 she became ill and had heart surgery on February 15, 2011(AD2-29 to AD2-32).

Testimony

[13] At the hearing, she testified that she couldn't remember her actual last day of work and therefore, indicated that she wanted her claimant antedated to July 2006. In fact, she wanted it antedated to April 28, 2006 her actual last day of work.

[14] The Claimant testified that she applied for benefits in August 2009 but assumed that she was denied at that time (on October 2, 2009) because she did not have her ROE and therefore, did not have proof of employment/earnings for 2006. The Claimant testified that she did not call or go to a Service Canada centre until after she had applied and she had proof of earning (reassessment) for the 2006 year.

[15] The Claimant testified that she did not apply for benefits immediately after her separation from employment on April 28, 2006 because she honestly believed that she could not apply without her ROE. She finally applied in August 2009 out of desperation and wanted to start her claim even if she didn't have everything. She then provided proof of earnings for 2006 when she received her income tax reassessment for that year on September 17, 2009 (referred to AD1-44).

[16] The Claimant explained that during the period of April 28, 2009 until August 31, 2009 she had a lot going on in her personal life. She felt that she was not in the right state of mind and couldn't think properly due to all the personal stressors she had to endure at the time. She delayed in applying for benefits because (a) she was focused on caring for her mother (b) she was stressed because her daughter was addicted to narcotics and passed away suddenly July 1, 2009 (c) she was applying for jobs but was unsuccessful and (d) she didn't have an ROE until then.

SUBMISSIONS

[17] The Claimant submitted that she delayed in applying for benefits until she was able to prove that she was employed and had earnings in 2006; she assumed she needed her ROE and/or other proof to apply. Further, during the period from her last day of work, April 28, 2006 until she did apply, she was not able to think straight due her extenuating personal circumstances including caring for her mother until she passed away, her daughter's addiction, job searching unsuccessfully and eventually losing her house and moving.

[18] The Commission submitted that the Claimant did not show good cause throughout the entire period of the delay in filing her claim for benefits between July 1, 2009 and January 16, 2012 because she made a personal decision not to file for benefits on the earlier date. She should have contacted the employment insurance office in order to obtain advice pertaining to the correct procedures regarding the filing of a claim for benefits. The Claimant may have been dealing with personal issues however her circumstances were not exceptional so that they prevented her from submitting her application form in 2006 or her failing to inform herself of her rights and responsibilities, during the lengthy 5.5 year period of delay.

ANALYSIS

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

[20] In this case, the Claimant lost her employment on April 28, 2006 but did not apply for benefits until August 31, 2009. On January 18, 2012 the Claimant submitted an application to antedate her claim for benefits to “July 2009” (AD1-32). Subsection 10(4) of the EI Act, states that an initial claim for benefits 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. In this case, the Claimant made an initial claim for benefits on August 31, 2009; not when the application/request for an antedate was made on January 18, 2012. The Commission therefore erred in determining that the Claimant had to show good cause from the earlier date until January 16, 2012. Further, regarding the earlier date, since the Claimant indicated that she failed to make an application for benefits on “July 2006” (AD2- 20), the Commission, without clarifying with the Claimant, determined (assumed) the earlier day to be July 1, 2006. At the hearing, the Claimant testified that she couldn’t remember her last day at work so she guessed and indicated “July 2006” however; she actually wanted her claim antedated to (what she now knows to be) her last day at work, April 28, 2006. Accordingly, the Member finds that, the period of delay that should have been considered is from April 28, 2006 to August 31, 2009.

[21] From the information provided on the ROE, the Member finds that the Claimant had enough hours of insurable employment to qualify for benefits on the earlier date of April 28, 2006. The issue in dispute therefore is whether the Claimant had good cause for the delay throughout the period beginning on April 28, 2006 and ending on August 31, 2009.

[22] 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).

[23] In this case, the Claimant consistently submitted that she did not apply for benefits upon separation from her employment on April 28, 2006 because she was not provided with a

'separation slip' or ROE at the time. She assumed that she required some proof of earnings/employment. On August 31, 2009, she applied for benefits out of desperation even though she wasn't able to provide proof of employment until shortly thereafter in September 2009, when she received a reassessment of her income tax (AD1-35 and AD1-38). The Claimant testified that she delayed in making an initial claim from April 28, 2006 until August 31, 2009 because of her state of mind at the time; because of the stress of dealing with her personal circumstances. She had to care for her ill mother in 2006 until she passed away on March 13, 2007 (AD2-30). She also had to deal with her daughter's illness and her sudden death on July 1, 2009. The Claimant testified that in the meanwhile, she was also attempting to secure employer but was unsuccessful; she lived off of her savings and subsequently lost her house and had to move.

[24] The Member first considered the Claimant's explanation that she simply was not aware, or assumed, that she could apply for benefits without proof of employment/earnings, that is, without an ROE. The Member considered that the jurisprudence on this matter is clear, that waiting to receive a record of employment is not good cause for the delay (CUB 74601). In this case, like other similar cases considered by the Federal Court of Appeal (FCA), the Claimant simply was not aware or assumed that she could not apply for benefits without an ROE. These decisions provide precedence. The Member therefore, also considered that it is well established case law that a claimant's reliance on unverified information or unfounded assumptions does not constitute good cause (Trinh 2010 FCA 335; Rouleau A-4-95). And, that it is well established jurisprudence that ignorance of the law, even when acting in good faith, is not good cause for delay (Kaler 2011 FCA 266; Howard 2011 FCA 116; Somwaru 2010 FCA 336; Innes 2010 FCA 341).

[25] The Member acknowledges that the Claimant, during the period of the delay, sought employment and relied on her own financial resources. The Member commends that Claimant for her efforts to secure employment as soon as possible. The FCA however, has ruled that good cause for delaying one's application was not found where the claimant's initial intention was not to apply because he/she was trying to find employment (Howard 2011 FCA 116; Ouimet 2010 FCA 83; Shebib 2003 FCA 88; Smith A-549-92; Caron A-395-85; Dunnington A-1865-83). The Member understands that in this case, the Claimant did not intentionally delay hoping

to find employment. Rather, she simply did not know to apply without an ROE and was overwhelmed with the stressors of her personal life. However, this reason was offered by the Claimant as a further reason for the prolonged delay. It was therefore considered. The Member finds that given the case law, delaying her application for benefits in the hopes of securing employment, although laudable, is not good cause for the delay.

[26] 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). The Member also noted that the onus on 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 his rights and obligations under the EI Act.

[27] In this case, 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 more than 3 year period of delay from April 28, 2006 until August 31, 2009. The Member considered and understands that the Claimant was under a lot of stress given the illnesses and subsequent deaths of both her mother and daughter during this period. The Member also acknowledges that because she was unable to find employment, she endured financial hardship. The Member finds however, that despite her dire situation, the Claimant still did not make any enquiries at a Service Canada office or website throughout the entire period of delay. Had she done so, she would have been informed of her potential eligibility for employment insurance benefits and directed to submit an application as she did on August 31, 2009 even without an ROE in hand.

[28] Finally, the Member notes that to antedate a claim is an advantage that should be applied exceptionally and with caution (*McBride* 2009 FCA 1; *Scott* 2008 FCA 145; *Brace* 2008 FCA 118).

[29] Having considered all of the Claimant's reasons for the delay and relevant case law, the Member finds that the Claimant did not act as a reasonable and prudent person would have done in the same situation to apprise herself of her rights and obligations and taken the steps required to protect her claim for benefits under the EI Act.

[30] The Member therefore concludes that the Claimant's initial claim for benefits cannot be antedated to April 28, 2006 because she failed to show good cause for the delay, throughout the period of delay from April 28, 2006 to August 31, 2009, in making the initial claim for benefits pursuant to subsection 10(4) of the EI Act.

CONCLUSION

[31] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section