



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. P. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 56

Tribunal File Number: GE-16-4197

BETWEEN:

S. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: April 21, 2017

DATE OF DECISION: April 23, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Mr. S. P., attended the teleconference hearing as scheduled.

INTRODUCTION

[1] The Claimant applied and was granted employment insurance regular benefits effective May 6, 2016. Although the Claimant completed one claim report on May 23, 2016, he delayed in submitting subsequent reports. The Canada Employment Insurance Commission (Commission) determined that the Claimant did not return his claim reports in a timely manner pursuant to subsection 26(1) of the Employment Insurance Regulations (Regulations). It further concluded that the Claimant's reasons for the delay did not constitute good cause pursuant to subsection 10(5) and 50 of the Employment Insurance Act (EI Act) and thus, denied him benefits for the period of May 22, 2016 to July 02, 2016.

[2] On October 4, 2016, the Claimant requested that the Commission reconsider its decision however; on October 19, 2016, the Commission maintained its initial decision.

[3] On November 4, 2016, the Claimant appealed to the General Division, Employment Insurance Section of the Social Security Tribunal (Tribunal).

[4] The hearing was held by teleconference given (a) the complexity of the issue(s) under appeal (b) the information in the file, including the need for additional information and because (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.

ISSUE

[5] The Member must decide whether the Claimant had good cause for delaying to submit his claim reports for the period of May 22, 2016 to July 2, 2016 pursuant to sections 10 and 50 of the EI Act and section 26 of the Regulations.

EVIDENCE

[6] The Claimant applied for employment insurance benefits on May 13, 2016. He indicated that nobody assisted him with completing the application form (GD3-7). His record of employment confirms that his last day of work was May 6, 2016 (GD3-14).

[7] On June 3, 2016, the Commission informed the Claimant that his claim was made effective May 8, 2016 and that the vacation pay he received upon separation from his employment would be allocated from May 8, 2016 to the week of May 15, 2016. He was also advised that “It is important that you file your reports. If you do not and your situation changes, you could lose benefits.” and he was provided contact information (GD3-15 and GD3-16).

[8] On July 13, 2016, the Claimant verbally advised the Commission that his address and phone number have not changed; he has not worked and that he was in receipt of a pension (\$219.08/month) since February 22, 2015. The Commission indicated that the Claimant forewent payment consideration for the period of May 22, 2015 to July 2, 2016 and his claim was immediately reactivated (GD3-17 to GD3-19).

[9] On August 18, 2016, the Claimant requested that his claim be antedated to June 6, 2016. He indicated that he delayed in applying for benefits between June 5, 2016 and July 2, 2016 because he was waiting for Service Canada to send him something in the mail in order to report. He confirmed that he received his access code and completed his first report on May 23, 2016. He was not sure what to do and waited to be informed to complete his next report. Although he read the information sent to him with the access code, he did not understand it. He also confirmed that he received the letter of June 3, 2016 that informed him to complete his reports or risk losing them. He stated that he tried unsuccessfully to call 2 or 3 times prior to July 13, 2016 (GD3-20 to GD3-23).

[10] The Commission advised the Claimant that it was unable to pay him benefits between May 22, 2016 and July 2, 2016 because he did not complete his claim reports within the allowed time and did not show good cause for the delay (GD3-24).

[11] On October 4, 2016, the Claimant requested that the Commission reconsider its decision. He wrote that he was in the process of moving to another province. He tried to access on-line but stopped because he was unsure of the process (GD3-25). He stated the same

reasons to the Commission. The Claimant also stated that he had help with the first report and couldn't do the other reports by himself (GD3-27).

[12] On October 19, 2016, the Commission maintained its initial decision of August 18, 2016 (GD3-28).

[13] At the hearing, the Claimant testified that he moved to Alberta from Ontario on May 15, 2016. A couple of days later the Commission called him for his account number in order to direct deposit his benefits. A week later he received a letter providing him with his access code. The Claimant wasn't sure if he received the letter of June 3, 2016; referred to GD3-15 (looked in his files) however he remembers receiving a letter but can't remember the date. The Claimant testified that his daughter-in-law helped him file his first report on May 23, 2016. After which she told him to complete subsequent report(s) on his own; she was busy and advised him to call for assistance.

[14] The Claimant confirmed and reiterated the same reason as he did to the Commission that he delayed 7 week to submit the next report(s). He stated four reasons: (1) he moved to a new province at the time (2) he was unfamiliar with the process of how to complete the reports on line as it was the first time he was on employment insurance benefits (3) he was waiting for a letter from the Commission to advise of what to do next - this is what he was told by others, and (4) he made attempts to call but was unsuccessful. Then, in June or July, he went to the Service Canada office in Calgary and the agent assisted him. He was able to complete his reports thereafter without problems.

SUBMISSIONS

[15] The Claimant submitted that he was unable to file his reports in a timely manner because he was moving to another province at the time and in the move, didn't have access to a computer plus, he was unfamiliar with the process and required assistance to file his reports. The Claimant submitted that he was waiting for a letter from the Commission as this is what he was told by others. In the meantime, he was attempting to call the Commission but was unsuccessful.

[16] The Commission submitted that it correctly disentitled the Claimant from receiving benefits for the period of May 22, 2015 to July 2, 2016 because he did not meet the

requirements of sections 10(5) and 50 of the EI Act and the section 26 of the Regulations. The Claimant's reasons do not justify a 7 week delay and he could have called using the access code he was provided or gone to a Service Canada office for assistance. On May 16, 2016, upon completion of his application, he was provided with specific information about what to do next and he was provided with contact information. Further, on May 23, 2016, he completed the first set of reports and he would have been informed when he was required to complete the next reports. The Commission submitted that the Claimant was not prevented from completing the subsequent required reports in a timely manner and thus, he did not act as a reasonable person would in his circumstances when he waited over 3 weeks from when the reports were due to contact the Commission. He therefore did not show good cause for the delay.

ANALYSIS

[17] The relevant legislative provisions are reproduced in the Annex to this decision.

[18] According to subsection 50(4) of the EI Act a claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time. Subsection 26(1) of the Regulations specifically sets out the time and stipulates that subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed. Further, pursuant to section 50(1) of the EI Act, a claimant is not entitled to receive benefits for as long as this condition or requirement is not fulfilled or complied with.

[19] In this case, the Claimant made a claim for regular benefits on May 13, 2016. The Claimant therefore, had until June 6, 2016 to submit his claim reports pursuant to subsection 26(1) of the Regulations. It is undisputed evidence that the Claimant complied with this requirement on May 23, 2016 when he filed his first claim report successfully for the prior two week period of May 8, 2016 to May 22, 2016. His next claim report would have been due two weeks later. He however delayed until July 13, 2016, more than 7 weeks later, to submit the reports for the weeks of May 22, 2016 to July 2, 2016. The Member finds that by not submitting the required forms within three weeks after which benefits were last claimed (he did so more than 5 weeks later), he did not meet the requirement of subsection 26(1) of the Regulations and 50(1) of the EI Act. At the hearing, the Claimant confirmed that this was the case and that he

was able to complete his claim reports thereafter (for the periods starting July 3, 2016) without problems.

[20] On August 18, 2016, the Claimant requested that his late reports be antedated to June 6, 2016. Subsection 10(5) of the EI Act states that a claim for benefits, other than an initial claim for benefits (in this case, the weekly report), 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.

[21] The Member notes that the onus on the Claimant is not simply to act in a reasonable manner or have 'good reason' for the delay. According to the Federal Court of Appeal (FCA), the onus on the Claimant is to show 'good cause' for the delay in making an initial claim for benefits by showing that he acted as a reasonable and prudent person would have done in the same situation to satisfy himself of his rights and obligations under the EI 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).

[22] The same principle applies in cases like this one where there is a delay in a claim for benefits for a week of unemployment by not submitting the claim reports as prescribed. In this case, there was a delay in the submission of the claim reports for the weeks of May 22, 2016 to July 2, 2016, that should have been made by the Claimant within three weeks after the week for which benefits were (last) claimed pursuant to subsection 26(1) of the Regulations (*Attorney General of Canada v. Kokavec* A-232-08).

[23] Further, according to the Federal Court of Appeal, 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. Burke* 2012 FCA 139).

[24] In this case, the Member considered the Claimant's position that he was moving to another province at the time, and in the move he didn't have access to a computer. Further, he

was unfamiliar with the process and required his daughter-in-law's assistance to file his reports. The Claimant submitted that he was told by others to wait for a letter and while he waited he made unsuccessful attempts to call the Commission. Although the Member understands that the Claimant moved (on May 15, 2016) shortly after he applied for benefits on May 13, 2016 and understands that he did not have access to a computer while moving. The Member notes however, that the Claimant sought the assistance of his daughter-in-law and submitted his first claim report on May 23, 2016 without delay. His moving from Ontario to Alberta is not a reasonable explanation for the subsequent 7 week delay. The Member acknowledges that the Claimant needed assistance because he was unfamiliar with the process and that he attempted to make telephone enquiries without success. The Member notes however, that he had access to a computer and phone on a daily basis and he had access to a Service Canada office in Calgary where he subsequently obtained assistance. The Member therefore finds, that even if the Claimant did not know how to submit a report on his own and even if he was told by others to wait for a letter, there were no exceptional circumstances that prevented him from going to a Service Canada office to enquire about his rights and obligations (and how to submit reports or otherwise) in a timely manner.

[25] The Member's findings are supported by case law. 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*).

[26] The Member also considered that it is well established jurisprudence that ignorance of the law, even when acting in good faith, is not good cause for 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).

[27] Given all the evidence, the Member finds that the Claimant did not act as reasonable person would to satisfy himself of his rights and obligations under the EI Act given his unfamiliarity with the system and his reliance on his daughter-in-law-in law to help him. The

Member finds that it is reasonable to expect the Claimant to have enquired about the requirements and his responsibilities shortly after his daughter-in-law showed him how to complete the first claim report and he found that he couldn't complete the subsequent one on his own. Further, the Member agrees with the Commission that the Claimant could have read the requirements regarding the completion of reports on the application form under "What's next", on the Internet or Telephone Reporting Service (GD3-12), and on the benefit letter the Claimant acknowledged receiving on June 3, 2016 that stated the importance of filing his reports and he was provided with contact information (GD3-15).

[28] Taking everything into consideration, the Member finds that the Claimant failed to prove good cause for the delay in filing his reports because he did not act as a reasonable person would to educate himself about his rights and responsibilities. The Member therefore concludes that the Claimant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in submitting his reports pursuant to subsection 10(5) of the EI Act.

CONCLUSION

[29] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Subsection 26(1) of the Regulations states that subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed.

Subsection 10(5) of the EI Act states 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.

Subsection 50(1) of the EI Act states that 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.

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