



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 107

Tribunal File Number: GE-17-151

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: June 27, 2017

DATE OF DECISION: July 10, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, R. M. participated by telephone.

INTRODUCTION

[1] The Appellant made an initial claim for Employment Insurance benefits on September 23, 2016 and a benefit period was made effective on September 18, 2016.

[2] The Appellant requested to antedate the initial claim for benefits to June 2, 2016 because that was the date Appellant was no longer employed. The Respondent denied the Appellant's request to antedate by letter issued on November 2, 2016 under subsection 10(4) of the *Employment Insurance Act* (Act).

[3] The Appellant requested a reconsideration of that initial decision on December 2, 2016. The Respondent maintained their initial decision and denied the Appellant's request to antedate by letter issued on December 8, 2016.

[4] The Appellant subsequently filed a Notice of Appeal with the Tribunal on January 5, 2017.

[5] 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

[6] Does the Appellant qualify for an antedate of the initial claim for benefits under subsection 10(4) of the Act?

EVIDENCE

[7] The Appellant made an initial claim for benefits on September 23, 2016.

[8] The Appellant requested her initial claim be antedated to June 2, 2016 (GD3-3 to GD3-14). The Respondent contacted the Appellant to obtain more information on October 5, 2016 and November 2, 2016. The Appellant said that she only became aware that she might be eligible for benefits in July 2016 after speaking with her former colleagues. The Appellant noted that she travelled abroad for family reasons from August 7, 2016 to August 24, 2016. The Appellant advised that the incorrect code was recorded on the Record of Employment (ROE) and that she believed she needed a copy of her ROE in order to make a claim for benefits (GD3-17 and GD3-19).

[9] The Respondent concluded that the claimant failed to show good cause throughout the entire period of the delay in making a claim for benefits (GD3-20).

[10] In her request for reconsideration, the Appellant wrote that she delayed filing her claim because she was not aware that she qualified for benefits, there was a death in her family and that she needed her ROE and paystubs (GD3-21 to GD3-23).

[11] At the hearing, the Appellant confirmed that she did not contact Service Canada to obtain any information about her claim for benefits and that she felt misled by the information posted on their website.

SUBMISSIONS

[12] The Appellant submitted that she was ready, available to work and was actively looking for employment. The Appellant said that she has never applied for regular benefits and was unfamiliar with the process.

[13] The Appellant also noted that she believed she needed her ROE and paystubs to apply for regular benefits. The Appellant acknowledges that she should have taken steps to obtain more information from the Respondent.

[14] The Respondent submitted that the Appellant did not require an ROE to file a claim for benefits because the employer had already submitted an electronic copy on June 8, 2016. The Respondent also submits that the incorrect code on the ROE does not prevent the claimant from making a claim for benefits.

[15] The Respondent noted that the claimant had previously received parental benefits on a previous claim and as a result should have had some knowledge about the availability of benefits. The Respondent notes the claimant has the onus to make herself aware of her rights and obligations under the Act. Lastly, the Respondent submits that the Appellant has not shown good cause throughout the entire delay.

ANALYSIS

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

[17] The Appellant has the burden of proof to show that she qualified to receive benefits on the earlier date and to demonstrate good cause for the entire period of delay in making an application for benefits.

[18] The Appellant testified that her primary reason for the delay was because she believed that she was unable to apply to for benefits without her ROE. The Appellant also said that she was out of the country from August 7, 2016 to August 23, 2016 due to an urgent family illness abroad.

[19] The Federal Court of Appeal ('FCA') established that 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 in order to establish good cause for a delay in making a claim for benefits. (*Mauchel*, 2012 FCA 202; *Bradford*, 2012 FCA 120).

[20] The FCA notes that unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits. (*Kaler*, 2011 FCA 266; *Caron*, A-395-85)

[21] The Appellant's last day of employment was on June 1, 2016. The Appellant testified that she first became aware she could apply for benefits sometime from July 15, 2016 to July 31, 2016 after speaking with her former colleagues. The Appellant said that she did an online search on the Respondent's website to obtain more information about Employment Insurance benefits. The Appellant said that she believed she needed a copy of her ROE before she applied for benefits after reviewing the website. This was disputed by her former Human Resources Manager who told the Respondent that the Appellant was verbally advised to apply for benefits immediately in July 2016 (GD3-18). I note that the Respondent did not participate in the telephone hearing.

[22] The Appellant testified that she contacted her Human Resources Manager and left several voicemails in order to obtain her ROE. The Appellant also spoke to her former Reporting Manager to obtain assistance. The Appellant could not recall any specific dates of the calls and had no supporting documents or call logs to show her attempts to call her former employer.

[23] The Appellant testified that she received a copy of her ROE by email from her Human Resource Manager on September 15, 2016 (GD3-24). The amended ROE was issued because the previous one had an incorrect code listed.

[24] The Appellant submits that she only became aware she might be eligible for benefits in July 2016 after speaking with her former colleagues. The Appellant subsequently reviewed the information available about employment insurance benefits on the Respondent's website. I do not accept her explanation because I find it would have been reasonable for the Appellant to contact the Respondent directly if there was any doubt about whether the ROE or paystubs were mandatory requirements in order to make a claim for benefits. I note that a claimant's reliance on rumors, unverified information or on unfounded and blind assumptions does not constitute good cause (*Trinh* 2010 FCA 335; *Rouleau* A-4-95). Given the significant passage of time before the Appellant received the ROE, I also find it would have reasonably prudent for the Appellant to make the appropriate inquiries with the Respondent. I also note the Appellant was

unable to reach her Human Resources Manager for a period of time, therefore further supporting that inquiries with the Respondent were necessary.

[25] At the hearing, the Appellant acknowledged that she should have contacted the Respondent to obtain more information. The Appellant has a positive obligation to obtain information about her rights and obligations under the Act and ignorance of the law does not constitute good cause.

[26] While the Appellant submits that the Respondent's website is misleading, there was insufficient evidence to establish that she was misled directly or indirectly that the ROE and paystubs were mandatory prior to making a claim for benefits. The Respondent's submissions indicate that their website specifically highlights the following information: "*Always apply for EI benefits as soon as you stop working. You can apply for benefits even if you have not yet received your Record of Employment. If you delay filing your claim for benefits for more than four weeks after your last day of work, you may lose benefits*". The Appellant failed to take appropriate steps to obtain the necessary information and chose only to conduct an online web search. I note that a reasonable person's duty to inform themselves about their rights is not satisfied only by seeking information on the Service Canada Website (Mauchel 2012 FCA 202). Therefore, I find that the Appellant has not established good cause for the period of delay from June 2, 2016 to August 6, 2016.

[27] I accept the Appellant's testimony about her travel from August 7, 2016 to August 23, 2016 for urgent medical travel for a family member's critical illness. I find that this was an extraordinary circumstance that likely prevented her from applying for benefits at that time. While the Appellant did not submit any supporting evidence in relation to the urgent nature of the medical trip, I found her explanation was reasonable and credible. As a result, I find that the Appellant has established good cause for the delay between August 7, 2016 to August 23, 2016.

[28] I note that the documentary evidence indicates that the Appellant applied for benefits eight days after receiving her amended ROE, on September 23, 2016. At the hearing, the Appellant explained that she believed that she also needed her pay stubs before making a claim for benefits. The Appellant said that she was experiencing some technical problems obtaining her paystubs and this caused the eight day delay. I do not accept her explanation because I note

that the ROE already outlines all the insurable hours and pay periods she received (GD3-15 & GD3- 16). The hours and amounts were not disputed by the Appellant. Therefore, I find that the Appellant has not established good cause for the period of delay from September 15, 2016 to September 23, 2016.

[29] While I partially accept that one period of delay claimed by the Appellant was reasonable, specifically the medical emergency abroad, the other periods had no reasonable explanation for the Appellant`s failure to inquire about her rights and responsibilities under the Act. More specifically, the Appellant could have called or visited a Service Canada office to obtain the necessary information and likely resolved her inquiry in a timely manner. In this case, the Appellant seemed more focused on directing her time and efforts to obtain her ROE and paystubs over an extended period of time. Given that the Appellant has not adequately established good cause for the entire period of delay, I must deny the Appellant`s claim to antedate.

[30] In light of the finding on good cause, it is unnecessary for the Tribunal to make a finding on whether the Appellant qualified to receive benefits on the earlier day.

CONCLUSION

[31] The appeal is dismissed.

Solange Losier
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

10 (4) 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.

Employment Insurance Regulations