



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KA v Canada Employment Insurance Commission*, 2017 SSTGDEI 778

Tribunal File Number: GE-17-324

BETWEEN:

K. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: November 2, 2017

DATE OF DECISION: November 14, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

Appellant: K. A.

OVERVIEW

[1] The Appellant became unemployed in September 2014. He filed an initial claim for regular Employment Insurance (EI) benefits on December 15, 2014 and a benefit period was established effective December 14, 2014. The Appellant did not file claim reports with the Respondent because, in part, he was awaiting resolution of wrongful dismissal litigation.

[2] On January 26, 2016 the Appellant requested his claim be reactivated.

[3] On October 19, 2016 the Appellant requested that his application for benefits be antedated so as to commence on December 14, 2014.

[4] The Respondent denied the antedate request at the initial and reconsideration levels because the Appellant did not show good cause throughout the entire period of the delay, from December 14, 2014 to January 26, 2016, in filing his claim reports for EI benefits. The Appellant appealed to the Social Security Tribunal (Tribunal).

[5] The hearing was held by teleconference for the following reasons:

- a) The fact that credibility is not expected to be a prevailing issue;
- 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 Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[6] Whether the Appellant's renewal claim for benefits pursuant to subsection 10(5) of the *Employment Insurance Act (Act)* should be antedated to December 14, 2014 from January 26, 2016.

DECISION

[7] The Tribunal finds that the Appellant's renewal claim for EI benefits pursuant to subsection 10(5) of the *Act* should not be antedated.

EVIDENCE

[8] The Appellant applied for EI benefits on December 15, 2014 (GD3-4) stating that he was dismissed from work on September 26, 2014, which was confirmed in his employer's Record of Employment (ROE) dated October 15, 2014 (GD3-14).

[9] The Appellant's initial benefit period was established effective December 14, 2014. The Appellant did not file claim reports and on January 26, 2016 he requested a renewal of his claim (GD2-22).

[10] In a telephone record of November 3, 2016 (GD3-17), the Appellant told the Respondent that the sole reason he did not file claim reports from December 2014 to January 2016 was due to information from his lawyer that receipt of separation funds from his employer in a wrongful dismissal legal case would occur quickly causing his EI benefit claim to be cancelled out.

[11] On November 4, 2016 the Respondent denied the Appellant's claim for EI benefits for the period December 14, 2014 to the end of his 52 week benefit period, December 11, 2015 (GD3-22).

[12] The Appellant requested a reconsideration of the Respondent's denial of benefits. By letter dated November 28, 2016 (GD3-19), the Appellant said that in January 2015 he called Service Canada to advise that he would not be submitting claim reports with the Respondent due

to his legal case against his employer for severance pay, which he said there was a “*good possibility*” for a quick settlement. He said that he contacted Service Canada through 2015 to January 2016 to advise when he would be out of the country due to his father’s ailing health and eventual funeral. He said he kept the Respondent informed in good faith on a timely basis. He said he has not claimed EI benefits in 41 years of employment and part of the reason for the delay in filing claim reports was that he did not want to “*double dip*” so as to receive EI benefits and a severance settlement from his employer.

[13] In a telephone call on December 21, 2016 (GD3-27), the Appellant told the Respondent that from December 2014 to January 2016 he did not file claim reports because his lawyer told him there was a good possibility for a quick settlement of the legal case for severance pay from his employer. However, he said that he had to withdraw his legal case in January 2016 due to accumulating lawyer’s fees.

[14] With his Notice of Appeal to the Tribunal dated January 22, 2017 (GD2-2), the Appellant said his delay filing claim reports from December 2014 to January 2016 was due to misinformation from his lawyer that his legal case for severance pay from his employer would be decided soon. He said the delay from January 2016 to October 2016 was due to misinformation from the Respondent who delayed and provided him with incomplete and inaccurate information.

[15] The Appellant testified that during the time of the delay in applying for EI benefits he did not ask a Service Canada representative if he needed to file claim reports while he awaited resolution of his legal case. He said he was told to contact them when his circumstances change. He said he did not ask his lawyer whether he needed to file claim reports while he awaited resolution of his legal case.

SUBMISSIONS

[16] The Appellant submitted that:

- a) He is entitled to an antedating of his claim for EI benefits for the period December 14, 2014 to January 26, 2016 due to misinformation from his lawyer that his legal case for severance pay from his employer would be decided quickly;

- b) Delay in filing claim reports from January 2016 to October 2016 was due to misinformation from the Respondent who delayed and provided him with incomplete and inaccurate information;
- c) He kept the Respondent informed in good faith and on a timely basis since applying for EI benefits and he has not claimed EI benefits in 41 years of employment;
- d) Part of the reason for the delay in filing claim reports was that he did not want to “*double dip*” so as to receive EI benefits and a severance settlement from his employer.

[17] The Respondent submitted that:

- a) The Appellant has failed to show good cause for the delay in filing claim reports on a timely basis as required by subsection 26(1) of the *Employment Insurance Regulations* throughout the entire period from December 14, 2014 to January 26, 2016;
- b) Misinformation provided to the Appellant by his lawyer that there was a good possibility of a quick settlement of his legal case for severance pay does not constitute good cause for the delay in filing claim reports;
- c) The Appellant did not enquire about his rights and responsibilities under the EI legislation as a reasonable person in the same situation as the Appellant would have done.

ANALYSIS

[18] The relevant legislative provision is reproduced in the Annex to this decision.

[19] The antedating of renewal claims is permissible under subsection 10(5) of the *Act* in circumstances where the Appellant qualifies for benefits at an earlier date and good cause for the delay is established.

[20] The Appellant made an initial claim for EI benefits on December 15, 2014, and a 52 week benefit period was established from December 14, 2014 to December 11, 2015, pursuant to subsection 10(2) of the *Act*.

[21] The Tribunal finds that the Appellant has not proven good cause for the delay in filing his claim reports to allow an antedate for the period December 14, 2014 to January 26, 2016 pursuant to subsection 10(5) of the *Act*. As such, it is not necessary to make a finding on whether the Appellant qualifies for benefits at an earlier date.

[22] The Appellant submits he is entitled to an antedating of his renewal claim for EI benefits for the period for the period December 14, 2014 to January 26, 2016 due to misinformation from his lawyer that his legal case for severance pay from his employer would be decided quickly. Confusion with the EI application process and ignorance of the law, brought about by good faith, would constitute good faith so long as the claimant was able to establish that he or she had acted as a reasonable and prudent person or established the existence of exceptional circumstances (*Canada (Attorney General) v. Beaudin*, 2005 FCA 123; *Shebib v. Canada (Attorney General)*, 2003 FCA 88).

[23] To establish good cause for the delay, the jurisprudence of the Federal Court of Appeal requires that a claimant “*be 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 (Attorney General) v. Albrecht*, A-172-85).

[24] It is also settled law that, unless exceptional circumstances exist, a claimant has an obligation to take “*reasonably prompt steps*” to determine entitlement to EI benefits and to ensure his rights and obligations under the *Act* (*Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336). The Appellant in this case did not submit any exceptional circumstances to justify the delay.

[25] While the Appellant had contacted Service Canada between filing his claim for EI benefits in December 2014 and requesting a renewal of his claim in January 2016, he chose not to file claim reports during this period as required by subsection 26(1) of the *Regulations*.

[26] The Appellant is not claiming that his lawyer, other third party or the Respondent told him not to file claim reports. The Appellant testified that he did not ask a Service Canada representative or his lawyer whether he needed to file claim reports while he awaited resolution

of his legal case. He had the onus to enquire about his rights and responsibilities under the EI legislation as a reasonable person in the same situation as the Appellant would have done.

[27] The Tribunal finds that a reasonable person in the same position as the Appellant would have made timely enquiries of his lawyer or a Service Canada representative to ensure he would comply with EI procedural requirements to file his EI claim reports under the legislation.

[28] Good cause for delay in filing claim reports must be shown throughout the entire period for which the antedate is required (*Canada (Attorney General) v. Chalk*, 2010 FCA 243). The burden of proof rests on the claimant (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

[29] In this case, the period for which an antedate is requested is over one year, which is a significant period of time within which the Appellant could have informed himself of his rights and responsibilities under the EI legislation.

[30] The obligation and duty to promptly file a claim is seen as very demanding and strict. This is why the “*good cause for delay*” exception is cautiously applied (*Canada (Attorney General) v. Brace*, 2008 FCA 118).

[31] The Appellant submits part of the reason for the delay in filing claim reports from the date his initial claim was made was that he did not want to “*double dip*” so as to receive EI benefits and a severance settlement from his employer. However, filing claim reports does not necessarily mean benefits will be paid for that period. The Tribunal finds that the Appellant did not act like a reasonable person in his situation would have done to verify his rights and obligations under the *Act*.

[32] In regard to the period from January 2016 to October 2016, the Appellant submits the delay in filing claim reports was due to misinformation from the Respondent who delayed and provided him with incomplete and inaccurate information during this period of time; however, delay outside the Appellant’s benefit period established under subsection 26(1) of the *Regulations* is not relevant to the Appellant’s antedate request from December 2014 to January 2016.

[33] Antedating the claim for benefits may adversely affect the integrity of the system where the Commission finds itself in the difficult position of having to engage in a job or process of reconstruction of the events, with the costs and hazards pertaining to such a process. It is a long established principle by the jurisprudence of the Court, that ignorance of the *Act* does not excuse a delay in filing an initial claim for benefits (*Beaudin*).

[34] The Appellant submits he kept the Respondent informed in good faith on a timely basis since applying for EI benefits. The Tribunal accepts that the Appellant has acted in good faith and with the best of intentions. Unfortunately, that does not constitute good cause for entitling him to an antedating of his claim for employment insurance benefits (*Shebib v. Canada (Attorney General)*, 2003 FCA 88).

[35] The Appellant submits he has not claimed EI benefits in 41 years of employment and this supports his claim for antedating his renewal claim for EI benefits. However, the Tribunal is bound by the legislative criteria for EI claims. The Tribunal cannot depart from the legislation and must apply it equally to all persons without exceptions.

[36] The Tribunal finds the Appellant has not proven good cause for the delay in filing his claim reports and accordingly is not entitled to have his claim antedated. The Respondent properly denied the antedate request pursuant to subsection 10(5) of the *Act*.

CONCLUSION

[37] The appeal is dismissed.

Glen Johnson

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

10 (1) A benefit period begins on the later of

- (a) the Sunday of the week in which the interruption of earnings occurs, and
- (b) the Sunday of the week in which the initial claim for benefits is made.

(2) Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

(3) Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

(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.

(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.

(5.1) A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;
- (b) the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or
- (c) the claim is made in any other circumstances set out in the regulations.

(5.2) A claim for benefits referred to in section 23.2 with respect to a critically ill child or children who are critically ill as a result of the same event must not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

(b) the beginning of the period referred to in subsection 23.2(3) or (4) has already been determined with respect to that child or those children and the claim would have the effect of moving the beginning of that period to an earlier date; or

(c) the claim is made in any other circumstances set out in the regulations.

(6) Once a benefit period has been established for a claimant, the Commission may

(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

(7) A cancelled benefit period or portion of a benefit period is deemed never to have begun.

(8) A benefit period ends when any of the following first occurs:

(a) no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

(b) the benefit period would otherwise end under this section; or

(c) [Repealed, 2002, c. 9, s. 12]

(d) the claimant

(i) requests that their benefit period end,

(ii) makes a new initial claim for benefits under this Part or Part VII.1, and

(iii) qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

(9) Whether or not the benefit period has ended, a request under paragraph 8(d) 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 request was made.

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

(a) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

(b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;

(c) in receipt of workers' compensation payments for an illness or injury; or

(d) in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

(11) A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

(12) If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

(12.1) If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

(13) If, during a claimant's benefit period,

(a) regular benefits were not paid to the claimant,

(b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and

(c) the maximum total number of weeks established for those reasons is greater than 50,

the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

(13.1) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.2) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.3) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.4) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.5) A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

(13.6) A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

(13.7) A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

(14) Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

(14.1) The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

(15) Unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).

50 (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.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

- (3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.
- (4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.
- (5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.
- (6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.
- (7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.
- (8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.
- (8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.
- (9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.
- (10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

Employment Insurance Regulations

26.1 (1) The definitions in this subsection apply in this section.

condition of entitlement to benefits means any requirement, circumstance or condition referred to in subsection 49(1) of the Act. (*condition d'admissibilité au bénéfice des prestations*)

period of eligibility means

- (a) in respect of the benefits referred to in subparagraph (2)(c)(i), one of the following

periods, to which is added the waiting period referred to in section 13 of the Act if that period has not already been served:

(i) the period referred to in subsection 22(2) of the Act and any extension of that period,

(ii) the period referred to in subsection 23(2) of the Act,

(iii) the period referred to in subsection 23.1(4) of the Act,

(iv) the period referred to in subsection 23.2(3) or (4) of the Act;

(b) in respect of the benefits referred to in subparagraph (2)(c)(ii), the period during which the claimant attends a course or program, referred to in paragraph 25(1)(a) of the Act, that is an apprenticeship course or an apprenticeship program; and

(c) in respect of the benefits referred to in subparagraph (2)(c)(iii), the period during which the claimant is employed in work-sharing employment referred to in section 24 of the Act. (*période d'admissibilité*)

(2) Notwithstanding section 26, a claimant is not required to make periodic claims for benefits in accordance with that section where

(a) the claimant makes an initial claim for benefits or a claim in respect of which subsection 26(2) applies;

(b) the claimant's period of eligibility ends after June 26, 1999;

(c) the claimant makes a claim for benefits in respect of every week of unemployment in the claimant's period of eligibility

(i) for a reason set out in paragraph 12(3)(a), (b), (d) or (e) of the Act,

(ii) under section 25 of the Act, to attend an apprenticeship course or an apprenticeship program, or

(iii) under section 24 of the Act, to receive work-sharing benefits, and

(d) the claimant completes a form, provided by the Commission, stating that

(i) to the best of the claimant's knowledge at the time of completing the form, there are no conditions of entitlement to benefits that will not be met for each week in the period of eligibility, except in respect of earnings that may be deducted under section 19, 22, 23, 23.1 or 23.2 of the Act during that period,

(ii) the claimant will notify the Commission as soon as possible if the claimant ceases to meet a condition of entitlement to benefits at any time during the period of eligibility and failure to meet that condition has the effect of reducing or eliminating any benefits for any week in the period of eligibility, or if the

claimant has earnings referred to in subparagraph (i) in respect of that period, and

(iii) the claimant will notify the Commission at the end of the period of eligibility whether or not they have met the conditions of entitlement to benefits for each week in the period of eligibility and whether or not they have declared all earnings that could be deducted under section 19, 22, 23, 23.1 or 23.2 of the Act during that period.

(3) If the Commission becomes aware that the claimant does not meet a condition of entitlement to benefits during the claimant's period of eligibility, this section shall cease to apply in respect of the claimant's claim for benefits as of the date on which the Commission becomes aware of the claimant's failure to meet the condition.