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

Citation: *R. N. v. Canada Employment Insurance Commission*, 2018 SST 310

Tribunal File Number: GE-17-2977

BETWEEN:

R. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: March 6, 2018

DATE OF DECISION: March 21, 2018

Canada

DECISION AND REASONS

OVERVIEW

[1] The Appellant was employed as a roofer when he underwent heart surgery. He applied for employment insurance (EI) sickness benefits and established a benefit period in early 2016. He requested information from the Canada Employment Insurance Commission (Respondent) about his eligibility for benefits after he was medically cleared to return to work in December 2016 but received incorrect information that caused him to delay his claim. The Appellant attempted to reactivate his benefit period in March 2017 and the Respondent determined he was unable to do so, because the benefit period had ended. The Appellant wants his claim antedated to December 19, 2016, as that was when he was first able to return to work. The Tribunal must decide whether his claim can be antedated.

DECISION

[2] The appeal is allowed. The Appellant showed he had good cause throughout the entire period of the delay in making his claim for benefits.

ISSUE

[3] Did the Appellant show good cause for the delay in making his claim?

ANALYSIS

[4] Subsection 10(5) of the *Employment Insurance Act* (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 the claim was made.

[5] Subsection 50(4) of the Act states that a claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time. The "prescribed time" is set out in the *Employment Insurance Regulations*, subsection 26(2) of which states that, where a claimant has not made a claim for benefits for four or more consecutive weeks, the first claim for benefits

after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed.

Did the Appellant show good cause for the delay in making his claim?

[6] Yes. The Appellant has shown he had good cause throughout the entire period of the delay in making his claim.

[7] The Appellant must show he had good cause for failing to make a claim for benefits throughout the entire period of the delay, which is from December 19, 2016, the date on which the Appellant was able to return to work, to March 17, 2017, the day he made a claim for benefits.

[8] Good cause is not the same as having a good reason, or a justification for the delay. In order to establish good cause the Appellant must show that he did what a reasonable and prudent person in the same circumstances would have done to satisfy himself as to his rights and obligations under the Act (*Canada (Attorney General) v. Mauchel*, 2012 FCA 202).

[9] The Appellant was employed as a roofer when he underwent heart surgery in January 2016. He established a benefit period starting February 14, 2016 and was paid sickness benefits until June 11, 2016. After his sickness benefits ended, the Appellant was advised by the Respondent that he could not claim regular benefits until he was medically able to return to work. The Appellant's doctor approved him to return to work on December 19, 2016, at which time he visited a Service Canada office to reactivate his benefit period.

[10] The Appellant provided the Respondent with a medical note from his doctor dated December 12, 2016, stating that he was able to begin a graduated return to work starting on December 19, 2016. His doctor prescribed that he would be cleared to return to work full time after he had worked five days at four hours each day and a further five days at six hours each day. The days did not have to be worked consecutively.

[11] The Appellant testified that during his visit to Service Canada in December 2016, he was advised by the Respondent that he was unable to make a claim until he had completed the graduated return to work and was back to work at full capacity. The Respondent does not have a

record of this conversation, but does not dispute the Appellant's statement that he was given this incorrect information. Considering the only evidence is the Appellant's testimony and the Respondent does not dispute his version of events, the Tribunal finds as fact that the Appellant was given this erroneous advice.

[12] The Appellant argues that his graduated return to work took twelve weeks to complete due to his seasonal work schedule. The Appellant testified that the nature of his work as a roofer depends heavily on the weather, and that his employer would only call him when work was possible due to weather conditions. This resulted in an interrupted work calendar, in which the Appellant worked ten non-consecutive days of limited hours to complete his graduated return to work schedule on March 8, 2017. In support of this extension of his graduated return to work schedule, the Appellant provided the Tribunal with another medical note from his doctor, dated September 5, 2017 that the Appellant followed his doctor's instructions in working ten days of limited hours starting from December 19, 2016 before he was considered medically able to return to working eight-hours per day on March 8, 2017.

[13] The Appellant submits that after he became able to work at full capacity again he made his claim for benefits based on the advice he was previously given by the Respondent. The Respondent then determined that he could not be paid benefits because his benefit period had ended on February 11, 2017.

[14] The Tribunal finds that the Appellant acted as reasonable person in his situation to inform himself of his rights and obligations under the EI Act by contacting the Respondent directly in December 2016 to request information about claiming benefits after his doctor determined he was medically able to return to work. The Appellant contacted the Respondent in December 2016 and received incorrect information that advised him he could not claim regular benefits until he had completed his graduated return to work and was back to working an eight hour day. His reliance on this advice is the entire reason for his delay in making a claim from December 19, 2016 to March 17, 2017.

[15] The Respondent argues that the Appellant was well informed about the EI system and knew how to convert his claims to a different type of benefits; how to direct questions and requests to the Respondent; as well as how to use his "My Service Canada" account, which

stated the end date of the Appellant's benefit period as February 11, 2017. The Appellant testified that he relied on EI benefits seasonally due to the nature of his work and had received benefits in the past. While the Respondent does not dispute that they gave the Appellant incorrect information in December 2016, they argue that he should have known better than to rely on the advice that he received, because of his past experience as a claimant.

[16] The Tribunal does not find this argument persuasive, as a reasonable and prudent person would rely on the representations of the Respondent and defer to their assumedly greater knowledge of the EI Act. The Tribunal finds the Respondent's argument fails because it applies a greater burden on the Appellant, due to his experience as a previous EI beneficiary, than the legal test for good cause, which is to act as a reasonable person would have in the same circumstances.

[17] Good cause may be found where a mistake induced by the Respondent's representations is the cause for the delay, and the delay is not imputable to the Appellant (*Pirotte v. Unemployment Insurance Commission et al*, A-108-76). A mistake or failure by the Respondent to provide accurate information does not necessarily constitute good cause, the information must be found to be necessary for an Appellant to make an intelligent decision (*Bradford v. Canada Employment Insurance Commission*, 2012 FCA 120). The Tribunal accepts that the erroneous advice the Appellant received from the Respondent was information that was necessary for him to ascertain his rights and obligations under the Act and to claim benefits within the statutory deadline.

[18] Absent exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand his rights and obligations under the Act (*Canada (Attorney General) v. Somwaru*, 2010 FCA 336). There is no evidence to support that there were exceptional circumstances, but the Tribunal finds that the Appellant took reasonably prompt actions to enquire about his benefit entitlement in December 2016. The Appellant received clearance that he was medically able to return to work and promptly visited the Service Canada office to enquire about his benefit entitlement.

[19] Good cause includes circumstances in which it is reasonable for a claimant to consciously delay making a claim (*Attorney General of Canada v. Ehman* A-360-95). The Tribunal finds the

Appellant acted as a reasonable person in relying on the advice of the Respondent and delaying making a claim for benefits until after he had completed his graduated return to work.

[20] The Appellant made direct enquiries to the Respondent regarding his benefit entitlement and took reasonably prompt steps to verify his rights and obligations under the EI Act by visiting a Service Canada office. His reliance on incorrect information provided by the Respondent was the reason for his delay in filing his claim for benefits, as the information was necessary for him to make an intelligent decision to file. The Tribunal therefore finds that the Appellant's actions have met the legal test for good cause throughout the entire period of the delay, as he demonstrated that he acted as a reasonable and prudent person would have in similar circumstances. The Tribunal finds that the Appellant's request for an antedate of his claim for EI benefits to December 19, 2016, is allowed, pursuant to subsection 10(5) of the Act.

CONCLUSION

[21] The appeal is allowed.

Catherine Shaw
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. N., Appellant

ANNEX

THE LAW

Employment Insurance Act

10 (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.

50 (4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

Employment Insurance Regulations

26 (1) 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.

(2) Where a claimant has not made a claim for benefits for four or more consecutive weeks, the first claim for benefits after that period for a week of unemployment shall be made within one week after the week for which benefits are claimed.