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

Citation: *R. P. v Canada Employment Insurance Commission*, 2018 SST 1373

Tribunal File Number: GE-16-3958

BETWEEN:

R. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa M. Day

DATE OF DECISION: June 5, 2018

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for regular employment insurance benefits (EI benefits) on June 27, 2014. The Commission could not process the Appellant's claim because his Social Insurance Number (SIN) was flagged as dormant and the date of birth on his application for EI benefits differed from the one on record with the Social Insurance Registry. These issues remained unresolved after the Appellant attended an in-person interview on July 18, 2014, and the Appellant's claim for EI benefits could not be processed. The Commission refused a request for reconsideration by the Appellant on the basis that there had not yet been an initial decision rendered on his claim. The Appellant appealed to the Social Security Tribunal of Canada (Tribunal) and won the right to a reconsideration.

[2] The Commission undertook a reconsideration of its original decision not to process his claim for EI benefits. As part of the reconsideration process, the Commission requested the Appellant attend an in-person interview on July 21, 2016 to provide certain information in connection with his claim, namely one piece of primary proof of identity, one piece of government-issued photo identification, and one completed Social Insurance Number (SIN) application form. The Appellant failed to attend the interview or otherwise schedule a different date to attend in person and provide the information requested. The Commission then issued its reconsideration decision, which modified the original decision by allowing Appellant's claim effective June 22, 2014, but imposed a disentitlement on his claim for failing to attend the interview on July 21, 2016, as required by subsection 50(6) of the *Employment Insurance Act* (EI Act). The Appellant appealed to the Tribunal, arguing that he had already properly identified himself and provided the information in an interview that took place in July 2014 and, therefore, should not be required to attend another interview.

[3] The Appellant's appeal was identified as a potential "Charter" appeal, namely an appeal that could involve an issue that certain rights and freedoms guaranteed to the Appellant under the Canadian *Charter of Rights and Freedoms* (Charter) had been infringed and/or that the Appellant had been discriminated against on the basis of a prohibited ground of discrimination. The Appellant participated in a Pre-Hearing Case Conference on October 2, 2017 and was provided

with information on the requirements for raising a Charter argument before the Tribunal. The Appellant was given until November 17, 2017 to file the Charter notice required under paragraph 20(1)(a) of the *Social Security Tribunal Regulations*. The Appellant failed to file that notice, and his appeal was returned to the regular appeal track for consideration.

[4] On January 15, 2018, the Appellant was advised that the Tribunal was considering summarily dismissing his appeal, and that he had until February 14, 2018 to provide written submissions as to why his appeal had a reasonable chance of success (GD28). The Appellant's responding submissions are at GD35 and GD36.

ISSUE

[5] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[6] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[7] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[8] Subsection 50(6) of the EI Act specifically authorizes the Commission to require a claimant attend an interview to provide information **in person** (emphasis added). Subsection 50(1) of the EI Act provides that a claimant who fails to fulfil or comply with a condition or requirement under section 50 of the EI Act is not entitled to receive EI benefits for as long as the condition or requirement is not fulfilled or complied with.

EVIDENCE

[9] The Appellant applied for EI benefits on June 27, 2014 (GD3-3 to GD3-6). The background regarding the Commission's initial response to his application for EI benefits can be found in the extensive documents submitted by the Appellant in the present appeal at GD5-20 to

GD5-149. It was also summarized by the Tribunal in its decision of April 8, 2016 (a complete copy of which was filed by the Appellant at GD11-17 to GD11-27). The relevant facts are as follows:

- On his initial application for EI benefits, the Appellant did not indicate his gender, noting it is not applicable, and provided only a post office box in Windsor, Ontario as his mailing and residential addresses.

- The Appellant was invited to attend an interview with an Integrity Services Investigator from the Commission in order to provide information regarding his SIN, which had been flagged as dormant for at least 5 years (GD3-7).

- The Appellant attended the interview on July 18, 2014, at which time he indicated that there was no requirement for a claimant to use a government agency within 5 years of applying for benefits in order to receive EI benefits. He subsequently advised that there was also no requirement to provide a physical address; and that the birthdate on his application for EI benefits was correct, regardless of what was in the SIN registry. He declined to apply to amend his SIN information (GD3-9 to GD3-11, and GD3-17 to GD3-19).

- The Commission advised the Appellant that, because he did not provide the required information, his application for EI benefits was not processed and his application was deleted.

- The Appellant submitted a Request for Reconsideration (GD3-12 to GD3-19). In its response (GD3-20), the Commission stated that the Appellant had not satisfactorily proven his identity and, therefore, his claim for EI benefits could not be processed. As a result, the Commission could not proceed with a reconsideration because it had not yet made an initial decision on his claim.

- The Appellant appealed to the Tribunal.

- In its decision of April 8, 2016, the Tribunal found that the Commission ***did*** make an initial decision, namely a decision "not to establish a benefit period" when it took action

> on the file and deleted/cancelled the Appellant's claim (GD11-26 to GD11-27), The Tribunal therefore found that the Commission had an obligation to reconsider that decision pursuant to section 112 of the EI Act.

[10] By letter dated July 7, 2016 (GD3-32 to GD3-36), the Commission advised the Appellant that his application for EI benefits had been reinstated and that he was required to attend an in-person interview on July 21, 2016 to provide information to validate his SIN record. The Appellant was specifically advised to bring the following to the interview:

- At least one piece of identification from the provided list of Primary proof-of-identity document list (photocopies not accepted).
- One piece of government-issued photo identification.
- A completed SIN application, for NAS-2120 (a copy was enclosed).

[11] The Appellant responded by letter dated July 15, 2016 (GD3-37), stating that his SIN had already been validated and there was no reason for a meeting.

[12] The Appellant did not attend the interview on July 21, 2016, nor did he contact the Commission to reschedule his interview.

[13] The Commission issued the following reconsideration decision on August 14, 2016 (GD3-38 to GD3-39):

> "As directed by the Social Security Tribunal, the Commission is formally reconsidering the initial decision not to establish a claim for benefits due to receiving insufficient information to validate your identity.
>
> The initial decision rendered on this issue is being modified as a claim for benefits is being established effective from June 22, 2014.
>
> However, we are unable to pay you any benefits as you failed to attend an in-person interview on July 21, 2016 as instructed by the Commission on July 7, 2016. This interview was required to confirm your identity and validate the status of your SIN. A disentitlement from benefits is being imposed effective from June 23, 2014 pursuant to sections 50(1), 50(5) and 50(6) of the EI Act." (GD3-38)

[14] In his appeal materials (GD2), the Appellant included an Appendix "A" to his Notice of Appeal (GD2-5 to GD2-9), in which he stated the following:

- that he attended an in-person interview with the Commission on July 18, 2014 and identified himself "by showing government issued photo identification and a copy of his birth certificate" (GD2-6).
- That he subsequently corrected the birth date on his SIN record (GD2-6).

SUBMISSIONS

[15] The Appellant submitted that:

a) he has already properly identified himself to the Commission, Service Canada, the SIN registry and to the Tribunal, and that the Commission's request he attend for another in-person interview is frivolous, vexatious, a form of harassment, and not supported by legislation or fundamental justice.

b) he "fulfilled and/or complied with the conditions authorized under section 50" of the EI Act (GD35-4) when he attended the interview on July 18, 2014, and that the legislation does not authorize "multiple attendances" (GD35-12) or "ongoing Gestapo type interrogations in order to harass people and try to trick the claimants into saying something that is not true, so their EI can be denied" (GD35-6).

c) the Tribunal should consider the entire file from his prior appeal to the Tribunal (being file number GE-14-3752) because the Member in that case found that the Commission was circumventing the rules under the EI Act when it cancelled his claim; and natural justice suggests the two files should be merged so that a fully informed decision can be rendered. Also, "there may be an unlawful pattern found that undermines the processes" made under the EI Act and related to the Tribunal itself (GD36-4).

[16] The Commission submitted that:

a) Subsection 48(2) of the EI Act requires a claimant to supply such information as the Commission may require in the form and manner directed by the Commission.

b) Subsection 49(1) of the EI Act requires that a person who makes a claim for EI benefits for a week of unemployment proves that he meets the requirements for receiving EI benefits and that no circumstances or conditions exist that may have the effect of disentitling or disqualifying him from receiving EI benefits.

c) Subsection 50(1) of the EI Act outlines that a claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive EI benefits for as long as the condition or requirement remains not fulfilled or complied with.

d) Subsection 50(5) of the EI Act further identifies that the Commission may, at any time, require a claimant to provide additional information about their claim for benefits.

e) Subsection 50(6) of the EI Act states that the Commission may require a claimant to be at a suitable place at a suitable time in order to make a claim for EI benefits in person or to provide additional information about a claim.

f) While the Appellant's date of birth has been undated in the SIN record system, no documentation in this regard has been received by the Commission.

g) The Appellant is not in compliance with subsections 50(1), (5) and (6) of the EI Act in order to prove his entitlement to EI benefits. In order to validate his identity and status in Canada, as well as the status of his SIN, he is required to attend an in-person interview with the Commission, which he has failed to do. As a result, a disentitlement from EI benefits is warranted until he complies with the requirements of the EI Act by attending an in-person interview to provide the additional information required of him. Specifically, he is required to attend an in-person interview "so that his original primary proof of identity documents can be examined and so that the status of his SIN can be reviewed, in order to validate his identity" (GD4-4).

h) Where the Commission has directed a claimant to attend an interview, the claimant has an obligation to attend that interview: *Canada (AG) v. Vilaca, A-370-99.*

i) The Tribunal has no discretion to vary the administrative requirements under section 50 of the EI Act.

ANALYSIS

[17] In order to receive EI benefits, the Appellant must satisfy the eligibility requirements in the EI Act and must prove that there are no circumstances or conditions that could disentitle or disqualify him from receipt of benefits: subsection 49(1) of the EI Act. To this end, the Commission is empowered to require the Appellant to supply such information as it may require – and in the form and manner it directs: subsection 48(2) of the EI Act; and may – at any time – require the Appellant to provide additional information about his claim: subsection 50(5) of the EI Act. This includes the power to require the Appellant to attend for an in-person interview to provide additional information about his claim: subsection 50(6) of the EI Act. The Appellant cannot receive EI Benefits as long as a requirement under section 50 of the EI Act (in this case: the Commission's request he attend for an in-person interview) remains outstanding and unfulfilled: subsection 50(1) of the EI Act.

[18] There is no dispute that the Appellant failed to attend the July 21, 2016 interview requested by the Commission. Indeed, it is clear from the Appellant's written response to the interview request (GD3-37) that he objected to attending the interview and had no intention of doing so.

[19] The Appellant submitted that he has already properly identified himself for purposes of his claim, and that the Commission's request he attend an in-person interview on July 21, 2016 was frivolous, vexatious, a form of harassment, and not supported by legislation or fundamental justice. The Appellant's self-assessment as to the sufficiency of the steps he took to confirm his identity is neither determinative nor relevant. It is not for the Appellant to decide if he has provided information that *should* be sufficient for the Commission's purposes. That is up to the Commission, and the Commission determined that it required additional information and a further in-person interview with the Appellant in order to assess his eligibility for EI benefits. Contrary to what the Appellant submitted, this is entirely within the powers accorded to the Commission under sections 48 to 50 of the EI Act. The integrity of the employment insurance program depends on the Commission being able to conduct fulsome assessments as to the eligibility of claims, and on claimants such as the Appellant complying with requests made under sections 48 to 50 of the EI Act. Moreover, there is no discretion in the legislation for the

Tribunal to waive the requirement for the Appellant to attend for a further in-person interview on July 21, 2016. Regardless of the Appellant's belief that the Commission's actions are vexatious and constitute harassment (a view the Tribunal does not share), the Tribunal does not have the authority to grant the remedies the Appellant is seeking at GD2-9.

[20] The Appellant further submitted that he fulfilled the conditions authorized under section 50 of the EI Act when he attended the interview on July 18, 2014, and that the legislation does not authorize multiple attendances for the same claim. While the Appellant did attend for an in-person interview on July18, 2014, there were numerous outstanding issues following that meeting, as documented in the Report of Interview at GD3-9 to GD3-11, and in the three letters written by the Appellant at GD3-14 to GD3-19. Once again, the Appellant's self-assessment as to his resolution of the Commission's concerns and, thus, his satisfaction of his obligations under section 50 of the EI Act, is neither determinative nor relevant. That is for the Commission to decide, and the Commission issued a request for a further interview. There is nothing whatsoever in the EI Act that limits the Commission to one interview per claim. The fresh request for the Appellant to attend for an interview was made on July 7, 2016 (GD3-32 to GD3-33) and clearly references the requirement to provide information pursuant to section 48 of the EI Act. This requirement simply cannot be said to have been satisfied by the interview that took place two years earlier in July 2014. Additionally, as above, the Tribunal has no discretion to waive the requirement for the Appellant to attend for a further in-person interview.

[21] The Appellant also submitted that the Tribunal should consider the entire file from his prior appeal (in file number GE-14-3752) because of the Member's findings in the April 8, 2016 decision that the Commission was circumventing the rules and because there may be "an unlawful pattern" that undermines the processes provided for in the EI Act. The Tribunal has carefully reviewed the April 8, 2016 decision and, in particular, the analysis in paragraphs 39 to 48 thereto. Contrary to the Appellant's submission, there were no findings that the Commission was circumventing the rules or otherwise undermining the process provided for in sections 48 to 50 of the EI Act. In the April 8, 2016 decision in GE-14-3752, the Tribunal made the following findings:

- That by refusing to do a reconsideration decision under section 112 of the EI Act, the Commission had rendered a decision (paragraph 40).

- That the Appellant is a "claimant" under the EI Act (paragraph 41).

- That the Commission does not have the authority to simply delete or cancel an application for benefits because it is incomplete and must make a decision on every initial claim for benefits it receives (paragraph 43).

- That in the Appellant's case, the Commission made an initial decision to not establish a benefit period (paragraphs 44 to 46).

- That since the Appellant is subject to this decision, and since he made a request for a reconsideration of that decision, the Commission must reconsider it pursuant to section 112(2) of the EI Act (paragraph 47 and 49).

[22] As a result of the Tribunal's decision in GE-14-3752, the Commission undertook a reconsideration of its decision not to establish a benefit period for the Appellant. As part of the reconsideration process, the Commission asked the Appellant to attend an in-person interview on July 21, 2016, which he declined to do. On September 14, 2016, the Commission rendered a reconsideration decision (GD3-38 to GD3-39), namely that the Appellant was disentitled to EI benefits pursuant to subsections 50(1), (5) and (6) of the EI Act for failing to attend the in-person interview on July 21, 2016. The Tribunal's decision in GE-14-3752 has been fully implemented by the Commission, and that file adds nothing to the issue before the Tribunal on this appeal.

[23] The Appellant has taken a stand based on a purported need to safeguard his privacy. He has done so to his own detriment. The EI Act does not allow any discretion with respect to the procedure and requirements for filing a claim for EI benefits set out in sections 48 to 50 of the EI Act, and the Tribunal does not have discretion to vary the clear wording in the legislation. The Tribunal cannot waive the requirement for the Appellant to attend the in-person interview scheduled for July 21, 2016, and, therefore, the disentitlement imposed on his claim for failing to attend that interview is correct. Moreover, it is not in the discretion of the Tribunal to grant any of the remedies being sought by the Appellant at GD2-9.

[24] In the present case, the failure of the Appellant's appeal is pre-ordained no matter what evidence or arguments might be presented at a hearing. The Tribunal is satisfied that the Appellant's appeal has no reasonable chance of success and, therefore, must summarily dismiss his appeal pursuant to subsection 53(1) of the DHRSD Act.

CONCLUSION

[25] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed

Teresa M. Day

Member, General Division - Employment Insurance Section