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

Citation : *W. S. v Canada Employment Insurance Commission*, 2018 SST 1409

Tribunal File Number : GE-17-3208

BETWEEN :

W. S.

Appellant

and

Canada Employment Insurance Commission

Respondant

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY : Catherine Frenette

HEARD ON : June 13, 2018

DATE OF THE DECISION : July 4, 2018

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] On March 30, 2017, the Appellant renewed his initial claim for benefits made on April 17, 2016. The Appellant requested that the renewal be antedated to November 20, 2016, when he lost his job. The Appellant did not make a claim for benefits in November 20, 2016, because the Employer told him he was not eligible and because he still had a part time job. The Canada Employment Insurance Commission (CEIC) determined that the Appellant did not have a good cause for the delay throughout the period of the delay. The Tribunal has to decide if the Appellant had a good cause for the delay and therefore if the renewal can be considered to have been made on an earlier day.

ISSUE

[3] Does the Appellant have good cause for the delay in making a claim for benefits throughout the entire period of the delay?

ANALYSIS

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

[5] 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 the benefits are claimed (subsections 50(4) of the *Employment Insurance Act* (the Act) and 26 (1) of the *Employment Insurance Regulations*).

[6] In order to soften this general rule, the legislation provides the notion of antedate which is an advantage of exceptional nature (*Canada (General Attorney)* v. *Scott*, 2008 FCA 145).

[7] The antedate goes directly against the principle of the Act which encourages the prompt filling of the claims for the CEIC to adequately verify the eligibility of the claimant (*Pirotte* v. *Unemployment Insurance Commission*, A-108-76).

[8] In addition, when an initial claim is accepted, the claimant must, during the benefit period that has been established, submit regular requests in which the claimant must demonstrates his availability. Therefore, it is difficult for the CEIC to not only verify the validity of claims retroactively, but also to sanction a claimant who fails to meet his weekly obligations (*Canada (General attorney)* v. *Brace*, 2008 FCA 118). A significant delay makes it difficult for the CEIC to ensure that a claimant who submits an application fulfills the conditions throughout the delay period (*Canada (General attorney)* v. *Beaudin*, 2005 FCA 123).

[9] Subsection 10(5) of the Act provides that a claim for benefits, other than an initial claim for benefits, made after the 3 weeks delay, shall be regarded as having been made on an earlier day and ending on the day when the claim was made 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.

Does the Appellant have good cause for the delay in making a claim for benefits throughout the entire period of the delay?

[10] The idea of "good cause" is not defined in the Act. It is therefore necessary to rely on case law.

[11] There is no easily applicable objective criterion to determine what constitutes good cause (*Canada (General Attorney)* v. *Albrecht*, A-172-85). Every case must be analyzed in part subjectively, based on an appreciation of the facts.

[12] A claimant has the burden of proving the existence of good cause throughout the entire period of the delay by showing 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" (*Albrecht*, supra; see also *Canada (General Attorney)* v. *Persiiantsev*, 2010 FCA 101).

[13] Moreover, unless there are exceptional circumstances, a reasonable and prudent person is expected to take reasonably prompt steps to determine whether he or she is entitled to Employment Insurance benefits and take reasonable measures to inquire about his or her rights

and obligations under the Act (*Canada (General-Attorney)* v. *Carry*, 2005 FCA 367; *Beaudin*, supra; *(General-Attorney)* v. *Somwaru*, 2010 FCA 336).

[14] Also, ignorance of the law and good faith are not, by themselves, good cause (*Canada (General Attorney)* v. *Caron*, A-395-85; *Canada (General Attorney)* v. *Kaler*, 2011 CAF 266; *Carry*, supra; *Canada (General Attorney)* v. *Labrecque*, A-690-94; *Beaudin*, supra). These elements must be analyzed according to the criterion of the reasonable person placed in the same situation (*Beaudin*, supra).

[15] The Tribunal finds that the Appellant did not have a good cause throughout the entire period of the delay. The Appellant did not act as a reasonable and prudent person in the same situation would have done to satisfy himself as to his rights and obligations under the Act.

[16] The Appellant filed in an initial claim on April 10, 2016, for sickness benefits which he received until July 16, 2016. From this date, the Appellant received disability benefits from his group insurer until September 2016.

[17] In August 2016, the Appellant’s doctor wanted him to return progressively to work, for 2 days per week. Unfortunately, the Employer refused this progressive plan.

[18] So, in order to follow his doctor's prescription to work 2 days a week, the Appellant found a part-time job where he worked as a bouncer in a bar starting on August 27, 2016.

[19] In November 2016, his group insurer discovered that the Appellant had another job while receiving disability benefits. The Employer summoned the Appellant to a meeting with the director of the human resources of the Employer and the Union representative on November 17, 2016. During this meeting, the Employer fired the Appellant because he did not tell the insurer he was working part-time while receiving benefits. The Appellant asked the director of human resources for his record of employment and she answered that it does not matter because he could not receive Employment Insurance because he was fired. The Appellant truly believed the director because she was a leading authority on the human resources.

[20] Furthermore, the Union representative did not correct the affirmation of the Employer. The Appellant told the Tribunal that the Union representative was preoccupied with filing a grievance for a reintegration to work.

[21] Afterwards, the Appellant did not contact the CEIC to obtain more information because the Employer told him he was not eligible to receive benefits and the Union was working towards getting his job back. The Appellant also said that he was still fragile at that time and that he was panicking because he lost his job.

[22] The Tribunal also asked the Appellant why, in November 2016, he did not call the CEIC to verify the Employer's statement that he was not entitled to receive benefits. The Appellant said that he believed the Employer, because the director of human resources has been working for a while and the Union did not correct her and was trying to get his job back. Moreover, since the Union was trying to reinstate him, the Appellant did not want to receive benefits and have to repay them once he went back to work.

[23] After he was fired from his full-time job, the Appellant continued to work at his part-time job until February 2017, when that Employer lost the contract with the bar where he was working. The Appellant was laid off work, and he started looking for another job.

[24] In March 2017, the Appellant's Employer from the part-time job told him that he would be getting another contract, but meanwhile, he should apply for Employment Insurance benefits. The Appellant thought he was still not eligible, but his Employer told him to apply anyway and that he had nothing to lose. So, the Appellant asked for a renewal of his claim.

[25] The Appellant called the Union for advice on whether it was possible to apply for Employment Insurance benefits and the representative approved the suggestion.

[26] In June 2017, the CEIC informed the Appellant that his benefit period had ended. So, on June 29, 2017, the Appellant ask for an antedate to November 20, 2016, because there was so much confusion about the termination of that full-time job. The Appellant explained to the Tribunal that the confusion was about the fact that he was fired and he thought he was not eligible for benefits and because the Employment Insurance system his really complicated.

[27] Also, in June 2017, the Appellant learned that the CEIC did not consider that he lost his job due to his misconduct.

[28] On July 11, 2017, a Union representative sent an antedate request to the CEIC on behalf of the Appellant mentioning that when he was fired the Employer told him he would not qualify for benefits because of his misconduct. But, on June 27, 2017, an agreement was reached between the Employer and the Appellant who waived his right to reinstatement.

[29] In his reconsideration request, the Appellant told the CEIC that he did not know he could ask for Employment Insurance benefits while working part-time.

[30] The Tribunal asked the Appellant why in the course of the reconsideration request he did not mention that his Employer told him he was not eligible for benefits. The Appellant explained that he knows he told the first agent at the CEIC, but through all the processes, he talked with so many agents and, somehow he got lost in all the communication with the CEIC. Also, the Appellant explained that he was doing what the CEIC was telling him to do.

[31] The Appellant also submitted a statement of the Union representative who negotiated the settlement agreement. The representative said that he advised the Appellant to wait until the settlement with the Employer before asking for an antedate.

Appellant's arguments

[32] The Appellant alleged that he did not file his claim sooner, because of 2 reasons: 1) the Employer told him he was not eligible to receive benefits and 2) he did not know he could get benefits if he had a part time job.

[33] The Appellant submitted that he acted like a reasonable person who had also received the wrong information from his Employer. In fact, it was reasonable for the Appellant to believe the Employer because it is a large company, well organized with hundreds of employees who were represented by a Union. So because of the importance of the company, it was reasonable for the Appellant to believe that the Employer knew what it was talking about. Also, the director of human resources was an authority figure. For all these reasons, a reasonable person would have

believed his Employer. Moreover, the representative of the Union who was present at the meeting did not correct the Employer. Therefore, the information was more believable for the Appellant.

[34] The Appellant also submitted that the decision *Albrecht,* supra, is quite similar to the present case. In *Albrecht,* supra the Federal Court of Appeal concluded that the ignorance of the law could be a good cause regarding the subjective factors of the claimant's situation. Also, the duty of care does not require acts that go beyond reasonable bounds. Every case must be analyzed according to the facts and the subjective appreciation of the Appellant. In *Albrecht,* supra, the Federal Court of Appeal concluded that the claimant was misled by his Employer, he was not familiar with the Employment Insurance system and he did not have the knowledge and the expertise of the Employer (see also *Canada (General Attorney)* c. *Dickson,* 2012 FCA 8).

[35] The Appellant submitted that it was important to consider his personal situation and his psychological vulnerability. The Appellant was coming out of a major depression; he was having a difficult separation with the mother of his 3 children. Also, the Appellant did not finish high school and consequently was not highly educated.

[36] Also, in the decision *De Jesus* v. *Canada (General Attorney),* 2013 FCA 264, the claimants were not aware of the Employment Insurance system and they were inactive in their efforts. The Federal Court of Appeal concluded that in some exceptional circumstances a claimant who has been inactive can be considered that a reasonable person would have acted the same way.

[37] The Appellant submitted to the Tribunal that the Act should be interpreted in favour of the workers considering that the objective of the law is to compensate the workers who find themselves involuntarily unemployed (*Canada (General attorney)* v. *Richardson,* A-596-91where the Federal Court of Appeal quoted the decision *Canada (CEIC)*v. *Gagnon,* [1988] 2 S.C.R. 29). The interpretation of a "good cause" should not be too restrictive; it should remain in the limits of the reasonability (*Canada (General attorney)* v. *Gauthier,* A-1789-83).

[38] The Appellant suggested that the Tribunal draw a parallel between the present case and the decision of *Paquette* v. *Canada (General Attorney),* 2006 FCA 309.

[39] Also, in the decision *Canada (General Attorney)* v. *Roy,* A-216-93, the Federal Court of Appeal confirmed that the depression of the claimant can be taken into account as an exceptional circumstance. In this case, the claimant did not make an initial claim because she was unable to work, she was not available and she thought she would find a new job earlier.

[40] The Appellant submitted the decision *Canada (General Attorney)* v. *Park,* A-706-94, where the Federal Court of Appeal confirmed the decision of the Umpire. He concluded that the claimant acted as a reasonable person because she had a mistaken belief of the law and it was not ignorance of the law. The decision *Canada (General Attorney)* v. *Usmani,* 2012 CAF 24, the Federal Court of Appeal refused to intervene in a decision of the Umpire because of the unusual facts of the case. The Umpire confirmed the decision of the Board of Referees that consider the claimant acted as a reasonable person because he had the personal conviction he was not admissible.

[41] The Appellant presented the decision *Canada (General Attorney)* v. *White,* 2009 CAF 292 in which the Board of Referees consider that the claimant acted as a reasonable person because he was overwhelmed with personal worries and it was why the claimant did not inquire about his right and obligations. The Umpire confirmed the decision and the Federal Court of Appeal refused to intervene.

[42] Finally, in the decision *Canada (General Attorney)* v. *Fingard,* A-509-94, the Federal Court of Appeal confirmed the decision of the Board of Referees who believed that the claimant had justified his delay. The claimant waited until the dispute over the wrongful dismissal and the grievance would be over before making an initial claim.

[43] Also, for the Appellant, the fact that he received sickness benefits earlier the same year is not relevant because it is not the same system.

CEIC's Arguments

[44] The CEIC submitted that the Appellant's renewal claim for benefits is effective March 19, 2017, because the claimant delayed filing his claim for 17 weeks and did not act like a reasonable person in his situation would have done to verify his rights and obligations under the

Act. The CEIC believes that the Appellant had the responsibility to contact the CEIC to verify the information given by the Employer. It is not uncommon or unreasonable for persons to seek information from a third party who by virtue of that person's office or employment could be regarded as experienced and knowledgeable, and from whom the claimant could anticipate accurate information. Because the Appellant did not do so, the CEIC considers that he did not act like as a reasonable person.

Decision

[45] The Tribunal finds that the Appellant did not act as a reasonable and prudent person in the same circumstances or situation would have acted to ensure compliance with his rights and obligations under the Act and therefore did not show that there was a "good cause" for the delay throughout the entire period.

[46] The Appellant explained that he did not make a claim in November 2016 because his Employer told him he was not eligible according to the decision *Albrecht*, supra.

[47] In the decision *Albrecht*, supra, the claimant had received incorrect information from his former Employer. The information was confirmed by the claimant's employment agency. Due to this misinformation, the Federal Court of Appeal found that the claimant had good cause for the delay.

[48] However, in the decision *Brace*, supra, the Federal Court of Appeal concluded that the fact that the former Employer had given wrong information is not a good cause, especially since the information had not been verified. A reasonable person would have taken steps to protect his claim and would have inquired the CEIC. The criterion of a reasonable person requires the claimant to take necessary steps to verify the information received from a person other than the CEIC:

> "The law is therefore clear that, barring exceptional circumstances, a prospective claimant in the respondent's position is expected to "take reasonably prompt steps" to understand her obligations under the Act. As part of this requirement, the respondent was expected to make reasonable

> inquiries to verify the information that she had received." (*Canada (General Attorney)* v. *Trinh*, 2010 FAC 335)

[49] The Tribunal finds that the same principle should apply to the Appellant (*Brace*, supra; *Trinh*, supra). It is true that the Employer is an authority figure, but not in regard of the Employment Insurance.

[50] The Tribunal considers that the nature of the information provided to the Appellant by his Employer is important. In *Albrecht*, supra, the Employer told the claimant that he had to receive his record of employment and the full payment of his severance pay before making a claim for regular benefits. So, the Employer did not advise the Appellant regarding his eligibility but rather at the moment when the claimant could make his claim. The Employer, no matter how important the company is, does not have the competence to decide on the eligibility to the Employment Insurance of his employees.

[51] Also, in *Albrecht*, supra, the claimant tried to verify the information given by the Employer by questioning the employment agency. In the present case, not only did the Appellant did not try to verify the commentary of the Employer, but also he blindly believed the Employer that just fired him. This is not the behaviour of a reasonable person (*Brace*, supra; *Trinh*, supra).

[52] Therefore, the Appellant did not act as a reasonable person because he did not verify the information given by the former Employer.

[53] The Appellant submitted that the Union was present at the meeting and did not correct the wrong information provided by the Employer. But, as the Appellant highlighted to the Tribunal, the Union was preoccupied by the reintegration of the Appellant, which was in his fields of competence. The Appellant could not rely on the silence of the Union to approve the information given by the Employer. In fact, the Appellant did not ask the opinion of the Union and there is no evidence that the Union representative had the knowledge of the declaration of the Employer.

[54] There is no evidence that, throughout the delay, the Appellant did make any attempt to contact the CEIC to inquire about his rights and obligations to Employment Insurance benefits

(*Albrecht*, supra; *Persiiantsev*, supra; *Scott*, supra; *Beaudin*, supra; *Somwaru*, supra).The Tribunal finds that the Appellant did not act as a reasonable person. Therefore, the Tribunal has to analyze if there are any exceptional circumstances in this case.

[55] In accordance with the Appellant submission, ignorance of the law can be a "good cause" if there are exceptional circumstances, as long as a reasonable person would have acted the same way (*Caron*, supra; *Albrecht*, supra; *Somwaru*, supra).

[56] The Appellant submitted that his personal condition should be taken into account as being an exceptional circumstance. The Appellant did not have any knowledge about the Employment Insurance system, he did not finish high school, he was going out of a major depression and he was psychologically fragile because of many life events. The Appellant also explained that when he was fired, he was panicking because he had just lost his main source of income.

[57] The Tribunal finds that the personal condition of the Appellant does not constitute an exceptional circumstance.

[58] The Tribunal understands that the Appellant was emotionally fragile. But his fragility did not stop the Appellant from being functional. Contrary to the decision *Roy*, supra, the Appellant mentioned that he was able and available to work. So even though he was fragile, his condition did not stop him from functioning. Therefore, the Appellant had personal worries, but there is no evidence that he was overwhelmed with them (*White*, supra). So the personal worries and the Appellant's fragility were not exceptional circumstances.

[59] In addition, the fact that the Appellant did not have a high level of education is not an exceptional circumstance due to the fact that he was introduced to the Employment Insurance system. The Appellant already received 15 weeks of sickness benefits in spring of the same year. So, the Appellant knew of the existence of the Employment Insurance system and of the CEIC as well. The Appellant also had a file open at the CEIC, so he knew how to make weekly claim for benefits. Also, the jurisprudence does not require that a reasonable person knows all the subtlety of the law, but requires that a person take measures to inquire about his rights and obligations. The evidence demonstrates that the Appellant had the capacity to do so.

[60] The Appellant also submitted that his inaction is an exceptional circumstance in regard of his personal limitation, like in the decision *De Jesus*, supra. The Tribunal believes that this decision does not apply to the present case.

[61] In the decision *De Jesus*, supra, the Federal Court of Appeal acknowledge the fact that there are disadvantages for the migrant worker within the Canadian labour market, mostly because the workers did not speak French or English, they are socially isolated and that they are mostly afraid to lose their job if they ask for benefits.

[62] The difference between the present case and the *De Jesus*, supra decision is that the disadvantages are not as major. In *De Jesus*, supra, the workers were unable to contact the CEIC to learn what their rights and obligations were, which is not the case with the Appellant. Not only did the Appellant know the existence of the Employment Insurance system, but he was able to express himself both in French and English. Therefore, the inaction of the Appellant cannot be considered as an exceptional circumstance according to *De Jesus*, supra, because he had the capacity to be proactive and also, a reasonable and prudent person would have been proactive.

[63] The Appellant also asked the Tribunal to do a parallel with the decision *Paquette*, supra, as both the Appellant and the claimant wrongfully believed that they were disqualified for Employment Insurance. The Tribunal cannot do this parallel between the *Paquette*, supra and the Appellant's case. The claimant in *Paquette*, supra knew he was disqualified because the law provided that a claimant is not entitled to receive benefits during the waiting period. In the present case, there was no decision of disqualification. So, the mistaken belief was not on the same basis.

[64] The Appellant also submitted that his wrongful belief does not constitute ignorance of the law (*Park*, supra; *Usmani*, supra). The Tribunal cannot accept the pretension of the Appellant, because the fact to mistakenly believing that he was not eligible constitutes ignorance of the law (*Canada (General Attorney)* v. *Innes*, 2010 CAF 341; *Carry*, supra; *Labrecque*, supra). So, if the wrong belief is ignorance of the law, the Appellant should have demonstrated that he acted as a reasonable person in order to have a good cause (*Beaudin*, supra). The Tribunal already concluded that the Appellant did not act as a reasonable person, so he did not have a good cause.

[65] Finally, the fact that the Appellant did not believe that he was entitled to benefits because he was working part-time is not a valid ground under the jurisprudence (*Innes*, supra; *Canada (General Attorney)* v. *Dunnigton*, A-1865-83).

[66] Considering all of the evidence, the Tribunal finds that the Appellant has not proved that he had good cause for the entire period of the delay in making a claim for benefits. The Tribunal finds that he did not act as a reasonable and prudent person in the same circumstances or situation would have acted to ensure compliance with their rights and obligations under the Act. The request for antedate pursuant to subsection 10(5) of the Act is denied.

CONCLUSION

[67] The appeal is dismissed.

Catherine Frenette
Member, General Division - Employment Insurance Section

METHOD OF HEARING :	Videoconference
APPEARANCES :	W. S., Appellant M^{e} Richard-Alexandre Laniel, representative of the Appellant

ANNEXE

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.

Employment Insurance Regulation

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