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

Citation: *M. R. v. Canada Employment Insurance Commission*, 2018 SST 729

Tribunal File Number: AD-18-10

BETWEEN:

M. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: July 13, 2018

Canada

DECISION AND REASONS

DECISION

[1] The General Division decision is allowed.

OVERVIEW

[2] The Appellant, M. R. (Claimant), was dismissed from his employment on September 4, 2016, and visited a Service Canada office to ask about Employment Insurance benefits. From what he was told by a Service Canada agent, the Claimant understood that he needed to obtain his Record of Employment (ROE) before he could apply for benefits. He left the office with the intention of obtaining this document. The Claimant had some difficulty obtaining his ROE because his employer had gone out of business, but his ROE was finally prepared on November 7, 2016, and mailed to him. He returned to Service Canada, where he was told to file his application online, which he did. The Claimant's online application was dated November 23, 2016, but he later requested that his initial claim be antedated to September 5, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), refused his request to antedate on the basis that he had not shown good cause for the delay.

[3] The Commission did not change its decision in response to the Claimant's request for reconsideration. The Claimant appealed to the General Division, but his appeal was dismissed. He has now appealed to the Appeal Division.

[4] The General Division erroneously found that the Claimant did not ask about his rights and obligations until late October 2016. It also erred in law by failing to consider whether his circumstances were exceptional. As a result, the appeal is allowed. I have revisited the General Division's conclusions to make the decision that the General Division should have made. I find that the Claimant showed good cause for the delay and I allow the antedating of the Claimant's application. The initial claim shall be regarded as having been made on September 5, 2016.

ISSUES

[5] Did the General Division base its decision on an erroneous finding of fact that was made in a perverse or capricious manner or without regard to the Claimant's testimony that he first

visited a Service Canada Centre to ask about benefits within a week or less of his dismissal from his employment?

[6] Did the General Division err in law:

a) by failing to consider whether the Claimant's misunderstanding of the requirement for an ROE constituted good cause;

b) by failing to consider whether the Claimant acted as a reasonable person to satisfy himself as to his rights and obligations; or

c) by failing to consider exceptional circumstances that justified the delay?

ANALYSIS

Standards of review

[7] The grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act) are similar to the usual grounds for judicial review, suggesting that the standards of review analysis that is applied by the courts might also be applicable at the Appeal Division.

[8] However, I do not consider the application of standards of review to be necessary or helpful. In *Canada (Citizenship and Immigration) v. Huruglica*,[1] the Federal Court of Appeal was of the view that standards of review should be applied only if the enabling statute provides for their application. Administrative appeals of Employment Insurance decisions are governed by the DESD Act, which does not provide that appeals should be conducted in accordance with the standards of review. *Huruglica* also stated that the principles that guided the role of courts on judicial review of administrative decisions have no application in a multilevel administrative framework.

[9] *Canada (Attorney General) v. Jean*[2] concerned a judicial review of an Appeal Division decision. The Federal Court of Appeal was not required to rule on the applicability of standards

[1] *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93
[2] *Canada (Attorney General) v. Jean*, 2015 FCA 242

of review, but it acknowledged in its reasons that administrative appeal tribunals do not have the review and superintending powers that are exercised by the Federal Court and the Federal Court of Appeal where the standards of review are applied. The Court also observed that the Appeal Division has as much expertise as the General Division and is therefore not required to show deference.

[10] Certain other Federal Court of Appeal decisions appear to approve of the application of the standards of review,[3] but I am nonetheless persuaded by the reasoning of the Court in *Huruglica* and *Jean*. I will therefore consider this appeal by referring to the grounds of appeal set out in the DESD Act only.

General principles

[11] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. The General Division must apply the law to these facts in order to reach conclusions on the substantive issues raised by the appeal.

[12] For the Appeal Division to intervene in a decision of the General Division, the Appeal Division must find that the General Division has made one of the types of errors described by the "grounds of appeal" in s. 58(1) of the DESD Act.

[13] The only grounds of appeal are described below:

a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material.

[3] See, for example, *Hurtubise v. Canada (Attorney General)*, 2016 FCA 147; *Thibodeau v. Canada (Attorney General*), 2015 FCA 167

Evidence of first visit to Service Canada

[14] A claimant must show good cause for delaying their claim during the entire period of the delay.[4] As I noted in the leave to appeal decision, the extent of the Claimant's initial delay before his visit to a Service Canada Centre appears to have factored significantly into the decision that the Claimant did not show good cause for the entire period of the delay.

[15] The General Division calculated that the Claimant's initial visit to Service Canada was about seven weeks from the date he was laid off. To arrive at this date, the General Division used the date of the ROE as a starting point and worked backwards, based on the Claimant's testimony that he received the ROE between two and three weeks after his visit. In doing so, the General Division disregarded the Claimant's testimony that he went to Service Canada "immediately," on "September 9 or 10," or within the first week after his employment terminated. The General Division provided no reasons for preferring the date it derived over the Claimant's specific testimony.

[16] The General Division failed to provide reasons why it resolved the apparent inconsistency in favour of the date that it derived and it is therefore impossible to know whether it took into account the Claimant's specific testimony regarding the date of his first visit. Thus, the General Division either erred in making a finding of fact without regard for the Claimant's evidence under s. 58(1)(*c*), or it erred in law by providing insufficient reasons under s. 58(1)(*b*).

Failure to consider whether the Claimant's reasons constitute "good cause"

[17] In order for the Commission to regard an initial claim for benefits as having been made on an earlier day than the date of the application, s. 10(4) of the *Employment Insurance Act* (Act) requires that the claimant show that he had "good cause for the delay throughout the benefit period beginning on the earlier day and ending on the day when the initial claim was made."

[18] The Commission argued that it was not clear that the General Division considered whether the Claimant's incorrect assumption that he needed his ROE to apply satisfied the requirement of having good cause.

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[4] *Canada (Attorney General) v. Dickson*, 2012 FCA 8; *Canada (Attorney General) v. Kaler*, 2011 FCA 266

[19] In fact, the General Division did consider that the Claimant was unfamiliar with the law or with Employment Insurance benefits,[5] that he sought advice about claiming benefits from Service Canada, and that he was asked about the ROE. The General Division found that the Claimant had assumed that he needed the ROE to apply,[6] that a claimant cannot rely on misinformation to show good cause, and that a claimant has a duty to understand his obligations.

[20] It is clearly implicit that the General Division considered whether the Claimant's mistaken view that he needed the ROE in order to apply amounted to good cause and found that it did not. I do not find that the General Division erred in law, in this regard.

Failure to consider whether the claimant acted as a reasonable person to satisfy himself as to his rights and obligations

[21] The Federal Court of Appeal has held that, barring exceptional circumstances, a claimant in this position is expected to take reasonably prompt steps to understand his obligations under the Act.[7]

[22] The General Division made no specific finding as to whether the Claimant's actions were reasonably prompt. However, it did consider the "belated" nature of the initial enquiry in determining that the Claimant did not act as a "reasonable and prudent" person. In *Quadir v. Attorney General of Canada*,[8] the Federal Court of Appeal held that the requirement to act as a reasonable and prudent person would have acted in the circumstances and the requirement to take reasonably prompt steps are essentially the same test. The question in the end is "one of reasonability, informed by the applicant's subjective appreciation of the circumstances, assessed on an objective standard."[9] *Quadir* determined that the "reasonableness" of the claimant's conduct was a question of mixed fact and law, in which settled law is applied to the facts. Therefore, the Appeal Division has no jurisdiction, and I cannot consider this question.

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[5] General Division decision, para. 27
[6] Ibid., paras. 29–30
[7] *Canada (Attorney General) v. Somwaru*, 2010 FCA 336; see also *Kaler*, *supra* at note 4
[8] *Quadir v. Attorney General of Canada*, 2018 FCA 21
[9] Ibid., para. 12

Failure to consider whether the Claimant's circumstances were "exceptional"

[23] As noted above, the determination of whether there is "good cause" necessarily requires an examination of whether the circumstances were exceptional, i.e. such that a claimant should not be expected to have acted promptly.

[24] The General Division stated that it considered whether there were "exceptional circumstances," noting that the Claimant had reported no particular challenges that **prevented** him from making additional enquires about the impact of his missing ROE.[10] However, this is too restricted a view. In *The Attorney General of Canada v. Gauthier,*[11] the Federal Court of Appeal rejected an approach that would require that the circumstances act to **prevent** the making of an application, even allowing that there may be circumstances in which it is reasonable for a claimant to consciously delay making a claim. Furthermore, it is not clear what circumstances, if any, the General Division actually considered in finding that he did not "submit any exceptional circumstances to justify the delay."[12]

[25] The General Division applied an unjustifiably strict test to determine that the Claimant's circumstances . Furthermore, its reasons were insufficient. The General Division also failed to analyze the Claimant's particular circumstances or adequately explain on what basis it found them to be unexceptional. For these reasons, I find the General Division erred in law under s. 58(1)(*b*) of the DESD Act.

[26] I have found that the General Division based its decision on an erroneous finding of fact, namely that the General Division ignored the Claimant's testimony as to when he first visited Service Canada. I have also found that the General Division erred in law by failing to analyze whether the Claimant's circumstances were exceptional. Therefore, the appeal is allowed.

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[10] General Division decision, para. 34
[11] *The Attorney General of Canada v. Gauthier*, A-1789-83
[12] General Division decision, para. 36

Remedy

[27] Having allowed the appeal, I must now consider the appropriate remedy. Under s. 59 of the DESD Act, I have the authority to give the decision that the General Division ought to have given; to refer the matter back to the General Division for reconsideration; or to confirm, rescind, or vary the decision of the General Division in whole or in part.

[28] Where a claimant is seeking to have a claim antedated to an earlier day, the claimant must show good cause for the delay throughout the period beginning on the earlier day and ending on the day the initial claim was made and that the claimant qualified for benefits on the earlier day.[13] In this case, the Claimant seeks antedating to September 5, 2016, and he made an initial claim on November 23, 2016.

[29] There is no dispute that the Claimant would have qualified for benefits on the earlier day. He lost his employment through no fault of his own, as a result of the closure of his employer's business. He clearly had more than enough hours to qualify for benefits within what would have been his qualifying period, had he applied for benefits on the earlier date.

[30] To establish that he had good cause for the delay, the onus is on the Claimant to also 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."[14] His obligations include an obligation to take "reasonably prompt steps" to determine entitlement to benefits and to ensure his rights and obligations under the Act[15]—unless there are exceptional circumstances.

Delay to first visit to Service Canada

[31] The General Division relied on the fact that the Claimant delayed going to Service Canada by almost seven weeks to find that the Claimant did not act as a reasonable and prudent person throughout the whole period of the delay.

[32] However, I find that the initial delay was not more than a week. The Claimant's evidence was that he went to Service Canada on September 9 or 10 or within a week of his September 4

[13] *Employment Insurance Act*, s. 10(4)
[14] *Canada* (*A.G.*) *v. Albrecht*, A-172-85
[15] *Canada* (*A.G.*) *v. Carry*, 2005 FCA 367

dismissal. However, his estimates of the date that he received his ROE were in the range of two to four weeks from his visit to Service Canada, and he was clearly uncertain of how much time had lapsed between his visit to Service Canada and the day when he received the ROE.

[33] I find the Claimant to be generally credible, but to have some difficulty remembering particular dates. I consider that his estimate of the date of his first visit to Service Canada is more likely to be reliable than his estimate of the date on which he received his ROE in the mail. His visit to Service Canada was a physical visit that the Claimant relates to the significant event of his dismissal and that took place shortly after that event. Conversely, the receipt of his ROE in the mail is not correlated with any date of particular significance and was at least two months after his dismissal. I prefer the Claimant's evidence that he sought advice from Service Canada within a week of his dismissal to any date derived from his estimation of how long it took for him to receive the ROE.

[34] I find that the delay between the Claimant's dismissal and his first visit to Service Canada is insufficient to support a finding that he did not have good cause for the delay during that time. While I appreciate that the reason for the delay is more important than the length of the delay,[16] the delay to this point consists of just one work week. In my view, claimants must be permitted to have **some** time to assess their situation and to consider how to determine their rights and responsibilities. This is a sufficient and reasonable explanation for such a short delay.

[35] However, a claimant must have good cause for the **entire** period of the delay. Therefore, the Claimant must also have good cause for delaying his application from the point he spoke to a Service Canada agent until the date he finally filed his application on November 23, 2016.

Delay until receipt of ROE

[36] In the Commission's written submissions to the General Division, the Commission did not dispute that the Claimant made the initial visit to the Service Canada Centre, but it did suggest that the visit was in the nature of a "general enquiry" only. However, the Commission's representative had no personal knowledge or record of the conversation that the Claimant had with the Service Canada agent. The only evidence to which the Commission could refer was an

[16] See *Canada (Attorney General) v. Burke*, 2012 FCA 139

outline in an agent's notes of an April 2017 telephone conversation between an agent and the Claimant. This conversation took place almost seven months after the Claimant visited Service Canada, and the notes are merely the agent's summary of the conversation—not a transcription. According to those notes, the Claimant said that a Service Canada agent asked him whether he had an ROE, which he didn't, and that he took this to mean that he needed an ROE to apply. The Claimant is reported to have also said that he did not ask whether an ROE was required to file and that he assumed it was needed.[17]

[37] The Claimant's testimony was that he went to Service Canada for the purpose of applying for benefits and that he communicated at least this much to the agent. The Claimant testified that the Service Canada agent's response to his request was to ask him whether he had his Record of Employment, to which the Claimant answered "No." The Claimant testified that the agent then said, "When you have [the] ROE, then apply."[18] The Claimant also testified that the agent told him that he needed his ROE to apply. However, at the suggestion of the General Division member, he conceded that he may have misunderstood what he was told because his English is not very good.[19]

[38] The General Division found it more likely that the advice the Claimant received was not specific enough or that the Claimant misunderstood it,[20] and I have no reason to interfere with this conclusion. However, I find it implausible that the Claimant would have gone to Service Canada to file his application, that he would specifically communicate that he had lost his job and that he wished to apply for benefits, that the agent would ask him for his ROE, that he would tell the agent that he did not have his ROE (none of this evidence has been contradicted), and that the conversation would just end there—that he would then walk away without completing the application process.

[39] In my view, the Claimant's departure without completing his application makes sense only if the Claimant's testimony is accepted that some further discussion took place by which the Claimant was led to believe that the ROE was required. Furthermore, unless the Service Canada agent believed that it was actually reasonable for the Claimant to defer filing his application until

[17] GD3-20
[18] Audio recording, 00:08:03
[19] General Division decision, paras. 16(b), 30; Audio recording, 00:14:24
[20] General Division decision, para. 31

he could return with his ROE, it is implausible that the agent would have permitted him to leave without informing him that he could begin his application even without the ROE.

[40] Despite the Claimant's imperfect English and his concession that he may have misunderstood what he was told, the Claimant maintained that the person at the information desk gave him misleading information[21] and he said the "only reason everything is delayed is the answer" (referring to what he was told at Service Canada).[22]

[41] Therefore, I accept that what the Service Canada agent told the Claimant was consistent with the Claimant's testimony that he was told to apply or to come back when he had his ROE.[23] The Claimant may have "took that to mean"[24] that he could not apply until he had the ROE, but as an assumption, it is not unfounded. It might more accurately be described as a reasonable inference.

[42] The General Division noted that "[o]ne would hope that [the Claimant] would have received all the information he required through his one visit to Service Canada, and his limited enquiry, but an agent cannot reasonably be expected to predict each person's individual circumstances."[25] This appears to have been said with reference to the fact that the Claimant did not communicate his difficulties in obtaining his ROE and that he did not ask specifically whether he needed to wait for his ROE before applying.

[43] The Claimant agreed with the General Division member that he did not tell the Service Canada agent that he might have difficulties producing the ROE and that he did not ask for help obtaining it.[26] Therefore, it is quite possible that the agent would have had no reason to believe that the Claimant could not just go home and come right back with his ROE.

[44] However, one would expect the agent to have understood that the Claimant could have filed his application without an ROE, to appreciate the potential prejudice to the Claimant if he was to delay his application, and to be careful not to discourage the Claimant from filing his application in any way. In coming to Service Canada within such a short time of his dismissal,

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[21] Audio recording, 00:14:35
[22] Ibid., 00:20:06
[23] Ibid., 00:10:05
[24] GD3-20
[25] General Division decision, para. 30
[26] Audio recording, 00:22:20

the Claimant was acting properly in pursuit of his right to apply for benefits and in accordance with his obligations under the Act. In my view, the Claimant should not have had to anticipate that a Service Canada agent might deflect him from his proper course unless he volunteered whatever additional information the agent might require.

[45] I agree with the General Division that the agent should not be asked to "predict" a claimant's individual circumstances, but I do not agree that the circumstances in this case called for the Commission to "predict" anything. The Claimant's intentions were clear: he went to Service Canada to apply for benefits and he told an agent he wanted to apply for benefits.[27] The Service Canada agent did not need to know how difficult it might be for the Claimant to obtain his own ROE because the Service Canada agent is not responsible for managing risks that the Claimant might face as a result of such delays. The agent did not need this information to direct, encourage, or permit the Claimant to complete his application.

[46] As stated by the Federal Court of Appeal in *Pirotte v. The Deputy Attorney General of Canada*[28] and many cases that followed, "ignorance of the law is not an excuse." However, *Pirotte* also opined as follows:

> I cannot conceive of any workable criterion short of a duty of care that would be satisfied only by application to the Commission itself for information as to the precise requirements of the law and regulations. In such a case we would be dealing not so much with ignorance of law as with **mistake induced by representations on behalf of the Commission. Such a case might be regarded as good cause for delay because it would be a cause imputable to the Commission** rather than to the claimant. [emphasis added]

[47] Not only did the Claimant make an "application to the Commission itself for *information*," he actually attempted to make applyication to the Commission for **benefits** in circumstances where the Commission could have received his application, but did not. The Service Canada agent represented that the Claimant could apply when he had his ROE—which was not false, so far as it goes—but it was a representation that was made in response to the Claimant's attempt to apply for benefits. Regardless of the agent's understanding or intention,

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[27] Ibid., 00:09:30
[28] *Pirotte v. The Deputy Attorney General of Canada* A-108-76

such a representation suggests, at least, that the Claimant could not apply unless he had his ROE. In my view, the information provided (that the claimant needed his ROE to apply), combined with the information that was omitted (that the claimant could still file right away, even without the ROE), is of a kind with "misinformation."

[48] In *Attorney General of Canada v. Rouleau,*[29] the Federal Court of Appeal found that misinformation did not amount to good cause, but the source of misinformation in that case was a "current rumour." Misinformation was also rejected in *The Attorney General of Canada v. Trinh,*[30] but the claimant had not identified the source of her misinformation, and the Court found that the claimant did not make "reasonable inquiries to verify the information." In the present case, the source is the Commission itself. The Claimant had just asked to file his application and he was told he needed his ROE. I cannot find that the Claimant is required to explicitly reframe his request to ask whether he *might still be permitted to apply*, despite his lack of ROE, or that his failure to do so is a failure to make reasonable enquiries.

[49] As noted in *The Attorney General of Canada v. Albrecht,*[31] "each case must be judged on its own facts and, to this extent, no clear and easily applicable principle exists; a partially subjective appreciation of the circumstances is involved which excludes the possibility of any exclusively objective test." As I understand the facts, the Claimant understood that he could not file his application without his missing ROE. Regardless of whether he was told this in terms both precise and explicit, I find that his belief and understanding were reasonable in the circumstances. I also consider that it was reasonable for him to have sought and obtained his ROE before making a second attempt to apply for benefits—providing he acted reasonably in seeking to obtain the ROE.

[50] The Claimant had some difficulty obtaining his ROE because his former employer was bankrupt, but he finally obtained it about two and a half months after visiting Service Canada. He stated in his Notice of Appeal that he tried to call his former employer to get a copy of his ROE on several occasions. When questioned by the General Division member, he agreed that the phone calls would not have helped him if the phone was disconnected, but there was no evidence

[29] *Attorney General of Canada v. Rouleau*, A-4-95
[30] *The Attorney General of Canada v. Trinh*, 2010 FCA 335
[31] *Albrecht*, *supra* at note 14

as to the number of times he tried to reach the number, that it was the business phone that he was calling, or that the phone was disconnected.

[51] Regardless, the Claimant agreed that he did not do anything else to obtain the ROE, other than attempt to call. His ROE was prepared and mailed to him only after his former employer's store was purchased and reopened on November 1, 2016, and the new owner contacted him to come back to work.

[52] I would not consider the Claimant's persistence with unproductive phone calls for two and a half months without seeking help from the Commission to have been either reasonable or prudent but, in my view, but the Claimant's circumstances were exceptional.

Existence of exceptional circumstances

[53] The Claimant had learned from Service Canada that they would not accept his application without his ROE, so he had little reason to attempt another application without first obtaining his ROE. This is not a situation where a claimant relied on information from a third party, asked for general or hypothetical advice, or even where he recklessly relied on what he understood as a result of a casual enquiry put to the Commission about the application filing process. The Claimant visited a Service Canada Centre with the express purpose of applying for benefits at a time when he was eligible to apply and, whatever the precise nature of the information, the Claimant was dissuaded from his purpose by what he was told.

[54] The Federal Court of Appeal has allowed that there could be exceptional cases in which "inaction and submissiveness would be understandable regardless" of whether the claimant had demonstrated that he did what a reasonable and prudent person would have done in the same circumstances.[32]

[55] The Claimant acted diligently by applying for benefits initially, but he was then diverted from completing that application by what he learned at Service Canada about the Commission's prerequisites. The Claimant did not visit the Service Canada Centre for the purpose of obtaining information or advice. Instead, he sought to file his application for benefits, as was his right and

[32] *Caron v. Attorney General of Canada* A-395-85

obligation. Instead of assisting him with filing his application, a Service Canada agent offered advice or suggested some course of action that did not involve taking his application immediately. While it would be difficult to precisely define the Commission's duty of care to claimants, I am satisfied that the Commission should take care that its agents do not discourage claimants from filing their applications when they are eligible to apply, particularly when the claimant visits a Service Canada Centre and expresses a present intention to file an application. If the Claimant left Service Canada without completing his application because he was misled or confused, this ought not to be held to his prejudice.

[56] In my view, the manner in which the Claimant was diverted from his objective of applying for benefits is an exceptional circumstance justifying his relative inaction while he sought to obtain his ROE. His failure to return to the Commission to seek assistance in obtaining the ROE is likewise understandable in light of his experience with Service Canada.

[57] I note that the Claimant also testified that he visited Service Canada a second time; this warrants some consideration. The Claimant said that he was told at that time that he could apply **without the ROE**[33] and that he was also told that he could apply online,[34] but it is not clear whether these were directions for how he should proceed with his application or whether it was after-the-fact, "for future reference"-type advice.

[58] The Claimant did not say when this second visit occurred. If the Claimant was told that he could apply without his ROE before he actually obtained his ROE, then further delay could not be justified. However, I do not accept that this second visit occurred before he received the ROE. I accept that the Claimant had been to Service Canada before with the intent and purpose of filing his application and that the only reason that he did not do so at that time was that he was given to understand that he needed the ROE. It is therefore implausible that he would not have applied immediately on being informed that he did not need the ROE to apply.

[59] I accept that the second visit either occurred after the Claimant had already filed or that he returned home to file his application online, in accordance with instructions he received at

[33] Audio recording, 00:13:10
[34] Ibid., 00:15:17

Service Canada. Therefore, I do not view the second visit to Service Canada to be a relevant consideration in determining whether the Claimant had good cause for the delay.

Delay after the Claimant secured the ROE

[60] The ROE is dated November 7, 2017, but the Claimant testified he received it by mail. According to his application for reconsideration dated February 2017, the Claimant received the ROE in late November. According to his Notice of Appeal dated April 2017, he received it in mid-November of 2016,[35] and he applied "soon after that." In his testimony at the General Division, the Claimant said he couldn't remember when he received it, but he did remember that he applied for benefits the same day he received the ROE.[36] At another point, he said that he received the ROE one day before he applied.[37] The online application was submitted on November 23, 2016.

[61] The ROE could not have been mailed until sometime after its November 7 date. Depending on when it was mailed, it is plausible that the ROE did not reach the Claimant for a week or two or even more. This would be consistent with either the mid-November estimate from the Notice of Appeal or with the late-November estimate from the request for reconsideration. The Claimant variously testified that he applied immediately after receiving the ROE, the same day he received the ROE, and the day following his receipt of the ROE. Based on the application date of November 23, his testimony suggests that he applied on either November 22 or 23.

[62] I do not consider this to be a significant discrepancy, and I accept the Claimant's testimony that he received the ROE on November 22 or 23. The only evidence that might be considered contrary is his own "mid-November" estimate found in his Notice of Appeal. However, his testimony is consistent with his earliest recorded statement (found in his request for reconsideration), where he said that he applied in late November. There is effectively no delay between the receipt of the ROE and the date of application, and the Claimant acted as a reasonable and prudent person in filing his application for benefits once he received the ROE.

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[35] GD2-5
[36] Audio recording, 00:17:06
[37] Ibid., 00:19:10

[63] In summary, I find that the Claimant took reasonably prompt steps to learn about his obligations under the Act by visiting the Service Canada Centre initially and by filing his application once he had obtained his ROE. I consider the delay between his visit to Service Canada and his receipt of his ROE to be justified by exceptional circumstances. As a result, I find that the Claimant has good cause for the delay throughout the period of the delay.

[64] The Claimant worked September 4, 2016, so the first day on which he experienced an interruption of earnings is September 5, 2016. The Claimant may antedate his application to September 5, 2016.

CONCLUSION

[65] The appeal is allowed.

[66] I am exercising my jurisdiction under s. 59 of the DESD Act to make the decision the General Division should have made. The initial claim shall be regarded as having been made on September 5, 2016.

Stephen Bergen
Member, Appeal Division

HEARD ON:	June 19, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M. R.