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

Citation: *S. M. v Canada Employment Insurance Commission*, 2019 SST 1566

Tribunal File Number: GE-18-3719

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: January 15, 2019

DATE OF DECISION: January 17, 2019

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant stopped working due to a workplace injury on September 12, 2016. She collected worker's compensation benefits until January 17, 2017. Her own doctor would not permit her to return to work, but the worker's compensation board determined that she had recovered and refused to pay any more benefits. The Appellant had no income until she started a gradual return to work on March 13, 2017. On August 31, 2018, the Appellant applied for employment insurance sickness benefits and requested an antedate to her last day of work before her injury. The Canada Employment Insurance Commission (Commission) determined that she had not proven that she had good cause for her delay and refused her antedate request. The Appellant requested a reconsideration and the Commission maintained its initial decision. The Appellant appealed to the Social Security Tribunal (Tribunal).

[3] I find that the Appellant has not proven that she had good cause for her delay in applying for employment insurance benefits, because I find that she has not proven that she took reasonably prompt steps to inquire about her entitlement. I find that she has not proven that she acted as a reasonable person in her situation would have done to satisfy herself of her rights and obligations under the legislation.

PRELIMINARY MATTERS

[4] The Commission provided evidence and made submissions on the issue of whether the Appellant had enough hours to qualify for benefits on August 26, 2018. At the hearing, the Appellant stated that she had returned to full-time work, and did not wish to claim benefits from August 26, 2018. She confirmed that the sole issue she wished to appeal was whether or not her benefit period could be antedated. As a result, I will not consider the issue of whether or not the Appellant has enough hours to qualify for benefits as of August 26, 2018.

ISSUE

- Issue 1 – Can the Appellant's benefit period start on September 11, 2016?
    - Does she qualify for benefits on the earlier date?
    - Does she have good cause for her delay?

ANALYSIS

[5] In order to receive employment insurance benefits, a claimant must make an initial claim for benefits. Once the Commission determines that the claimant qualifies for benefits, the Commission establishes a benefit period (section 9 of the *Employment Insurance Act* (EI Act)). The benefit period is the window of time in which the claimant may receive employment insurance benefits.

[6] A claimant can request an antedate; that is to say, a claimant can ask the Commission to start the benefit period on an earlier date. However, a benefit period can only be antedated if the claimant qualifies for benefits on the earlier date and if the claimant shows that they have good cause for the entire period of the delay. The claimant has to meet both conditions to qualify for an antedate (subsection 10(4) of the EI Act).

[7] In order to prove that they have good cause for the delay, the claimant must prove that they acted as a reasonable person in the same situation would have done to satisfy themselves of their rights and obligations under the EI Act. The claimant must show that they had good cause throughout the entire period of the delay (*Canada (Attorney General) v. Kaler*, 2011 FCA 266). Unless there are exceptional circumstances, the claimant must show that they took reasonably prompt steps to understand their obligations under the EI Act (*Canada (Attorney General) v. Somwaru*, 2010 FCA 336).

Issue 1: Can the Appellant's benefit period start on September 11, 2016?

[8] I find that the Appellant's benefit period cannot start on September 11, 2016. While I accept that she would qualify for benefits on the earlier date, I find that she has not proven that she had good cause for her delay in applying for benefits.

Does she qualify for benefits on the earlier date?

[9] I find, on a balance of probabilities, that the Appellant qualifies for benefits on September 11, 2016.

[10] The Commission did not make submissions on the issue of whether or not the Appellant would qualify for benefits on the earlier date. However, it its submissions, the Commission noted that the Appellant would need at least 600 hours to qualify for sickness benefits.

[11] I note that, according to the Appellant's Record of Employment (ROE), she had accumulated 2052 hours in the 26 pay periods before her last day of work on September 12, 2016. Given that she would have only needed 600 hours in her qualify period to qualify for sickness benefits, I find that it is likely that the Appellant has enough hours to qualify for benefits if her benefit period were to start on September 11, 2016.

Does she have good cause for her delay?

[12] I find that the Appellant has failed to prove that she had good cause for her delay in applying for benefits because I find that she did not take reasonably prompt steps to inquire about her rights and obligations under the EI Act.

[13] The Appellant stopped working on September 12, 2016 and collected worker's compensation benefits from September 12, 2016 until January 17, 2017. She testified that the worker's compensation board deemed her fit to return to work after January 17, 2017, but that her own doctor would not clear her to return to work. She stated that she started a gradual return to work on March 13, 2017 and returned to full-time duties on May 18, 2017.

[14] The Appellant stated that she delayed applying for employment insurance benefits until August 31, 2018 because she was trying to get worker's compensation benefits for the period of

January 17 until March 13, 2017. She stated that she first learned that worker's compensation would not pay her for this period in February or March 2017, and stated that she received the final appeal decision about her entitlement to worker's compensation on July 29, 2018.

[15] The Appellant also stated that she delayed applying for employment insurance because she did not know that she could be entitled to employment insurance and because she did not want to "double dip." She stated that she was not familiar with employment insurance, but also acknowledged that she worked as a human resources manager and issued ROEs as part of her job.

[16] The Appellant testified that she did not contact the Commission and did not inquire about her potential entitlement to benefits until a Commission representative contacted her to speak about another employee. She testified that she asked the Commission representative for advice about her own situation during that conversation. She testified that she did not think about employment insurance benefits before she spoke to the Commission because she believed that worker's compensation should pay her for the time she was off work. She stated that her doctor told her that she should be entitled to worker's compensation.

[17] I must give some weight to the fact that the Appellant was aware of the employment insurance scheme. Indeed, as a human resources manager responsible for issuing ROEs, I find that the Appellant was familiar with the employment insurance scheme. However, given her statements, I find that the Appellant did not take any active steps to contact the Commission to inquire about her situation; she only asked the Commission about her potential entitlement when a Commission representative contacted her about an unrelated matter. If the Commission had not called the Appellant, I am not satisfied that she has demonstrated that she would have eventually contacted the Commission on her own initiative to investigate her entitlement.

[18] I acknowledge that the Appellant argues that she believed that she should receive worker's compensation for the entire period she was off work. However, the Appellant acknowledges that she had no income from any source after her worker's compensation benefits ended. I find that, in those circumstances, it would have been reasonable for the Appellant to contact the Commission to ask whether or not she would be entitled to employment insurance benefits.

[19] In order to prove that she had just cause for her delay, the Appellant must prove that she took reasonably prompt steps to inquire about her entitlement to benefits. The duty of care expected of the Appellant is "demanding and strict" (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

[20] I find that the Appellant has not proven that she took any active steps to contact the Commission, either by phone, in-person, or by visiting the website. I find that, by failing to take any steps to contact the Commission to inquire about her situation, the Appellant has not proven that she acted as a reasonable person in similar circumstances would have done to satisfy herself of her rights and obligations under the EI Act. As a result, I find that the Appellant has not proven that she had good cause for her delay in applying for employment insurance benefits, and so I find that her benefit period may not start on the earlier date.

CONCLUSION

[21] The appeal is dismissed.

Amanda Pezzutto
Member, General Division - Employment Insurance Section

HEARD ON:	January 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. M., Appellant