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

Citation: J. H. v Canada Employment Insurance Commission, 2019 SST 859

Tribunal File Number: GE-18-2492

BETWEEN:

J. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: April 30, 2019

DATE OF DECISION: May 3, 2019

Canada

DECISION

[1] The appeal is dismissed. The Appellant J. H., whom I will refer to as the Claimant, does not have the required number of hours of insurable employment to qualify for Employment Insurance benefits starting on April 22, 2018, or on February 4, 2018, as requested in his back date (antedate) request.

OVERVIEW

[2] The Claimant had been working, on call as a yardman when he lost his employment due to a shortage of work. The Claimant waited 12 weeks until April 26, 2018, before applying for benefits and then requested that his claim be antedated to start on February 4, 2018.

[3] The Respondent, who is the Canada Employment Insurance Commission (Commission), determined that the Claimant did not have enough hours of insurable employment to qualify for benefits at either date, April 22, 2018, or February 4, 2018, and denied his antedate request. Upon reconsideration, the Commission maintained their decision. The Claimant appeals this decision to the Social Security Tribunal and argues that he is "being defrauded" of his Employment Insurance premiums.

ISSUES

[4] Does the Claimant qualify for benefits on April 22, 2018?

[5] Does the Claimant qualify for benefits on the earlier day of February 4, 2018?

[6] If not, does the Claimant meet the requirements to antedate his claim to an earlier date?

ANALYSIS

A) Benefit Period Not Established

[7] To qualify for regular benefits the Claimant must have an interruption of earnings and have the number of hours of insurable employment in his qualifying period relating to the regional rate of unemployment.[1]

[1] As set out in the table in subsection 7(2) of the *Employment Insurance Act* (*Act*)

[8] For the Claimant's initial claim filed on April 26, 2018, the qualifying period is from April 23, 2017, until April 21, 2018, during which the Commission determined that he acquired 421 hours of insurable employment. The Commission supported their calculation by submitting the Records of Employment (ROEs) on file issued by the Claimant's employer. When asked if hew as disputing that these were his hours of insurable employment, the Claimant replied, "No, I don't think I'm disputing my hours."

[9] Further, the Claimant did not dispute how the regional rate of unemployment (RRU) is determined or that he resides in an area where the RRU on April 21, 2018, was 8.2%. Based on this RRU the Claimant requires 595 hours of insurable employment to qualify for benefits.[2] Based on the Commission's calculations and the ROE evidence on file, the Claimant has only 421 hours of insurable employment April 23, 2017, until April 21, 2018; therefore, he does not have the required 595 hours to qualify for benefits as of April 22, 2018.

B) Antedate

[10] An initial claim for benefits shall be antedated if the following criteria are met: a) he qualifies to receive benefits on the earlier day; and b) the claimant proves there was good cause for the delay throughout the entire period.[3]

i) Does the Claimant qualify for benefits on the earlier day?

[11] Based on the ROEs on file, the Claimant's last day paid was January 29, 2018, and the Claimant requested an antedate to start his claim on February 4, 2018. The Claimant states that he failed to apply for benefits earlier because he was working in an on call position, and his employer did not inform him that he lost his job until several weeks after his last day worked.

[12] The qualifying period for an initial claim starting on February 4, 2018, is from January 29, 2017, until February 3, 2018. The Commission determined that during this qualifying period the Claimant had 580 hours of insurable employment, based on the ROEs on file. As set out above, the Claimant does not dispute that these were his hours of insurable employment during this period.

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[2] Section 7 of the *Act*
[3] Section 10(4) of the *Act*

[13] There is no dispute that the Claimant resides in an area where the RRU on February 4, 2018, was 7.9%, requiring that he have 630 hours of insurable employment to qualify for benefits.[4] The Claimant only has 580 hours of insurable employment from January 29, 2017, until February 3, 2018, and therefore, he does not qualify for benefits as of February 4, 2018.

[14] Being short of the number of hours of insurable employment required by subsection 7(2) of the *Act* cannot be ignored. This requirement of the *Act* does not allow any discrepancy and provides no discretion.[5]

ii) Good Cause for Entire Period of Delay

[15] In order to prove good cause for the period of delay, the Claimant needs to prove that he acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of the delay. That is to say, the Claimant took reasonably prompt steps to determine his entitlement to benefits and to ensure his rights and obligations under the *Act;*[6]which in this case he has failed to do.

[16] I must also consider that the obligation and duty to promptly file a claim are seen as very demanding and strict. This is why the "good cause for delay" exception is cautiously applied.[7]

[17] There is no dispute that the Claimant was not aware of the 4-week application timeframe required by the *Act.* This being said, I agree with the Commission that a prudent and reasonable person would have contacted them sooner. The Commission notes that the Claimant did not visit the Service Canada website or attempt to contact Service Canada to obtain information prior to April 26, 2018. Therefore, as the Claimant failed to make any attempt to seek out what his rights and obligations were under the *Act,* for any previous period he is contemplating requesting benefits, he has not proven good cause for the entire period of delay in submitting his claim for benefits.

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[4] Section 7 of the *Act*
[5] *Canada (Attorney General) v. Levesque*, 2001 FCA 304
[6] *Canada (Attorney General) v Kaler*, 2011 FCA 266
[7] *Canada (Attorney General) v Brace*, 2008 FCA 118

[18] During the hearing, the Claimant asked that I consider whether he would qualify for an antedate to start his claim on December 1, 2017, because that is when he started experiencing a reduction in hours. The Claimant argued that he was never told that his entitlement to benefits was based on hours of insurable employment, or that he could have submitted an application while he was still working in an on call position. The Claimant asserted that he finds the Commission's decision to deny him benefits to be unfair and that his antedate should be considered to any period where he may qualify for benefits, such as in December 2017, when the slow down of work started.

[19] I recognize that the Claimant feels that his inexperience with employment insurance should satisfy the requirements to prove good cause for his delay in requesting benefits and allow his claim to commence on any previous date where he would meet the requirement of the number of hours of insurable employment; however, this is not the case. The courts have consistently held that not knowing the law, without more, is insufficient to prove good cause for a delay in submitting a claim for benefits.[8]

[20] The law requires that the Claimant meet both factors in order to have his claim antedated. Since the Claimant does not have the required number of insurable hours to qualify for benefits at the earlier date of February 4, 2018, or at the later date of April 22, 2018, and has not proven good cause for the delay in submitted a claim for benefits, I find that the appeal cannot succeed.

[21] I wish to add that I am quite sympathetic to the Claimant's circumstances and to what he may perceive as an unfair result. However, there are no exceptions and no room for discretion. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.[9]

[22] As explained during the hearing, the Employment Insurance scheme is not a pension fund or a needs-based program where the Claimant can collect benefits based solely on contributions to the fund. Nor does the *Act* provide for a refund of premiums in cases where a claimant does

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[8] *Canada (Attorney General) v. Albrecht*, 1985 FCA 170; *Canada (Attorney General) v. Persiiantsev*, 2008 FCA 307

[9] *Canada (Attorney General) v. Knee*, 2011 FCA 301

not qualify for benefits. Rather, the Employment Insurance system is a contributory scheme that provides benefits to those who meet the entitlement requirements set out in the *Act.*[10]

CONCLUSION

[23] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	April 30, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. H., Appellant (Claimant)

[10] *Canada (Attorney General) v Lesiuk*, 2003 FCA 3; and *Tanguay v Canada (Unemployment Insurance Commission)*, [1985] F.C.J. No. 910