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

[TRANSLATION]

Citation: *M. R. v Canada Employment Insurance Commission*, 2019 SST 806

Tribunal File Numbers: GE-19-2329
GE-19-2330

BETWEEN:

M. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: July 4, 2019

DATE OF DECISION: July 4, 2019

Canada

DECISION

[1] The appeal is dismissed. I find that the Appellant's initial claim for benefits cannot be considered to have been made on June 28, 2015.

OVERVIEW

[2] The Appellant filed a claim for benefits on September 4, 2015, even though he stopped working in his employment for the school board on June 28, 2015. He asked the Commission to consider his claim retroactively to June 28, 2015, because when he filed his claim for benefits, he was convinced he was not eligible. On May 15, 2019, the Canada Employment Insurance Commission (Commission) found that the Appellant did not have good cause for his delay in filing his claim. I must determine whether the initial claim for benefits must be considered to have been made on June 28, 2015.

ISSUE

[3] Did the Appellant have a reasonable explanation for his delay in applying for benefits?

PRELIMINARY MATTER

[4] At the hearing, I combined the Appellant's two files, numbered GE-19-2329 and GE-19-2330, because both claims relate to the same file, because they both raise common questions of fact or law, and because combining them was not likely to cause prejudice to the parties.

ANALYSIS

Did the Appellant have a reasonable explanation for his delay in applying for benefits?

[5] A benefit period may be established on an earlier day when two conditions are met: The claimant shows that they qualified to receive benefits on the earlier day and there was good cause for the delay throughout the period that begins on the earlier day and ends on the day on which the initial claim was made.

[6] There is no dispute on either side as to whether the Appellant was entitled to receive benefits. I do not have all the necessary data to apply the facts to the law regarding the first condition of section 10(4) of the *Employment Insurance Act* (Act), and I reserve that question for analyzing the second condition. I note, however, that a benefit period was not established in favour of the Appellant because the Commission considered that he did not have good cause for his delay in filing his claim during the period of June 28, 2015, to August 29, 2015.

[7] The Commission submits that the Appellant did not do what a reasonable person in his situation would have done because he made no effort to inform himself of his rights. It argues that he did not show good cause for his delay in applying for benefits.

[8] The Appellant stated to the Commission that given that he was not entitled to receive benefits in 2014, and that his situation was the same in 2015, he was convinced that he was not entitled to receive benefits. He explained that after speaking with the secretary of the school board, it was clear to him that he was not entitled to receive benefits as of June 28, 2015, which explains why he did not apply for benefits at that time.

[9] The Appellant also stated in his notice of appeal that he knew he was not entitled to receive benefits as of June 28, 2015, and that that is why he did not apply for benefits at that time. Furthermore, he stated that the general information provided by the Commission, including on the website, showed that he was not eligible. He explained that in fall 2018, his employer had informed him that it was possible to receive benefits. He stated that he is now convinced he is entitled to benefits and is asking to antedate his claim to June 28, 2015.

[10] The Appellant submits that he learned he could receive benefits when the percentage of menial tasks in his contract was 33.3% and that this discovery constitutes a new fact establishing good cause for his delay in applying for benefits.

[11] At the hearing, the Appellant restated his position and explained that he had submitted benefit claims from 2009 to 2014 and that, in 2014, the Commission had denied him benefits during the summer because he had a contract lined up for the 2014/2015 school year. The Appellant argues that given the Commission's 2014 decision, along with the information provided on the website and by the secretary of the school board, he was convinced he was not entitled to

receive benefits. He explained that he had not been negligent and that, had he known he was entitled to receive benefits, he would have submitted a claim.

[12] The Appellant argues that the information provided on the Commission's website indicates that a teacher cannot receive benefits when they have been offered a contract for the following school year, but that certain exceptions may apply. Therefore, the Appellant understood that, as soon as he had assurance of a contract, he was not entitled to receive benefits and it was pointless to apply for benefits. That is why he did not receive benefits during summer 2014. The Appellant submits that it is precisely for this reason that he did not apply for benefits on June 28, 2015.

[13] The Appellant submits that he had been informed in fall 2018 that, because he had a percentage of tasks in his contract and his employer paid him by the hour, the employer could not guarantee him a contract for the following school year. The Appellant submits that the contract he was given for 2015 was therefore not valid and that he was entitled to receive Employment Insurance benefits. The Appellant acknowledges that the employer's interpretation of the collective agreement has changed and that it was interpreted differently in 2015. However, the Appellant acknowledges that he had obtained a contract for the 2015/2016 school year and that this contract had been honoured. The Appellant does not know whether the collective agreement that applied in 2018 was the one that applied in 2014 and 2015, but he submits that, had he known he was entitled to Employment Insurance benefits, he would have applied.

[14] I must assess whether the Appellant had, throughout the entire period of the delay in filing his claim for benefits, good cause for not applying for benefits on June 28, 2015. The Appellant must 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.[1]

[15] I note that good faith and ignorance of the Act are not, in themselves, a valid reason justifying a delay in filing a claim. However, they do not exclude the existence of a valid reason if

[1] *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Albrecht*, A-172-85.

the claimant shows that they did what a reasonable person in same situation would have done in order to make sure of both their rights and obligations under the Act.[2]

[16] First, I point out that, even if the Appellant was not entitled to receive benefits in 2014 and he was convinced that he was entitled to receive benefits in 2015, ignorance of the Act is not, in itself, a sufficient excuse to obtain retroactivity of a claim.[3] The Commission's 2014 decision concerned only his 2014 file, and the Appellant should have informed himself of his rights concerning his situation on June 28, 2015, even if he considered the situation to be the same as or similar to that of the previous year.

[17] The Appellant could have contacted the Commission by phone or gone to a Service Canada centre in person to obtain specific information about his file. Even if the Appellant submitted at the hearing that he was certain he was not entitled to receive benefits and that applying for benefits seemed pointless, he should have informed himself of his specific situation at that time because ignorance of the Act, or even good faith, is not a valid reason for a delay in applying for benefits.

[18] I have examined all the evidence as well as the Appellant's testimony at the hearing, and I find that he did not have good cause for his delay in applying for benefits. I find that the Appellant was responsible for verifying his rights and obligations with either the Commission or Service Canada on June 28, 2015, when he stopped working, and that ignorance of the right to claim benefits is not a valid reason for a delay in filing a claim even if the employer interpreted the 2018 collective agreement differently. Indeed, a claimant must promptly verify whether they are entitled to receive benefits and satisfy themselves of their rights and obligations under the Act.[4] Even if the Appellant was convinced that he was not entitled to receive benefits, he should have informed himself at that time or even applied for benefits if he could have, because ignorance of the Act is not good cause for a delay in filing for benefits.

[19] I find that the Appellant has not demonstrated that he did what a reasonable person in his situation would have done. Even if the Appellant had no knowledge of the Act and was certain he

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[2] *Canada (Attorney General) v Beaudin*, 2005 FCA 123.
[3] *Caron*, A-395-85.
[4] *Canada (Attorney General) v Carry*, 2005 FCA 367.

was not entitled to receive benefits because of discussions he had with his employer and the Commission's 2014 decision concerning another file, he did not verify his rights and obligations with the Commission concerning his June 28, 2015, file.[5] That was the Appellant's responsibility.

[20] I find that the Appellant has not met the eligibility requirements because he did not have good cause for the delay in filing his claim for benefits on June 28, 2015.

CONCLUSION

[21] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	July 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M.~~axime~~ R.~~ichard~~, Appellant

[5] *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Albrecht*, A-172-85.