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

Citation: *G. S. v Canada Employment Insurance Commission*, 2019 SST 944

Tribunal File Number: GE-19-2257

BETWEEN:

G. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: June 26, 2019

DATE OF DECISION: July 25, 2019

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant is a teacher. He had his first child on December 11, 2017. His collective agreement provides a top-up of Employment Insurance benefits for an employee on Employment Insurance parental leave benefits. However, at the time, the Appellant did not file his claim for employment insurance benefits. Therefore, he never received neither his benefits nor the top-up. It's in January 2019, with the birth of his second child that the Appellant looked more carefully into his benefits that he realized he had missed on those amounts of money. On January 7, 2019, he applied with the Employment Insurance Commission (the Commission) to have his claim for parental benefits antedated to December 13, 2017.

[3] The Commission refused to grant the antidate request on the basis that the Appellant failed to show good cause throughout the entire period of the delay in filing his claim for benefits.

ISSUE

[4] The Tribunal must decide whether the Appellant's claim for benefits can be considered to have been made on an earlier day (December 13, 2017) pursuant to subsection 10(5) of the *Employment Insurance Act* (EI Act).

ANALYSIS

[5] Subsection 10(4) of the EI Act sets out that 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 qualified to receive benefits and shows there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

Issue : Should the Appellant' claim be antedated to December 13, 2017?

[6] In cases of antedate, the burden of proof rests with the Appellant. Therefore, the Appellant has to demonstrate, pursuant to subsection 10(4) of the EI Act that he had good cause, throughout the entire period of December 13, 2017 to January 7, 2019, for the delay in making the claim for benefits.

[7] In this case, I am not satisfied that the Appellant has met his burden.

[8] According to the Federal Court of Appeal, to show good cause for the delay in making a claim for benefits, appellants must show that they acted as a reasonable and prudent person would have done in the same situation to satisfy themselves of their rights and obligations under the Act[1].

[9] The Appellant indicated that he did not know that he needed to receive unemployment insurance benefits in order to receive the top-up from his employer. He provided the collective agreement language dealing with the Supplemental Employment Benefits (SEB), which represent a top-up of his employment insurance benefits while on parental leave. He stated that he applied directly for the SEB with his employer and assumed everything else would be taken care of.

[10] The Appellant explained that his confusion stems from the fact that he received a generous payment of approximately $12,000 from his employer just before his parental leave of December 2017. He stated that he believed that his EI parental benefits were paid to him through his employer's lump sum payment. However, it was not the case. The Appellant later discovered that the money was for income averaging and that he had actually never received EI benefits or his top-up.

[11] The Appellant repeated several times that he was interested in receiving his top-up from his employer more than his EI benefits per se. However, although very empathetic to the

[1] *Mauchel v. Attorney General of Canada*, 2012 FCA 202; *Bradford v. Canada Employment Insurance Commission*, 2012 FCA 120; *Attorney General of Canada v. Albrecht,* A-172-85

Appellant's situation, the Tribunal cannot grant the antedate only in order to help someone access other sources of benefits such as a top-up.

[12] When the employer received the Appellant's application for the top-up, they replied to him in a letter: "Once you receive your EI Benefit Statement from Service Canada please forward to me so I can calculate your SEB plan/Top-up payment as per the Collective agreement". The Appellant argues that neither the employer's letter, neither the Collective agreement is clear regarding the necessity to file an EI claim. He regrets that he may have misinterpreted the details of how their SEB program worked. Indeed, I am of the view that the issue the Appellant is faced with is an issue of interpretation of his collective agreement. Whether the Appellant is trying to recuperate sums he would have been entitled to through his employer in the form of a top-up is not relevant to this appeal.

[13] As for the present request to antedate, the question I have to answer is whether the Appellant acted like a reasonable person would have acted in the same circumstances to satisfy themselves as to their rights and obligations under the EI Act[2]. I cannot answer this question positively. A reasonable person is expected to read letters and materials that is sent to them. In this case, the language of the Employer's letter dated December 4, 2017 is very clear to me. It clearly indicates the involvement of Service Canada and EI benefits. Common sense dictates that it is therefore implied that a person must file application to receive such benefits. I cannot accept that a reasonable person would believe that his EI benefits will be paid through his employer as argued by the Appellant. On the balance of probabilities, I find that he had some basic knowledge of the Employment Insurance system since his wife was a recipient of benefits, which required her to file a claim.

[14] Even in the case that the Appellant would have been totally not aware of the system, the Federal Court of Appeal has re-affirmed that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause[3]. The Federal Court of Appeal also determined that claimants must take reasonable measures with the Commission to verify their personal beliefs or

---

[2] *Canada (Attorney General) v Dickson*, 2012 FCA 8;; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Attorney General of Canada v Trinh*, 2010 FCA 335; *Canada (Attorney General) v Carry*, 2005 FCA 367; *Canada (Attorney General) v Larouche* (1994), 176 N.R. 69 (FCA); *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Albrecht* [1985] 1 FC 710 (CA)
[3] *Canada (Attorney General) v Kaler*, 2011 FCA 266

information that they might have received from an intermediary or third person. This obligation involves a duty of care that is both demanding and strict. In this case, the Appellant acted based on his personal assumptions of the lump sum of money received and did not take reasonable and prompt steps to verify whether his personal beliefs were acurate.

In his appeal, the Appellant indicated that when he made his oversight, his life conditions were adverse and challenging, processing the paperwork, preparing his supply teacher plans for his absence, trying to finish the upper floor of his house and help his pregnant wife. Again, I empathise with the Appellant's situation and acknowledge that he may have experienced some challenging times. However, I am not satisfied that the Appellant demonstrated that he was experiencing exceptional circumstances that would provide good cause for his delay. Antedating a claim must remain an exceptional measure that is used carefully. The EI Act does not expect or allow claimants to defer their applications just because they are not yet ready to file them, and there are sound policy reasons for requiring claimants to file their applications in a timely manner. As noted by the Federal Court of Appeal in *Canada (Attorney General) v. Chalk*:

> [T]he rationale for the requirement that an application for benefits be made in a timely fashion is that the retroactive payment of benefits impedes the Commission's ability to monitor the administration of the applicant's benefits. As a result, issues such as availability for work, and the effect of any earnings which the applicant may have, cannot be dealt with as they occur.

[15] The Appellant did not contact Service Canada or his employer to make sure he understood correctly the process to access his benefits and top-up for an entire year. Respectfully, I am not convinced that a reasonable person would have waited this long to enquire about their rights and entitlements.

CONCLUSION

[16] The appeal is dismissed.

Lucie Leduc

Member, General Division - Employment Insurance Section

HEARD ON:	June 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. S., Appellant