



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v Canada Employment Insurance Commission*, 2020 SST 113

Tribunal File Number: GE-19-4053

BETWEEN:

D. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bonnie Ozirny

HEARD ON: December 13, 2019

DATE OF DECISION: January 6, 2020

DECISION

[1] The appeal is dismissed. The Appellant (Claimant) has not shown that he had good cause for the delay in applying for employment insurance (EI) benefits. This means that the Claimant's application cannot be treated as though it was made on an earlier date.

OVERVIEW

[2] The Claimant applied for employment insurance (EI) benefits on January 12, 2019. He is now asking that the application be treated as if it was made earlier, on September 30, 2018, when his employment was terminated. The Commission has already refused this request.

[3] I must decide whether the Claimant has proven that he had good cause when he delayed making his application for benefits. The Commission says that the Claimant does not have good cause because he did not act like a reasonable person in his situation would have to find out about his rights and obligations with respect to employment insurance. The Commission says he did not contact the commission to find out about his rights and responsibilities. It says the Claimant had no intention to apply on the earlier because he was expecting a severance payment.

[4] The Claimant disagrees and says that the location of his job was moved from the United States to Canada in 2016. He then worked and lived in Canada. The employer eliminated his position as a budget analyst on September 30, 2018. The Claimant says his lawyer was negotiating terms of a severance package with the employer, and the employer took the position that the Claimant was an employee in the United States and not an employee in Canada. The Claimant said that the employer did not issue a Record of Employment (ROE) when it terminated his employment, and he says he did not think he could apply for EI benefits without a ROE. He says he was in a state of limbo and ambiguity.

ISSUE

[5] I must decide whether the Claimant's application for benefits can be treated as if it had been made on September 30, 2018 (this is called antedating the application).

ANALYSIS

[6] Claimants have to prove two things to have an application for benefits antedated:

1. They had good cause for the delay during the whole period of the delay.
2. They qualified for benefits on the earlier day.¹

[7] Since the main arguments before me are about whether there was good cause, I will start with that.

[8] To show good cause, the Claimant has to prove that he acted like a reasonable and prudent person would have in similar circumstances.² The Claimant has to show this for the entire period of the delay.³ For the Claimant, the period of delay is from September 30, 2018, to January 12, 2019.

[9] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.⁴ If the Claimant did not take these steps, then he must show that there were exceptional circumstances that explain why he did not do it.⁵ The Claimant has to prove that it is more likely than not⁶ that he had good cause.

[10] The Claimant says that he had good cause for the delay because he met with a lawyer in approximately mid-October, 2018, to negotiate a severance package with the employer. The lawyer sent a letter to the employer dated November 19, 2018,⁷ which set out the Claimant's terms of settlement with respect to the employer's termination of his employment.

[11] The Commission says that that the Claimant did not show good cause for the delay. It says the Claimant told it his reasons for delay were that he did not receive a ROE. He told the Commission he was under the impression that he could not apply for EI benefits until the employer made its decision about whether it would make a severance payment of six months'

¹ Subsection 10(4) of the *Employment Insurance Act*.

² *Canada (Attorney General) v Burke*, 2012 FCA 139.

³ *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁴ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁵ *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁶ The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

⁷ GD3-19 to 21.

salary. He told the Commission that he thought he would receive a severance payment and have to exhaust those funds before he could file a claim for EI benefits. He says that his lawyer told him that he would eventually be receiving a severance payment. The Commission says the Claimant said that nothing specifically made him think he did not need to apply for EI benefits, and that he just thought that he did not need EI if he would be receiving severance pay. The Claimant told the Commission that his wife was working so she covered the period of his delay in applying for benefits financially. The Claimant does not dispute this.

[12] The Commission says that the Claimant told it that he did not ask his lawyer or anyone else about his rights and responsibilities for employment insurance prior to January, 2019. The Claimant told the Commission that he realizes that it was his responsibility to find out about his rights and obligations, but he did not do that because he thought he would not be entitled to benefits. The Commission says that the Claimant said he did not apply for EI benefits until his lawyer told him to apply on January 10, 2019. The Claimant also told me this at the hearing.

[13] I asked the Claimant why he did not contact Service Canada or any other reliable source to find out about his rights and obligations regarding employment insurance. The Claimant says that when his employment was terminated he contacted various lawyers in the province where he lives and worked to find out whether provincial or U.S. employment law applies to severance on termination of his employment. He met with the lawyer he selected in approximately mid-October, 2018. He says that he did not contact the Commission because he is usually adamant about communicating online because he has full control in that method of communication. He told me that he did not do any research on line about employment insurance. The Claimant says that he was reluctant to reach out, and that not many people knew he was without work. He said he discussed the termination of his employment with only his wife and his lawyer prior to submitting his application for EI benefits.

[14] The Claimant filed his application for regular EI benefits on January 18, 2019, and his claim was made effective on January 13, 2019. The employer issued the Claimant's ROE on April 29, 2019.

[15] The Claimant told the Commission, and told me in his affirmed testimony at the hearing, that his lawyer kept asking the employer to provide an ROE, and the employer refused. In

answer to my questions about dates of requests to the employer to issue the ROE and the employer's refusals, the Claimant says he did not personally request an ROE from the employer when his employment ended or at any time after that. He told me that his lawyer's letter to the employer dated November 19, 2018, includes provision of an ROE as one of the terms of settlement regarding the termination of the Claimant's employment. The Claimant was not able to specify any other dates when his lawyer requested the employer to provide the ROE or any dates when the employer refused requests. He says that he is not sure if the lawyer made prior requests for an ROE, but he assumes the lawyer did. He confirms that he never discussed applying for EI benefits with his lawyer until their meeting on January 10, 2019.

[16] The Claimant told me that he thought EI was not that critical because he was under the impression that he would have to exhaust the amount of his severance payment, which he was expecting, before he could apply for EI benefits.

[17] The Claimant told me that there were no other circumstances that prevented him from applying for EI during the period of delay. He says he is healthy and there were no medical reasons for the delay.

[18] I find that the Claimant did not make any efforts from September 30, 2018, to January 12, 2019 to ask the Commission or any other source about his rights and obligations under the law with regard to employment insurance. Based on the Claimant's evidence, I find that he did not act like a reasonable and prudent person would have in similar circumstances. The Claimant admitted that he made assumptions about whether he would be eligible for EI benefits and when he could apply for EI benefits but did not bother to contact the Commission or any other reliable source to obtain information.

[19] I find that the Claimant did not intend to apply EI benefits when his employment was terminated because he was expecting to receive a severance package.

[20] A reasonable and prudent person would not have waited as long as the Claimant did to make his claim. A person, who has lost employment and is in need of financial assistance, would have taken the necessary steps to ask the Commission what to do to file a claim.

[21] Based on the Claimant's testimony, I find that he did not take reasonably prompt steps to understand his entitlement and obligations under the law. I find that the Claimant did not take any steps until after his lawyer told him to apply for EI benefits on January 10, 2019.

[22] I find that the position the Claimant says the employer was taking with the Claimant's lawyer during negotiations of a severance package did not prevent the Claimant from taking reasonably prompt steps to understand his entitlement and obligations for employment insurance. I find that does not constitute an exceptional circumstance which would excuse the Claimant from the requirement to take those steps reasonably promptly.

[23] I find that the Claimant has not provided any evidence of exceptional circumstances which would excuse him from the requirement to take reasonably prompt steps to understand his entitlement to EI benefits and his obligations under the law.

[24] The Claimant has not proven that he had good cause for the delay in applying for EI benefits throughout the entire period of the delay. So, it is not necessary for me to consider whether the Claimant qualified for benefits on the earlier day.

CONCLUSION

[25] The appeal is dismissed. This means that the Claimant's application for EI benefits cannot be treated as if it were made earlier.

Bonnie Ozirny

Member, General Division - Employment Insurance Section

HEARD ON:	December 13, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. P., Appellant