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

Citation: *SA v Canada Employment Insurance Commission*, 2021 SST 146

Tribunal File Number: GE-20-2349

BETWEEN:

S. A.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: January 5, 2021

DATE OF DECISION: January 6, 2021

Canada

DECISION

[1] The appeal is dismissed. The Claimant has not shown that she had good cause for the delay in applying for benefits. This means that the Claimant's application cannot be treated as though it was made on an earlier date. The Claimant does not have enough hours of insurable employment to establish a claim for benefits.

OVERVIEW

[2] The Claimant left her job after suffering an injury at work. She did not get a record of employment (ROE) from the employer. She received an ROE approximately two years after leaving work. The Claimant applied for regular benefits approximately two years and five months after leaving work. The Commission denied the Claimant's application for employment insurance (EI) benefits. They refused to antedate her application. Because of this, they also determined that she did not have enough hours of insurable employment to qualify for benefits. The Claimant argued that her employer had refused to issue an ROE until she contacted head office.

PRELIMINARY MATTERS

[3] A claimant can appeal to the Social Security Tribunal a reconsideration decision made by the Commission.[1]

[4] In their notice of reconsideration decision, the Commission referred to one issue only. The one issue is that the Claimant did not establish a benefit period. This is because she did not have enough insurable hours. In their submissions, the Commission says they should have included the antedate issue on the notice of reconsideration. They state that they told the Claimant verbally that she did not have good cause for the delay in applying for benefits. The Commission says that this reflects that they reconsidered two issues even though they show only one on the notice of reconsideration.

[5] In review of the Commission's notes, I find that they reconsidered two issues. The notes summarize the reason for their reconsideration decision. The Commission refers both to the

[1] Section 113 of the *Employment Insurance Act*.

Claimant not having enough hours to establish a claim, and not having good cause to start her claim for benefits earlier. As a result, I am satisfied that the Commission reconsidered their decision concerning the Claimant's delay in applying for benefits. I find, therefore, that I can hear an appeal on two issues. These issues are whether the Claimant has good cause for the delay in applying for benefits, and whether she has enough hours to qualify for benefits.

ISSUES

[6] Did the Claimant have good cause for the delay in applying for EI benefits?

[7] If so, did the Claimant qualify to receive benefits on May 26, 2018?

[8] Does the Claimant have enough hours of insurable employment to establish a claim for benefits?

ANALYSIS

Issue 1: Did the Claimant have good cause for the delay in applying for EI benefits?

[9] I do not find the Claimant had good cause for the delay in applying for EI benefits.

[10] An application for benefits can be regarded as having been made on an earlier day. For this to happen, a claimant must show that they were qualified to receive benefits on the earlier day. They must also show that there was good cause for the delay throughout the period.[2]

[11] The Claimant has burden of showing good cause.[3] They do so by proving that they did what a reasonable and prudent person would do in the same circumstances to satisfy themselves of their rights and obligations under the *Employment Insurance Act*.[4]

[12] The Claimant injured herself at work in 2018. As a result, she was unable to work. However, she did not apply for EI benefits until October 7, 2020. She told the Commission that the reason for the delay is that her employer refused to give her an ROE.

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[2] Subsection 10(4) of the *Employment Insurance Act.*
[3] *(AG) v. Kaler*, 2011 FCA 266; *Canada (AG) v. Albrecht*, A-172-85.
[4] *Canada Mauchel v. Canada (AG)*, 2012 FCA 202; *Bradford v. Canada (AG)*, 2012 FCA 120; *Canada (AG) v. Kaler*, 2011 FCA 266.

[13] At the hearing, I asked the Claimant why she did not apply for benefits when she left her job in 2018. She explained that her employer offered her light duties. However, she was unable to continue working. After the Claimant saw her doctor, her employer asked her about having made a WSIB claim. The Claimant testified that her employer told her that they would help her. They had her sign a form withdrawing the WSIB claim, and gave her a payment for June to July 2018. They said they would send her paperwork for future payments, but this did not happen.

[14] The Claimant described unsuccessful efforts she made to contact her employer after she had stopped working and got the payment for June to July 2018. She said that her manager had left, and no one else at her job knew about her situation. I asked the Claimant if she specifically asked her employer for an ROE. The Claimant said that she did in January 2019. She testified that after that, she called her employer every day. The Claimant stated that she went to her employer's human resources department at head office and finally got an ROE. The employer issued the ROE on May 19, 2020. It states that the last day for which they paid the Claimant was May 25, 2018. I note that the employer does not account for any payment for June to July 2018.

[15] The Claimant confirmed her statement to the Commission that she did not contact Service Canada to get help getting her ROE. She also testified that she did not know that she could make an application for benefits without an ROE. I asked the Claimant if she had applied for benefits before. She said that she had applied for maternity benefits in 2014. I pointed out to her that the second/back page of the ROE says a person does not need an ROE to apply for EI benefits. The Claimant said that she did not read the ROE she got in 2014.

[16] The Claimant's husband, who acted as representative and witness, said that his wife had worked for the employer for 10 years. He suggested that the employer should guide employees who are new immigrants and may have communication problems. The Claimant's husband stated that they did not give her any support. He testified that they might have made a mistake by not applying for benefits without the ROE.

[17] I found the testimony of both the Claimant and her husband to be clear, straightforward and sincere. I sympathize with them, given the Claimant's ongoing injury and her desire to return to work. I find it unfortunate that the Claimant's employer led her to believe that she

would get financial support from them. I find this caused her to delay her application for benefits up to January 2019 when she first asked for an ROE.

[18] The Claimant's husband suggested that they are new immigrants. However, I accept based on the length of time the Claimant has worked for the employer that they have been in Canada for at least 10 years. In addition, she has applied for EI benefits in the past.
For these reasons, I find that the Claimant could have done more to understand her rights and obligations related to applying for EI benefits. Unfortunately, she did not do so.

[19] The Claimant's employer issued the ROE in May 2020. However, the Claimant delayed did not apply for benefits for more than four months after that. I asked her about this delay. The Claimant said that she was thinking of returning to work in April 2020, but then the pandemic started. She said that her children were at home, and she had to homeschool them.

[20] Again, I do not doubt that the time from when she got her ROE to when she applied for EI benefits was busy and stressful in view of the pandemic. However, I am not satisfied that this constitutes good cause for an additional four-month delay in applying for benefits.

[21] Based on the above, I do not find that the Claimant has shown good cause for the delay in applying for EI benefits.

Issue 2: Did the Claimant qualify to receive benefits on May 26, 2018?

[22] I have found that the Claimant has not demonstrated good cause for the delay in applying for EI benefits. As a result, it is not necessary to consider whether she qualified to receive benefits on May 26, 2018.

Issue 3: Does the Claimant have enough hours of insurable employment to establish a claim for benefits?

[23] I do not find that the Claimant has enough hours of insurable employment to establish a claim for benefits.

[24] A claimant's qualifying period can be the 52-week period immediately before the period in which benefits are paid.[5] The Commission can extend the qualifying period if a claimant could not work because of illness or injury.[6]

[25] In order to qualify for benefits, the Claimant must have the required number of hours of insurable employment. The hours required relate to the regional rate of employment.[7] I have no discretion concerning the number of hours required.[8]

[26] The Claimant did not dispute that she lives in the economic region of X. Because of this, I find that since the unemployment rate was 13.7% when she made her application for benefits, she required 420 hours of insurable benefits to qualify for benefits.

[27] The Commission submitted that since the Claimant was unable to work up to October 7, 2020, they extended her qualifying period for the maximum 52-week period. Based on the Claimant's October 7, 2020 application, I find that the Commission correctly identified the qualifying period as October 7, 2018 to October 3, 2020.

[28] The Claimant confirmed that she has not worked since leaving her job in 2018. She testified that she left her job sometime in the first week of June 2018. However, the ROE shows that the last date for which her employer paid her was May 25, 2018. Even if I accept that the Claimant last worked in June 2018, I find that she did not work during her qualifying period. As a result, I find that she accumulated 0 hours of insurable employment in her qualifying period. Therefore, I do not find that the Claimant has enough insurable hours of employment in her qualifying period to establish a claim for regular benefits.

[29] I find that the Claimant does not have enough hours of insurable employment to qualify for EI benefits.

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[5] Paragraph 8(1)(a) of the *Employment Insurance Act*.
[6] Paragraph 8(2)(a) of the *Employment Insurance Act*.
[7] Paragraph 7(2)(b) of the *Employment Insurance Act*.
[8] *Canada (AG) v. Lévesque*, 2001 FCA 304).

CONCLUSION

[30] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	January 5, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. A., Claimant Ahmad Javeed Munir, Representative for the Claimant