



Citation: *FI v Canada Employment Insurance Commission*, 2022 SST 798

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: F. I.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (436559) dated October 15, 2021
(issued by Service Canada)

Tribunal member: Solange Losier
Type of hearing: Teleconference
Hearing date: February 2, 2022
Hearing participant: Appellant
Decision date: February 14, 2022
File number: GE-21-2281

Decision

[1] The appeal is dismissed. This means that I disagree with the Claimant. He has not proven that he had good cause for submitting his ROE late to the Commission.

Overview

[2] The Claimant stopped working and applied for employment insurance (EI) benefits on December 11, 2020.¹ The Claimant did not provide a copy of the Record of Employment (ROE) to the Canada Employment Insurance Commission (Commission) when he applied. The Commission only received a copy of the Claimant's ROE around 7 months later, on July 22, 2021.²

[3] The Commission decided that the Claimant could not receive EI benefits from December 7, 2020 to July 22, 2021 because he did not have good cause for his delay in submitting the ROE.³

[4] The Claimant disagrees and provides several reasons to support his request. He appealed the Commission's decision to the Tribunal.⁴

Matters I have to consider first

The Claimant asked for an in-person hearing

[5] The Claimant filed his appeal on November 16, 2021.⁵ This issue in dispute is whether the Claimant had good cause to submit his record of employment to Service Canada late.

¹ See application for benefits at GD3-3 to GD3-15.

² See record of employment at GD3-16 to GD3-17.

³ See initial decision dated August 20, 2021 at GD3-19 and reconsideration decision dated October 15, 2021 at GD3-22.

⁴ See Claimant's notice of appeal forms at GD2-1 to GD2-8.

⁵ Ibid.

[6] The Tribunal considers the preferences of the parties when deciding on the type of hearing. Some of the available options on the appeal forms include: teleconference, videoconference at Service Canada centre, videoconference from a personal computer or mobile device and in-person.⁶

[7] Some types of hearings have not been available due to the pandemic. For example, videoconference hearings at a Service Canada centre and in-person hearings have been temporarily paused.

[8] I wrote the Claimant on December 1, 2021 to advise him and offer a teleconference or zoom videoconference hearing.⁷ The Claimant replied by email and asked for a videoconference hearing at Service Canada.⁸ Unfortunately, we could not accommodate his request for a videoconference hearing, or an in-person hearing at Service Canada.

[9] After I reviewed the case, I decided to schedule a teleconference hearing on February 2, 2022.⁹ Many of our hearings are done by teleconference and it easily allows parties to participate conveniently from their preferred location. The legal issue does not appear to be complex and I only expected the Claimant to attend.

The Claimant asked me to remove myself from the file

[10] At the beginning of the hearing, I noted that a teleconference hearing had been booked instead of an in-person hearing. I asked the Claimant why he wanted an in-person hearing. He explained that he had privacy concerns, but would not provide enough detail to explain what he meant by his concerns.

[11] The Claimant then asked that I remove myself from the file as I had made the decision on the form of hearing without his consent.

⁶ See options available at GD2-4.

⁷ See letter dated December 1, 2021 at GD5-1 to GD5-2.

⁸ The Claimant sent an email to the Tribunal on December 12, 2021.

⁹ See notice of hearing at GD1-1 to GD1-3; proof of service by mail was December 15, 2021.

[12] I acknowledged the Claimant's request, however I declined to remove myself from the file. I am permitted to decide on the form hearing and the law allows me to make that decision.¹⁰ I do not need the Claimant's consent to make this decision. My decision to schedule a teleconference does not warrant my recusal from this case. Further, I do not find there was an actual bias and it did not rise to a level of reasonable apprehension of bias.¹¹

[13] Even though it is our practice to accommodate the preferences of parties, I must also interpret the Regulations so as to secure the just, most expeditious and least expensive determination of appeals and applications.¹² I must also conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.¹³

[14] In my view, removing myself from the file would have created unnecessary delays. The Claimant refused to provide more information about his privacy concerns, so I could not assess whether it warranted putting the file on hold or an entirely different type of hearing.

The Claimant also asked for an adjournment

[15] The Claimant also asked for an adjournment because he was not prepared to proceed. I advised that I might consider adjourning to another date, but I had some inquiries. The Claimant said that he expected it to be rescheduled with another Tribunal Member in 15 days for an in-person hearing. He followed up by saying he would no longer answer any further questions. He then hung up the telephone line. As of today's date, the Claimant has not made any further contact with the Tribunal.

[16] The Claimant wants to reschedule the hearing to different date so that another Tribunal Member can hear his case. I have already decided that I would not remove

¹⁰ Section 21 of the *Social Security Tribunal Regulations*.

¹¹ See *Committee for Justice and Liberty v National Energy Board*, (1978] 1976 CanLII 2 (SCC), 1 S.C.R. 369. The test to be applied is "what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?"

¹² Section 2 of the *Social Security Tribunal Regulations*.

¹³ Section 3(1)(a) of the *Social Security Tribunal Regulations*.

myself from this case, so it would not be appropriate to adjourn this to another date. Therefore, I have decided to proceed and render a decision in this file. The Claimant received the notice of hearing and chose not to proceed.

Issues

[17] When did the Claimant complete his application for EI benefits?

[18] Does the Claimant have good cause for his delay in applying for EI benefits?

Analysis

[19] The Commission needs information about your past employment and circumstances before it will start paying you benefits. You cannot receive employment insurance benefits until you provide all of the necessary information to the Commission.¹⁴

[20] This information is usually provided in a record of employment (ROE). The ROE gives the Commission information about your hours and earnings. This information is necessary to complete your application for benefits. For example, an online application for benefits without an ROE is not complete until you give the Commission a copy of the ROE.

[21] If your application for benefits is made later than your last day of work, the Commission usually starts your benefit period in the week you applied.¹⁵ However, you can ask them to start your benefit period to an earlier date, but you would have to show that you qualify for benefits on the earlier date and that you have good cause for being late.¹⁶

¹⁴ See Section 48 of the *Employment Insurance Act* (Act) says that the Commission will not establish a benefit period until the claimant supplies the information that the Commission needs. Section 50(5) of the Act allows the Commission to ask for any extra information, and section 50(1) of the Act says that a claimant is not entitled to receive any benefits until they comply with the Commission's requirements.

¹⁵ See Section 10(1) of the Act.

¹⁶ See Section 10(4) of the Act.

[22] A Claimant can show good cause for being late by proving that they acted reasonably. This means that a Claimant has to prove that they acted as a reasonable person in the same situation would have done to understand their rights and obligations under the *Employment Insurance Act*.¹⁷

[23] Unless your situation was exceptional, you have to prove that you acted reasonably quickly to understand what you needed to do to receive employment insurance benefits.¹⁸

The Claimant does not have good cause for submitting his ROE late

[24] The Claimant worked for a temp agency as a casual labourer. The ROE shows that his first day of work was September 16, 2020 and his last day paid was October 26, 2020. He was laid off from this employment.

[25] The evidence shows that the Claimant made an application for benefits on December 11, 2020.¹⁹ Accordingly, I accept this as fact.

[26] There are several parts to the application for benefits. One section deals with the ROE information for the last employer. The application says: “We need a Record of Employment (ROE) covering this period of work to process your claim. If your employer issued you an ROE with a serial number that begins with “S,” “W” or “Y,” Service Canada already has it”.²⁰

[27] The Claimant picked: “I requested or will request the Record of Employment from my employer to be submitted promptly”.²¹

¹⁷ See *Canada (Attorney General) v. Kaler*, 2011 FCA 266.

¹⁸ See *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.

¹⁹ The application was made effective on December 6, 2020 and see application for benefits at GD3-3 to GD3-15.

²⁰ See GD3-7.

²¹ Ibid.

[28] The Commission had received the Claimant's ROE and they wanted to know why it was submitted late. The evidence shows that the Commission spoke with the Claimant on August 20, 2021, several months after he applied for benefits.²² The employer only issued the ROE on July 22, 2021.²³ This was already several months after he stopped working for the employer.

[29] The Claimant told the Commission that he only asked his employer for the ROE two weeks prior and the employer sent it.²⁴ He had not requested it earlier because he was looking for a new job and did not think he needed benefits at that time.

[30] In his appeal forms, the Claimant outlines additional reasons to support his case:²⁵

- a) His account as not accessible after he registered. He also noticed two different records of employment and thought that one of them was from the temp agency.
- b) He received an access code by mail, but the letter said his claim was rejected. He had made attempts to obtain one by calling Service Canada by phone, but was not successful.
- c) He was hoping that his employer would have sent the ROE after he stopped working.
- d) He was unable to reach Service Canada telephone because his next door neighbour and other unwanted people he knows may pretend to work or speak on behalf of the Service Canada call centre.
- e) This happened during the covid19 pandemic and he did not know that he was eligible for a credit of hours.

²² See supplementary of claim dated August 20, 2021 at GD3-18.

²³ See record of employment at GD3-16 to GD3-17

²⁴ See supplementary of claim dated August 20, 2021 at GD3-18.

²⁵ See GD2-5.

- f) He was hoping to find work immediately, but it was tough to-do during the pandemic.
- g) His personal information has been obtained by unauthorized people or criminals. Some of them have access to his income tax return where it includes some details and activities that have remained unresolved. As well, there is a conflict of interest from those who have access to some of his personal financial details.

[31] I find that the Claimant did not have good cause for submitting his record of employment late for the following reasons.

[32] I was not persuaded by the Claimant's reasons because I find that a reasonable and prudent person in similar circumstances would not have waited several months to obtain his ROE. None of the Claimant's reasons prevented him from contacting his employer and asking them to issue it. Based on his statement to the Commission, he asked the employer and it only took them two weeks. Further, the Claimant was aware of the requirement to submit his ROE because he acknowledged it in his application, but did not do so.

[33] I find it more likely than not, that the Claimant was focused on looking for a new job and did not need benefits at that time. This is not good cause.²⁶ This is consistent with his initial statement to the Commission. I note that he did not provide any other reasons to the Commission at the time. If the Claimant had difficulty finding work during the pandemic, that should have triggered him to take steps sooner to obtain his ROE in order to secure his benefits.

[34] I do not find the Claimant's circumstances are exceptional because he could have taken steps earlier than he did to obtain his ROE by simply asking his employer.

²⁶ See *Howard v Canada (Attorney General)*, 2011 FCA 116: Good cause was not found where a Claimant had no initial intention to claim benefits because they were trying to find employment.

Conclusion

[35] The appeal is dismissed.

Solange Losier

Member, General Division – Employment Insurance Section