



Citation: *FI v Canada Employment Insurance Commission*, 2022 SST 1200

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 (0) dated August 22, 2022 (issued by Service Canada)

Tribunal member: Mark Leonard

Type of hearing: In person

Hearing date: November 1, 2022

Hearing participants: Appellant

Decision date: November 21, 2022

File number: GE-22-2842

Decision

[1] The appeal is allowed.

[2] The Appellant (Claimant) has shown that that he is entitled to Employment Insurance (EI) benefits. The decision of the Canada Employment Insurance Commission (Commission) to disentitle the Claimant from December 7, 2020, until July 22, 2021, because he did not show good cause for a delay in submitting his Record of Employment (RoE) is not justified.

Overview

[3] The Claimant made an initial application for EI benefits on December 11, 2020. The Commission established his claim effective December 6, 2020.

[4] The Commission did not receive the Claimant's RoE until July 22, 2021. A RoE is a critical piece of information the Commission uses to determine if an applicant is eligible for EI benefits. It disentitled the Claimant from receiving benefits from December 7, 2020, until July 22, 2021, because it decided that the Claimant did not have good cause for a delay in submitting his RoE.

[5] Ordinarily, if there is a delay in submitting an initial claim, making biweekly reports, or submitting required information, claimant must show good cause or, in other words, a reasonable explanation for the delay that is acceptable to the Commission.

[6] The Claimant contends that he did everything he was required to do and believes he should receive benefits.

[7] I must decide whether the Commission's decision to disentitle the Claimant from receiving EI benefits because he did have good cause for a delay in submitting his RoE is justified.

Issue

[8] Is the Claimant disentitled from receiving EI benefits because his RoE was submitted late without good cause?

Analysis

[9] The Employment Insurance Act (Act) contains several claim procedure provisions that a claimant must follow to be entitled to EI benefits.¹

[10] The Commission cannot establish a benefit period unless the claimant supplies required information explaining the claimant's employment circumstances, how they came to have an interruption of earnings and any other information the Commission may require.

[11] To be entitled to receive EI benefits for a week of unemployment, a claimant must prove that they meet the requirements and that no circumstances or conditions exist that would result in disentitling or disqualifying them from receiving benefits.²

[12] A claimant that fails to fulfill a condition or requirement under the Act is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.³

Background

[13] The Claimant made an initial claim for EI benefits on November 12, 2020. The Commission established that claim effective December 6, 2020.

[14] The Commission determined that the Claimant delayed submitting his RoE until July 22, 2021, and did not provide a reason they considered good cause for the delay. It disentitled the Claimant from receiving EI benefits.

¹ See Sections 48, 48, 50 of the Act.

² Se Sections 49(1) and 50 of the Act.

³ See Section 50 (1) of the Act.

[15] In support of its decision, it submits that the Claimant:

- Was obligated by the EI Act to submit his RoE or ensure that it was.
- Noted in his application, for EI benefits that he “... *requested or will request the Record of Employment from my employer to be submitted promptly.*”
- Only requested his RoE two weeks prior to its submission in July 2021.
- Told the Commission that the reason he did not ask his employer sooner for a RoE is that he did not think he needed benefits at the time.
- Made no efforts before July 22, 2021, to look into his rights and obligations under the Act necessary to receive EI benefits.
- Did not act as a reasonable person would have in his situation to verify his rights and obligations under the Act.
- Does not have good cause for the delay in providing his RoE.

[16] Ordinarily, in order to qualify for EI benefits, claimants are required to provide any information the Commission deems necessary before approving the claim. The Commission submits that this includes his RoE.

Who is responsible to provide a Record of Employment to the Commission?

[17] I find that the Claimant’s Employer is responsible for providing the RoE to the Commission in the prescribed format and within the time limits specified in the *Employment Insurance Regulations*.⁴

[18] The Commission submits that the Claimant needs good cause for a delay in submitting his RoE. It relies upon sections 48, 49, and 50 of the Act suggesting that he

⁴ See Section 19 of the *Employment Insurance Regulations*.

must submit all required information including his RoE and failure to do so is reason to deny EI benefits.

[19] In fact, the Act does not require the Claimant to send his RoE to the Commission. It is the Employer's responsibility.

[20] The Act details that no benefit period will be established unless the person has made an initial claim and as a claimant, has supplied all information concerning the circumstances surrounding an interruption of earnings.⁵

[21] The Commission relies upon this section to support the notion that the Claimant is responsible to provide the RoE. However, the Act notes in section 48(1) that the initial claim must be made in accordance with section 50 and the "*Regulations*."

[22] The *Employment Insurance Regulations* (Regulations) state that the employer establishes a Record of Employment, on the form supplied by the Commission, when the person employed in insurable employment by the employer has an interruption of earnings.⁶ The Regulations also state the manner in which the employer will distribute the copies and sets the deadline to do so.⁷

[23] It details that the "*Employer*" will send the RoE to the "*Commission*" within one day of the interruption of earnings. Clearly, the Regulations provide a more explicit demand surrounding who is responsible for the creation and distribution of a RoE.

[24] I also find myself guided by a previous decision wherein the Umpire confirmed that the Regulations do not require a claimant to provide their record of employment to the Commission and that they cannot be penalized for not having done so.⁸

[25] When the Claimant was told there was no more work for him at the place where he was working, he did what was asked of him. He returned the businesses property. He was told that everything else would be taken care of. He accepted that and had no

⁵ See Subsections 48(1) and (2).

⁶ See Subsection 19(2) of the *Employment Insurance Regulations*.

⁷ See Subsection 19(3) of the *Employment Insurance Regulations*.

⁸ See CUB 44202

reason to doubt that this would include the Employer's responsibility to forward his RoE to the Commission. At the point that his Employer told him that there was no further work for him (an interruption in earnings), it became the Employer's responsibility to complete and send the Claimant's RoE to the Commission. Since the Claimant is not responsible to do this, he does not have to show good cause why there was a delay.

[26] Even if I were to accept the premise that the Claimant still needed to take action sooner to find out why there was a problem with his claim, I would find that he has good cause for the delay.

Does the Claimant have good cause for the delay?

[27] I find that the Claimant has shown good cause for the delay in following up with his employer concerning his RoE notwithstanding that the *Regulations* stipulate that he is not responsible for submitting it to the Commission.

[28] The Claimant worked as a casual labourer for three employment agencies between September 2019 and October 2020.

[29] The Claimant testified that when his last contract ended, he asked the Employer if there was anything he needed to do. He was told that all he had to do was return the business's property and everything else would be taken care of.

[30] He made his initial claim for EI benefits. He says that he did not receive an access code to access his account. He says he did try contacting the Service Canada by phone but had trouble getting through to talk to someone. He also testified that he attended the Service Canada office to talk to a representative, however; he was not clear what the representative told him regarding his claim, or how to fix it.

[31] He testified that he used his credit card to pay his bills and was looking for other employment. He said that he had previously expressed to the Commission concern regarding speaking to representatives by phone because people were intercepting his communications and may be impersonating officials.

[32] He says that when he lost his credit cards due to nonpayment, he again contacted the Commission because he needed money to pay his bills. He says he was told he had to submit a RoE from his Employer. This prompted him to contact the Employer to send the RoE in July 2022.

[33] I took several attempts for him to confirm when certain events took place. I am satisfied that the Claimant made some efforts at contacting the Commission between December 2020 and July 2021. I am convinced that any problems he had with his account and access code occurred after July 22, 2021,

[34] I find the Claimant credible. I did not detect any misdirection or attempting to be evasive. During the hearing, he was able to convey his story by reading it and ended his presentation by saying he did his best.

[35] However, when responding to questions, it was evident that the Claimant had difficulty situating events in a sequential timeline. During his responses he would trail off or simply give up trying, smile, and conclude by repeating that he did his best.

[36] I note in the Commission's submissions that during an interaction with a Commission representative regarding his request for reconsideration, the Claimant refused to answer questions about his identity and hung up on the representative. In another call, he conveyed concerns with using the telephone because others may be listening or neighbours were impersonating officials.

[37] This is concerning because it seems evident that there is something more going on in the claimant's life.

[38] I asked him there was anything that might have prevented him from contacting the Commission sooner about his benefits. He again simply responded that he believed he did everything he should have and that he tried his best.

[39] There is no evidence before me that the Claimant suffers from a medical condition. He did not confirm that he experiences any health struggles. However, I cannot ignore what I witnessed during the in-person hearing.

[40] I am satisfied that the Claimant struggles with some health issues that diminish his capacity to respond in a usual or expected manner. I am also satisfied that these circumstances may have affected his reasoning concerning understanding and responding to his obligations surrounding his EI claim.

[41] The Commission submits that the Claimant was not concerned about his benefits because he was living off his credit cards and looking for work. It states that focussing on finding work is not good cause for not following up about his benefits. It recorded that the Claimant said he did not think he needed the benefits before he contacted his employer in July 2022.

[42] The Commission's statements are not well taken. Give that the Claimant has a history of casual labour assignments with several employment agencies, I can conclude that he does not hold down regular employment such that he would have a sufficient reserve of funds that he could live on while looking for other employment thus foregoing EI benefits.

[43] Further, his statement that he used credit cards to pay living expenses is consistent with anyone who loses employment and has not received financial assistance but still needs to pay bills. I am not convinced that the Claimant fully understood the questions or provided appropriate answers to the representative's questions during the interaction on August 20, 2021, when he said that he did not need the benefits at the time.⁹ I am satisfied that the claimant provided answers he believed correctly responding to the questions asked, but were not indicative of his true situation. Moreover, I am satisfied that the Claimant was in need of the benefits and his response, if correctly recorded, was inconsistent with his circumstances.

[44] The Claimant testified that he called his Employer (employment agency) about work after his contract ended at the last job location but was told that there was none available at the time. He says that he then looked for other work.

⁹ See GD3-18

[45] His admission that he was looking for other work does not lead me to conclude he focussed on finding work and disregarded his obligations concerning his claim. I find it more likely that he went looking for work while awaiting his EI benefits. Looking for work after having lost his job is exactly what the Claimant is required to be doing by the EI Act to be eligible to collect EI benefits.

[46] The Commission concluded that the claimant did not act as a reasonable person would have in his circumstances to follow up sooner about his claim and have his Employer forward his RoE.

[47] I am satisfied that the Claimant's circumstances are drastically different from others. He clearly has circumstances in his life that diminish his capacity to function in a fashion one might usually expect. So, expecting that he will act as anyone else would, in his circumstances, is simply not reasonable.

[48] I find that the Claimant faces circumstances that suggest he did everything he was capable of doing to follow up about his claim. I find he has provided good cause for any delay in contacting his Employer to get his RoE sent to the Commission.

Is the Claimant entitled to EI benefits?

[49] I find that the Claimant is entitled to receive EI benefits.

[50] Since the Commission already established the claim effective December 6, 2020, I am satisfied that the Claimant qualified for benefits on that date.

[51] The Commission rendered both a primary and reconsideration decision that the Claimant did not have good cause for the delay in providing his RoE. It relies on sections 48, 49 and 50 of the Act in support of its decision. But the Act does not specify that the Claimant must submit or direct his employer to submit his RoE.

[52] The *EI Regulations* specify that the Claimant is not responsible for ensuring his RoE is sent to the Commission in a timely fashion. It is the Employer's responsibility to prepare and send in the RoE. Since he is not responsible, the Claimant is not required to show good cause for why there was a delay.

[53] Lastly, I am convinced that the Claimant had an ongoing desire to receive EI benefits and did the best he could to follow up within his capacity given his circumstances. He has shown good cause throughout any period of delay contacting the Commission about his claim.

Conclusion

[54] The appeal is allowed. The Claimant is entitled to receive EI benefits from December 6, 2020.

Mark Leonard
Member, General Division – Employment Insurance Section