



Citation: *IW v Canada Employment Insurance Commission*, 2022 SST 1668

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

Decision

Appellant: I. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (499730) dated June 21, 2022 (issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: In person

Hearing date: November 23, 2022

Hearing participants: Appellant

Decision date: November 27, 2022

File number: GE-22-2429

Decision

[1] The appeal is allowed.

Overview

[2] The Appellant, I. W., was upon reconsideration by the Commission, notified that because he did not file his reports for employment insurance benefits within the time prescribed under subsection 26 (2) of the Regulations and did not show good cause throughout the entire period of the delay in filing his reports. The Commission denied benefits from August 8, 2021 through to March 12, 2022 as well as his antedate request pursuant to subsection 10 (5) of the Act. The Appellant asserts that he did not know that he had an active claim for benefits. The Tribunal must decide if the Appellant should be denied an antedate as per subsection 10(5) of the Employment Insurance Act (the Act) and section 26(2) of the Employment Insurance Regulations (the Regulations).

Issues

[3] Issue # 1: Did the Appellant qualify on the earlier day?

Issue #2: If so, was there good cause for the delay throughout the entire period?

Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] Subsection 10(5) of the Act allows a claim for benefits to be considered to have been made on an earlier day if the Appellant shows he qualified for benefits on the earlier day and that he had good cause for the delay, throughout the entire period of delay. (this covers the issue of delayed bi-weekly reports also)

[6] The correct legal test for good cause is whether the Appellant acted as a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act. **Canada (AG) v. Kaler, 2011 FCA 266**

[7] The onus / burden is on the Appellant to show good cause for the delay throughout the entire period. CUB 18315 The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

[8] Good cause is not defined in the legislation. It can be said to exist where the claimant acted as a reasonable person in the same situation would have acted to ensure compliance with his rights and obligations under the Act. **Paquette v. Canada (AG), 2006 FCA 309**

Issue 1: Did the Appellant qualify on the earlier day?

[9] Yes.

[10] Evidence on the file shows that the Appellant filed a sickness claim which had become effective on April 21, 2021. The Appellant then was issued an access code by the Commission so as he could submit his bi-weekly reports.

[11] His renewal claim became effective March 13, 2022

[12] I find that because there was an open claim that had not been terminated by either the Appellant or the Commission, the Appellant qualified for benefits on the earlier day.

Issue 2: If so, was there good cause for the delay throughout the entire period?

[13] Yes.

[14] The Commission asserts that for the period of September 20, 2021 through March 13, 2022 the Appellant failed to submit his bi-weekly reports.

[15] The Appellant filed an antedate request in an effort to be paid for the weeks where the Commission asserts no reports had been made, May 23, 2021 through to July 10, 2021.

[16] The Appellant, at his hearing, testified that he was never made aware that his sickness claim had been converted to a regular claim for benefits.

[17] Regarding the delay in filing bi-weekly reports, the Appellant submitted that he was not aware that he had a claim however, he filed his bi-weekly reports on order to receive his sick benefits from the beginning of his claim in April, 2021. At the end of this period he was cleared to return to work.

[18] The Commission asserts that the Appellant did not act as a reasonable person would in his circumstance regarding his entitlement to benefits by making contact with them.

[19] However, I disagree. The Appellant, at his hearing, testified, under affirmation, that he was in contact with the Commission on many occasions.

[20] His telephone records show that he made several calls to the numbers provided by the Commission. For example, on Monday, July 12 at 9:06 AM he made a call that lasted 89 minutes.

[21] During this call an agent of the Commission completed, with information supplied by the Appellant, all his missing bi-weekly reports.

[22] The Appellant explained the dropped calls experienced by the Commission, he works in a home office in the basement of his home where reception is not always good and with caller id or ability to get call back number there was no way of knowing who called.

[23] When the Appellant called the Commission to speak with a supervisor regarding his claim, he waited 7 weeks for a return call wherein he was given 48 hours to reply. His attempt, when he got the message, was made on the Friday before the Labour Day long weekend and there was no answer.

[24] He was still expecting a response regarding the reports completed on July 12th.

[25] The Appellant attended the X Service Canada office regarding the status of his claim, spoke with an agent in booth 7. (Agents are not assigned booth space on regular basis only as operational requirements dictate. A list of who was working that day would be available but not the particular booth assigned. – Team Lead – X Office)

[26] I accept that there may have been telephone delays but the Appellant was making continuous efforts to have his situation explained.

[27] There is nothing in the September 8th letter to advise him his claim had been converted to a regular claim. There is no evidence before me that at the time it was converted that he was advised to continue to submit reports. Had he been he would have continued, as he had in the past, to file his reports. While ignorance of the law is not good cause, not knowing that one has an active claim surely is. Why would a reasonable person file bi-weekly reports when there was no known active claim.

[28] I find that the Appellant, in this case, did act “as a reasonable person in the same situation would have acted to ensure compliance with his rights and obligations under the Act”. **Canada (AG) v. Kaler, 2011 FCA 266**

[29] The Commission has shown that it had, on many occasions, attempted to contact the Appellant by phone and letters however there is also equal evidence that the Appellant made similar attempts by phone, some successfully.

[30] In this case, I find that the Appellant has shown evidence of good cause for the delay in submitting his bi-weekly reports throughout the entire period which is also the basis for the antedate request.

Conclusion

[31] Having given careful consideration to all the circumstances, I find that the Appellant has shown good cause throughout the entire period of delay as the onus is on him to do so therefore the appeal is allowed. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” the events occurred as described.

John Noonan

Member, General Division – Employment Insurance Section