



Citation: *NP v Canada Employment Insurance Commission*, 2023 SST 639

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. P.
Representative: R. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (544046) dated September 15,
2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: February 1, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: February 17, 2023

File number: GE-22-3456

Decision

[1] The appeal is dismissed.

[2] The Appellant has not shown good cause for her delay in filing for benefits. This means her claim cannot be started at the earlier date she is requesting.

Overview

[3] The Appellant says she was laid off on August 15, 2021, but never received her Record of Employment (ROE), so she did not file a claim for Employment Insurance (EI) at that time.

[4] The Appellant says she was told by people, and someone from EI, that she had 52 weeks to file a claim after she was laid off, so she was not overly concerned.

[5] She kept trying to get her ROE, but could never get her employer to send her one, so, on June 28, 2022, she filed a claim without her ROE. She requested her claim be backdated to start on August 15, 2021.

[6] The Canada Employment Insurance Commission (Commission) decided that they could not backdate the Appellant's claim as she did not show good cause for the delay in filing for EI.

[7] The Commission says the Appellant did not act as a reasonable person, as she called once, in October 2021, but never asked what could be done to get her ROE from her employer, or if she could file her EI claim without an ROE.

[8] I have to decide whether the Appellant's claim can start at an earlier date.

Matter I have to consider first

The Commission sent in post-hearing documents¹ which I accepted and considered in making my decision as it was information I explicitly asked for from the Commission.

¹ GD06

Issue

[9] The start date of the Appellant's claim.

Analysis

The start date of the Appellant's claim.

The Law

[10] To get her application for benefits to start at an earlier date, the Appellant has to prove two things:²

1. She had good cause for the delay during the entire period of the delay. In other words, she has an explanation that the law accepts.
2. She qualified for benefits on the earlier day (that is, the day she wants her application antedated to).

[11] To show good cause, the Appellant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.³ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation to the Appellant.

[12] The Appellant has to show she acted this way for the entire period of the delay.⁴ That period is from the day she wants her application to start (August 15, 2021)⁵ to the day she actually filed her application (June 28, 2022).⁶

[13] The Appellant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁷ This means that the Appellant has to show that she tried to learn about her rights and responsibilities as

² See section 10(4) of the EI Act.

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

⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁵ GD03-30

⁶ GD03-24

⁷ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

soon as possible and as best she could. If the Appellant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.⁸

[14] The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she had good cause for the delay.

The Appellant's and Commission's arguments

[15] The Appellant says she was laid off and she expected her employer would promptly send her the ROE, but he did not.

[16] She called her employer over and over, but he kept telling her that he had no idea how to complete an ROE and so could not make one for her.

[17] In October 2021, the Appellant called the Commission and asked them if her ROE was on file and if she needed an ROE to collect EI. She says the lady told her ROE was not on file, that she had to have an ROE to get EI and to keep after her employer. So, the Appellant kept calling her employer over and over trying to get an ROE.

[18] The Appellant says she was not overly concerned since she had been told by many people, and during her October 2021 phone call with the Commission, that she had 52 weeks to collect EI, so that meant she could apply up to August 2022, since she was laid off in August 2021.

[19] The Appellant says that during a camping trip in June 2022, one of the people she met camping told her there was no need to have an ROE to file for EI. So, when the Appellant returned from camping, she filed her application for EI on June 28, 2022.

[20] The Appellant says she did not get her ROE from her employer until August 2022.

⁸ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[21] The Commission says the Appellant did not act like a reasonable person in her situation would have to verify her rights and obligations under the law. They say, that by her own statement, she did not make any enquiries of them after October 2021, as to what she could do regarding her employer's failure to provide her with an ROE, and whether there were any provisions for her to be able to file an application for benefits without the ROE.

[22] The Commission says the Appellant appears to have relied on information from friends as to what the EI requirements were, instead of asking EI herself.

My findings on good cause

[23] I find the Appellant has not shown good cause for the entire period of the delay for the following reasons.

[24] I can understand the Appellant patiently waiting to get an ROE, and then calling her employer when she has failed to receive it.

[25] Regarding the October 2021 phone call, while the Commission says they have no record of it, so cannot say it if happened and what information may have been given to the Appellant,⁹ they do not directly dispute it happening,¹⁰ so I accept as fact the Appellant did call the Commission in October 2021.

[26] I accept the Appellant's testimony that in this phone call she was told that her ROE was not on file, and that her ROE was required in order to collect benefits, so to keep trying to get it from her employer.

[27] I find that where the Appellant fails in showing good cause is for the period after the October 2021, phone call.

⁹ GD06

¹⁰ See GD04-5 where their submissions show they simply accept as fact the Appellant made a phone call in October 2021, but argue she should have made inquiries after that call.

[28] I can understand the Appellant accepting the information from the Commission, thus being under the impression that an ROE was required to collect EI, and therefore continuing to go after her employer for the ROE.

[29] However, I find her actions were not that of a reasonable and prudent person in similar circumstances. I find a reasonable and prudent person would not have gone nearly 8 months with the same fruitless actions of contacting the employer and being told he cannot do an ROE and never have contacted the Commission again for further guidance.

[30] I find a reasonable and prudent person would have contacted the Commission again to see if there is something, anything, that could be done in a situation of an employer refusing to provide an ROE, that would have allowed her to collect EI benefits.

[31] I understand the Appellant had already contacted the Commission once, and it is reasonable to rely on the information given by the Commission, as a person is not expected to contact the Commission over and over to try and verify information they were given, but that is not what I am saying a prudent person would have done.

[32] I am saying that a reasonable and prudent person would be calling to acquire new, or more, information on how to handle the situation they were in.

[33] I note the Appellant was not adverse to asking for, or taking advice on this subject, as she obviously talked about the situation with other people and was willing to act on the advice she received from other people, such as the person she met while camping, who told her she could apply without an ROE.

[34] I further find the Appellant has not presented any exceptional circumstances that would have prevented her from taking reasonably prompt steps to inquire to the Commission what could be done in a situation where her employer refused to provide her with an ROE, in other words to inquire about her rights and obligations under the law.

Summary

[35] So, in summary the Appellant has not shown good cause for the entire period of the delay (from August 15, 2021, to June 28, 2022) because she did not act as a reasonable and prudent person would have in her circumstances and did not take reasonably prompt steps to determine her rights and obligations under the law.

[36] A reasonable and prudent person in the Appellant's circumstances, of having been told no ROE was on file, that she needed an ROE, and continuing to have her employer refuse to provide her with one, would have contacted the Commission to see what could be done in such a situation, instead of going 8 months without speaking to the Commission again.

[37] The Appellant has also not presented any exceptional circumstances that would excuse her from the requirement to take reasonably prompt steps to understand her rights and obligations under law.

[38] Since the Appellant does not have good cause for the entire period of the delay, this means her claim cannot start on the earlier date she is requesting

Conclusion

[39] The appeal is dismissed.

[40] I find the Appellant has not shown good cause for the entire period of the delay in filing her claim for benefits. This means her claim cannot start on the earlier day she is requesting.

Gary Conrad
Member, General Division – Employment Insurance Section