Citation: *IW v Canada Employment Insurance Commission*, 2023 SST 1697

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 (583456) dated March 28, 2023 (issued by Service Canada)

Tribunal member:	John Noonan
Type of hearing:	In person
Hearing date:	July 5, 2023
Hearing participants:	Appellant Appellant's Witness / Husband
Decision date:	July 21, 2023
File number:	GE-23-1157

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, I. W., was, upon reconsideration by the Commission, notified that it was unable to pay her the Employment Insurance benefits she requested. Specifically, she needed 420 hours of insurable employment during her qualifying period between December 13, 2020 and December 11, 2021 to qualify, but she had only 151 hours of insurable employment. The Appellant requested that her claim be antedated to January 6, 2021 to allow her to avail of the insurable hours needed. The Appellant argued she requested her benefit period be backdated to January 6, 2021 as this was her last day and would give her sufficient hours of employment to qualify for regular Employment Insurance benefits. The Tribunal must decide if the Appellant had accumulated the number of hours of insurable employment required by section 7 in order to establish a claim and receive employment insurance benefits and whether or not to deny an antedate request pursuant to subsection 10(4) of the Act .

Issues

[3] Issue # 1: Did the Appellant, in her qualifying period, accumulate the number of hours of insurable employment required by section 7 of the Act in order to receive employment insurance benefits?

Issue # 2: Did the Appellant qualify on the earlier day?

Issue #3: If so, was there good cause for the delay throughout the entire period?

RE: Qualifying Conditions - # Hours Insurable Employment

Analysis

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

[5] Section 7(2) of the Act stipulates that an insured person qualifies if the person **(a)** has had an interruption of earnings from employment; and **(b)** has had during their qualifying period at least the number of hours of insurable employment set out in the table at GD4-7 in relation to the regional rate of unemployment that applies to the person.

Issue 1: Did the Appellant, in her qualifying period, accumulate the number of hours of insurable employment required by section 7 of the Act in order to receive employment insurance benefits?

[6] No.

[7] In this case the Appellant's qualifying was determined to be the period from December 13, 2020 through to December 11, 2021 as set out in paragraph 8(1)(a) of the Act.

[8] According to the Table in subsection 7(2) of the Act, the minimum requirement for the Appellant to qualify to receive employment insurance benefits was 420 hours based on the rate of unemployment of 13% in the region where she resided at the time of application.

[9] The Appellant had accumulated only 151 hours of insurable employment in her qualifying period.

[10] There were no other records of employment submitted and no conditions existed to allow the qualifying period to be extended.

[11] No benefit period can be established where a claimant fails to show entitlement to receive employment insurance benefits pursuant to subsection 7(2) of the Act.

[12] I find that no benefit period can be established on the Appellant's December 16, 2021 claim due to her not having accumulated the required number of hours of insurable employment in her qualifying period.

Re: Antedate

ANALYSIS

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

[14] 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.

[15] 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**

[16] 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.

[17] 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 2: Did the Appellant qualify on the earlier day?

[18] Yes.

[19] Evidence on the file shows that the Appellant met all qualifying conditions on January 6, 2021, the date which she requests her claim start.

Issue 3: If so, was there good cause for the delay throughout the entire period?

[20] No.

[21] For the period of January 6, 2021 through to December 16, 2021 she failed to submit her application for benefits.

[22] The Appellant requested to antedate her benefit period to the week of her interruption of earnings (GD3-31, GD3-32). An officer of the Commission contacted her for additional information (GD3-33). She confirmed that she did not apply for employment insurance sooner because she did not think she was eligible. She was also waiting for her record of employment. She did not contact Service Canada before December, which was when her accountant told her she qualifies for EI.

[23] The Appellant here has stated that she assumed that she did not qualify for benefits due to her age.

[24] She did not attempt to contact Service Canada to confirm her assumption until December, 2021 after a third party advised her that she might qualify for benefits.

[25] It has been well established by the courts that an individual who assumes that they do not qualify or makes no effort to enquire about their rights and responsibilities would not be considered to have good cause because they cannot be said to have acted as a reasonable person would have. **Canada (AG) v. Labrecque, A-690-94, Kamgar v. Canada (AG), 2013 FCA 157, Canada (AG) v. Carry, 2005 FCA 367**

[26] At her hearing, the Appellant testified that she was mistakenly of the understanding that an ROE was required to apply and hers was not issued until 11 months after her leaving the employment.

[27] The Appellant had worked for this employer for 43 years and was summoned to a meeting with the accountant where she was told she was being replaced by a junior

worker who, by the way, only lasted three months in the position before being forced to resign.

[28] The Appellant is actively pursuing a wrongful dismissal case against the employer.

[29] As a result of her leaving the employment she has suffered emotional stress as well as financial insecurity.

[30] However there is no evidence before me that the Appellant was hindered in any way from submitting her application in a timely manner.

[31] The Federal Court of Appeal has re-affirmed that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause. The correct legal test for good cause is whether the claimant 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**

[32] I find that the Appellant, in this case, did not act “as a reasonable person in the same situation would have acted to ensure compliance with her rights and obligations under the Act”.

[33] The onus is totally on the Appellant to submit the application for benefits in a timely manner. There is no provision in the legislation that would allow for the payment of benefits when no claim for such was made in the proper manner as described in the Act and Regulations.

[34] I must agree with the Commission’s assertion that the relevant jurisprudence maintains that a claimant who delays in requesting benefits because they are waiting for their record of employment, or because they believe they are not eligible, or because they are awaiting the outcome of a legal matter, has not proven good cause. For these reasons, the Appellant’s antedate request was denied.

[35] While I understand and sympathize with the Appellant’s frustrations and that she has financial difficulties I must consider the facts and apply the statutory requirements

and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (**Canada (Attorney General) v. Knee, 2011 FCA 301).**

[36] In this case I find that the Appellant has not shown evidence of good cause for the delay in submitting her application for benefits throughout the entire period.

Conclusion

[37] The Member finds that, having given due consideration to all of the circumstances, the Appellant accumulated only 151 hours of insurable employment whereas she needed 420 hours therefore the appeal on this issue is dismissed. In this case, I find that the Appellant has not shown any evidence of good cause for the delay in submitting her application for benefits throughout the entire period which is also the basis for the antedate request therefore the request is denied and the appeal on this issue dismissed.

John Noonan
Member, General Division – Employment Insurance Section