



Citation: *EP v Canada Employment Insurance Commission*, 2024 SST 271

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: E. P.

Respondent: Canada Employment Insurance Commission
Representative: Daniel McRoberts

Decision under appeal: General Division decision dated October 4, 2023
(GE-23-1959)

Tribunal member: Solange Losier

Type of hearing: Teleconference

Hearing date: March 8, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: March 15, 2024

File number: AD-23-939

Decision

[1] The appeal is dismissed. The General Division based its decision on important errors of fact.

[2] To fix those errors, I made the decision the General Division should have made and I reached the same conclusion.

[3] The Claimant is entitled to a two week extension on the qualifying and as a result, he has enough hours to establish a benefit period. However, he does not have good cause to antedate his Employment Insurance (EI) claim to an earlier date.

Overview

[4] E. P. is the Claimant. He applied for EI regular benefits. He asked the Canada Employment Insurance Commission (Commission) to backdate his EI claim (antedate) to two earlier dates and provided his reasons for making that request.

[5] The Commission found that a benefit period could not be established because he didn't have enough hours during the 52 week qualifying period. It denied his request to antedate his EI claim to either of the earlier dates.¹ The Claimant appealed the Commission's decision to the General Division.

[6] The General Division allowed the Claimant's appeal, in part.² It extended his qualifying period by two weeks and in doing so, it found that he had worked enough hours to establish a benefit period.³ However, the General Division also decided that he didn't have good cause for the entire period of delay in applying for EI benefits. The result was that his application for EI benefits could not antedated.

¹ See Commission's reconsideration decision at pages GD3-38 to GD3-39.

² See General Division decision at pages AD1A-1 to AD1A-11.

³ See section 8(2) of the *Employment Insurance Act* (EI Act). The qualifying period is usually 52 weeks, but it can be extended. In this case, it was extended by 2 additional weeks due to incapacity.

[7] The Claimant appealed to the Tribunal's Appeal Division.⁴ He argued that the General Division didn't follow procedural fairness, made an error of jurisdiction and important errors of fact.⁵ At the Appeal Division hearing, the Claimant confirmed that he was only focusing on the errors of fact made by the General Division.

[8] I have decided that the General Division based its decision on important errors of fact. To fix the errors, I have decided to give the decision that the General Division should have given. The Claimant has enough hours to establish a benefit period during the 54 week extended qualifying period. He does not have good cause to antedate his EI application to an earlier date.

Issues

[9] The issues in this appeal are:

- a) Did the General Division make an important errors of fact?
- b) If so, how should the errors be fixed?

Analysis

[10] An error of fact happens when the General Division has based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.⁶

[11] This involves considering some of the following questions:⁷

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?

⁴ See application to the Appeal Division at pages AD1-1 to AD1-18.

⁵ See page AD1-3.

⁶ See section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

⁷ This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

- Did the General Division overlook critical evidence that contradicts one of its key findings?

[12] I can intervene if the General Division based its decision on an important error about the facts of the case.⁸

The General Division based its decision on an important errors of fact

– The General Division made an error by relying on facts that were not part of the record or the Claimant's testimony

[13] The parties agree that the General Division made factual errors. More specifically, the General Division relied on facts that were not part of the record or the Claimant's testimony.

[14] In paragraph 36 of its decision, the General Division found that the Claimant was dealing with mental health issues, a family situation, moving, Covid-19 lockdowns, personal intimacy issues and a cockroach infestation. It acknowledged that the Claimant said these circumstances blew him over the edge and were enough to give him a mental breakdown.

[15] At the Appeal Division hearing, the Claimant explained that he told the General Division he was dealing with an anxiety disorder, but that none of the other circumstances listed in paragraph 36 of its decision applied to him.

[16] I listened to the audio recording from the General Division hearing. None of the circumstances listed above were raised by the Claimant (aside from his anxiety). They are also not included anywhere else in the file.

[17] I find that the General Division based its decision on an important errors of fact. During its assessment of whether the Claimant had exceptional circumstances, it relied

⁸ Section 58(1)(c) of the DESD Act.

on facts and circumstances that were not part of the record or the Claimant's testimony.⁹

– **The General Division made an important error of fact with the delay period**

[18] The Claimant and Commission also agree that the General Division made an important error of fact when it determined the period of delay.

[19] In paragraph 32 of its decision, the General Division found that the period of delay in applying for EI benefits was only 9 weeks.

[20] The Claimant applied for EI benefits on April 20, 2023.¹⁰ He then asked the Commission to consider antedating his EI claim to two dates: May 1, 2022 or December 18, 2022.¹¹

[21] Based on my calculations, this means that the period of delay would have been approximately 17 weeks from December 18, 2022, or approximately 49 weeks from May 1, 2022.

[22] I find that the General Division based its decision on an important error of fact when it decided that the period of delay was only 9 weeks.¹² This was not consistent with the evidence before it.

– **The General Division made an error of fact about the number of hours the Claimant needed and the number of hours he had accrued**

[23] The parties agree that the General Division made errors when it determined the number of hours the Claimant needed to establish a benefit period and the number of hours he had accrued.¹³

[24] In paragraph 41 of the General Division decision, it found that the Claimant needed 700 hours to get EI benefits.

⁹ See section 58(1)(c) of the DESD Act.

¹⁰ See application for EI benefits at pages GD3-3 to GD3-13.

¹¹ See pages GD3-31 and GD3-34.

¹² See section 58(1)(c) of the DESD Act.

[25] In paragraph 55 of the General Division decision, it found that the Claimant needed 600 hours, but only had 535 hours in his qualifying period.

[26] The evidence shows that the Claimant had 748 hours during the 54 week qualifying period.¹⁴ The Claimant only needed 700 hours based on the date he applied (April 20, 2023) and regional rate of unemployment at that time (5.9%).¹⁵

[27] The Commission submits that correcting the above error would not affect the outcome. It explained that the General Division allowed the Claimant's appeal in part finding that he had enough hours to get EI benefits.

[28] The Commission further explained that it had already paid the Claimant EI benefits. He only needed 700 hours and he had accrued 748 hours. This was not disputed by the Claimant and he agreed that he already received the EI benefits mentioned.

[29] I find that the General Division made errors of fact when it incorrectly determined that the Claimant had only 535 hours in his qualifying period and needed 600 hours. This finding was not consistent with the evidence. As noted above, the Claimant had 748 hours during the 54 week qualifying period and only needed 700 hours to establish a benefit period.

[30] I accept that the errors of fact made by the General Division were not important enough to affect the outcome in this particular case. As noted by the Commission, they have already paid the Claimant EI benefits in response to General Division's decision allowing the appeal in part.

[31] Lastly, I acknowledge that the parties raised other errors they allege the General Division made, but I have only focused on the above errors.

[32] I will now consider how to fix the errors.

¹⁴ See pages GD7-1 to GD7-2.

¹⁵ See section 7 of the EI Act.

Remedy: How to fix the error

– The parties agree how to fix the errors, so I will substitute with my decision

[33] I have to decide how to correct the General Division errors. There are two options. I can make the decision that the General Division should have made, or I can send the matter back to the General Division for reconsideration.¹⁶

[34] The Claimant and the Commission agree that I should make the decision the General Division should have made. They submit that the record is complete.

[35] The Claimant explained that he doesn't want any additional EI benefits from the Commission. Also, he doesn't want to owe them any money for EI benefits already paid to him after the General Division allowed his appeal in part.

[36] I agree with the parties. I will make the decision the General Division should have made. I have all of the information I need to decide the question whether the Claimant had enough hours to establish a benefits and whether his EI claim should be antedated. In making this decision, I can make necessary findings of fact.¹⁷

– The Claimant has enough hours to establish a benefit period

[37] The Claimant applied for EI benefits on April 20, 2023. His benefit period was made effective on April 16, 2023 (on the Sunday, the beginning of the week).

[38] The qualifying period is usually the 52 weeks before your benefit period would start.¹⁸ But, there are some exceptions where a qualifying period can be extended.¹⁹ One of those exceptions includes if a Claimant was incapable of working because of illness, injury, quarantine or pregnancy.²⁰

¹⁶ See section 59(1) of the DESD Act.

¹⁷ See section 64 of the DESD Act

¹⁸ See section 8 of the EI Act.

¹⁹ See section 8(2) of the EI Act.

²⁰ See section 8(2)(a) of the EI Act.

[39] In this case, there is medical evidence that the Claimant was unable to work for a period of two weeks from December 19, 2022 to January 2, 2023 because he had his wisdom teeth extracted.²¹

[40] I find that the Claimant's qualifying period can be extended by two weeks because he was unable to work (incapacity). This means that his qualifying period is 54 weeks (52 weeks, plus the 2 week extension). Accordingly, his 54 week qualifying period would start from April 3, 2022 to April 16, 2023.

[41] Based on the regional rate of unemployment (5.9%) at the time that he applied for EI benefits (April 20, 2023) and the economic region, the Claimant needed 700 hours during the qualifying period to establish a benefit period and get EI benefits.²²

[42] The Commission confirmed that the Claimant had 748 hours of insurable employment during the 54 week qualifying period and could establish a claim for EI benefits.²³ This is not disputed by the Claimant.

[43] Accordingly, I find that the Claimant had enough hours during his 54 week qualifying period (from April 3, 2022 to April 16, 2023) to establish a benefit period and get EI benefits.

– **Antedate**

[44] In order to get an antedate, the Claimant has to prove that he had good cause for the delay in applying for EI benefits. He has to prove this for the entire period of delay.²⁴

[45] To show good cause, the Claimant has to prove that he acted as a reasonable and prudent person would have acted in similar circumstances.²⁵

²¹ See medical note at page GD5-2.

²² See section 7(2) of the EI Act and page GD3-15.

²³ See pages GD7-1 to GD7-2.

²⁴ See section 10(4) of the EI Act.

²⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139, at paragraph 5.

[46] Barring exceptional circumstances, the Claimant has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law.²⁶

[47] The Claimant applied for EI benefits on April 20, 2023, but he wants his application antedated to one of two dates: May 1, 2022 or December 18, 2022. This means that there are two periods of delay for me to consider.

[48] The first period of delay runs from May 1, 2022 to April 20, 2023. This is approximately 49 weeks.

[49] The second period of delay runs from December 18, 2022 to April 20, 2023. This is approximately 17 weeks.

[50] The Claimant told the Commission that he was in school from May 2022 to August 2022.²⁷ This followed by a job contract from September 2022 to December 2022. He returned to school in new year, from January 2023 to April 20, 2023 and then applied for EI benefits.

[51] The Claimant argues that he had good cause for the delay in applying for EI benefits for the following reasons.

[52] I will start by reviewing the supplementary notes that were related to telephone discussions between the Claimant and the Commission.

[53] First, the Claimant told the Commission that school faculty told him that he would not be approved for EI benefits while he was in in school.²⁸ His peers also told him the same.²⁹

²⁶ See *Kaler v Canada (Attorney General)*, 2011 FCA 266, at paragraph 4 and *Canada (Attorney General) v Somwaru*, 2010 FCA 366, at paragraphs 8 and 11.

²⁷ See pages GD3-31 to GD3-32.

²⁸ See page GD3-33.

²⁹ See page GD3-34.

[54] Second, he took steps to inquire with the Service Canada between May 1, 2022 and April 19, 2023. He was told that he would not be approved for EI benefits during his studies and should apply after he graduated.³⁰ He made other calls as well, in 2021.³¹

[55] Third, the Claimant told the Commission said he wasn't really sure if he was entitled to EI benefits. He described himself as an anxious person, so he didn't want to apply and risk that it would be considered a fraudulent EI claim.³²

[56] At the General Division hearing, the Claimant testified that he made efforts to inquire through multiple channels about EI benefits with the time he had available.³³ He explained that he was in school upwards of 50 hours a week and didn't have time to be prudent to search for loopholes in the system because he had too much stuff to do.

[57] He also told the General Division that he has a severe anxiety disorder and that in his mind, he was concerned he would be fined or get a "record" for submitting a fraudulent EI claim under false pretenses.³⁴

– The Claimant does not have good cause to antedate his EI claim

[58] I find that the Claimant has not proven that he had good cause for the delay in applying for EI benefits for the entire period of delay. To be clear, I have considered both periods that he asked to antedate his EI claim (May 1, 2022 or December 18, 2022).

[59] I accept that the Claimant may have received misinformation from faculty and his peers from school, and maybe even Service Canada. However, I find that he was not prevented from actually applying for EI benefits despite the information he received.

[60] For example, I find that the Claimant could have applied for EI benefits back in May 2022 or December 2022. He could have followed up with Service Canada after to inquire further about his eligibility and discuss his concerns about the fraud. Even if he

³⁰ See page GD3-33.

³¹ See page GD3-34.

³² See page GD3-34.

³³ See audio recording from General Division hearing at 24:37 to 24:15.

³⁴ See audio recording from General Division hearing at 29:49 to 30:13

was busy with school, he could have submitted an application for EI benefits online anytime, or visited a Service Canada centre during business hours.

[61] I accept that the Claimant acted in good faith. I understand that he didn't want to risk applying for EI benefits and risk being subject to some sort of penalty. However, the Court has found ignorance of the law, even coupled with good faith is not enough to establish good cause.³⁵

[62] I do not find that the Claimant's circumstances viewed individually or cumulatively were exceptional in this case. A Claimant is expected to take reasonably prompt steps to understand his obligations under the EI Act and that did not happen in this case.

Conclusion

[63] The appeal is dismissed. The General Division made important errors of fact. I have substituted with my own decision and reached the same conclusion.

[64] On the issue of hours, the Claimant has enough hours to establish a benefit period from April 16, 2023 with the extended 54 week qualifying period. This includes a two week extension to the qualifying period.

[65] On the issue of antedate, the Claimant has not shown that he good cause for the delay in applying for EI benefits throughout either period of delay. This means that he is not entitled to an antedate.

Solange Losier
Member, Appeal Division

³⁵ See *Kaler v Canada (Attorney General)*, 2011 FCA 266, at paragraph 4 and *Canada (Attorney General) v Somwaru*, 2010 FCA 366, at paragraphs 8 and 11.