Citation: ***M. A. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1256**

Date: October 26, 2015

File number: AD-14-537

APPEAL DIVISION

Between:

M. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

Heard by Teleconference on October 20, 2015

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On September 26, 2014, the General Division of the Tribunal determined that:

- The Appellant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Employment Insurance Act* (the "*Act*").

- The Appellant did not have sufficient hours to qualify for regular benefits pursuant to section 7 of the *Act*.

[3] The Appellant requested leave to appeal to the Appeal Division on October 16, 2014. Leave to appeal was granted by the Appeal Division on March 31, 2015.

TYPE OF HEARING

[4] The Tribunal held a telephone hearing for the following reasons:

- The complexity of the issue(s) under appeal.

- The fact that the credibility of the parties is not anticipated being a prevailing issue.

- The information in the file, including the need for additional information.

- The requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant was present at the hearing. The Respondent was represented by Mrs. J. Davis.

THE LAW

[6] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

a. the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

c. The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUES

[7] The Tribunal must decide if the General Division erred in fact and in law when it concluded that:

a) The Appellant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Act*;

b) The Appellant did not have sufficient hours to qualify for regular benefits pursuant to section 7 of the *Act*.

ARGUMENTS

[8] The Appellant submits the following arguments in support of his appeal:

- He did not apply for EI benefits because he had a foreign worker status and was not aware that foreign workers could apply;

- It is clearly stated on Service Canada website that EI benefits are for "Canadians" everywhere on the website even on the online application for EI benefits;

- For almost 13 months, he had no doubt that only Canadians could apply for EI benefits.

- He performed his duty to obtain information from the Service Canada website;

- He did not call Service Canada to enquire about his eligibility because he could get the information he needed to know on line;

- His case is not about ignorance of the law as he was misled by the Service Canada website;

- The Federal Court of Appeal does not allow writing misleading and incorrect information to the public on the Service Canada website. It is acceptable that the website cannot deal with specifics of every person's situation, but this does not mean that it is okay to state misleading information to the public;

- He did not make any assumption. Foreign workers are not “Canadians”, this is a well-known fact, not an assumption;

- The General Division ignored all his documented evidences of his delay. The General Division did not agree that the Service Canada website contains misleading information however Service Canada has changed their website on Sept 4th 2014 - and used his recommendation;

- He looked for the American, British, Irish, Australian and New Zealander websites for employment insurance/jobseeker allowance to compare it with the Service Canada website. He can show that those countries used very accurate/easy terms that do not mislead a native or a foreign English speaker like the Service Canada website did to him;

- The case law submitted by the General Division to support its decision does not apply to him.

[9] The Respondent submits the following arguments against the appeal:

- To establish good cause under section 10(4) of the *Act*, a claimant must be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the *Act*. The Federal Court of Appeal re-affirmed claimants have a duty to enquire about their rights and obligations and the steps that should be taken to protect a claim for benefits;

- The Appellant's employer was required to deduct EI premiums from each pay cheque as well as producing a T-4 slip, yet the Appellant took no steps to clarify the purpose of these deductions or his right to EI benefits;

- The Federal Court of Appeal re-affirmed that ignorance of the law does not constitute good cause for delay and that the "good cause for delay" exception must be cautiously applied to protect the integrity of the EI system;

- There is no evidence that the Appellant took any steps from April 28, 2013 to February 2, 2014 to verify his particular eligibility; nor did he identify any exceptional circumstances that prevented him from making enquiries or filing a claim throughout the period of delay. Consequently, the Appellant failed to prove good cause throughout the 9 month delay in filing his claim;

- Before the General Division, the Appellant argued that he visited the Canada Services website and did not file because of the information he found. The Federal Court of Appeal clarified that the Service Canada website cannot be relied on solely as an authority because the website does not "purport to deal with the specifics of every person's particular situation" and claimants cannot reasonably treat information on it as if it were personally provided to them;

- The Federal Court of Appeal has re-affirmed the principle that a claimant who takes no steps to validate his incorrect assumption that he was not eligible for benefits has not proven "good cause" for the delay in filing;

- The General Division applied the correct legal test and cited relevant case law to support its decision. The General Division, in dismissing the Appellant's appeal, found that he was well educated and resourceful and that it was reasonable to

expect that he should have enquired further as to whether he was entitled to benefits from the EI system into which he had just contributed;

- The General Division committed no error in its decision; its findings were reasonable and compatible with the evidence, legislation and jurisprudence that was before it; there is nothing to suggest that its decision was biased against the Appellant in any way, or that it did not act impartially; nor that there is any evidence to show there was a breach of natural justice present in this case;

STANDARD OF REVIEW

[10] The Appellant did not make any representations regarding the applicable standard of review.

[11] The Respondent submits that the applicable standard of review for mixed questions of fact and law is reasonableness - *Smith v. Alliance Pipeline Ltd*, 2011 SCC 7, *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[12] The Tribunal acknowledges that the Federal court of appeal determined that the standard of review applicable to a decision of a board of referees (now the General Division) or an Umpire (now the Appeal Division) regarding questions of law is the standard of correctness - *Martens c. Canada (AG)*, 2008 FCA 240 and that the standard of review applicable to questions of fact and law is reasonableness - *Dunsmuir v. New Brunswick*, 2008 SCC 9,*Canada (AG) v. Hallée*, 2008 FCA 159,

ANALYSIS

[13] To establish good cause under section 10(4) of the *Act*, a claimant must be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the *Act*. The Federal Court of Appeal re-affirmed on numerous occasions that claimants have a duty to enquire about their rights and obligations and the steps that should be taken to protect a claim for benefits - *Canada (AG) v. Kaler*, 2011 FCA 266; *Canada (AG) v. Dickson*, 2012 FCA 8.

[14] The Appellant submits that it is clearly stated on the Service Canada website that EI benefits are for "Canadians", everywhere on the website, even on the online application for EI benefits. For almost 13 months he had no doubt that only Canadians could apply for EI benefits. He takes the position that he performed his duty to obtain information from the Service Canada website and that explains why he did not call Service Canada to enquire any further about his eligibility. He could get all the information he needed to know on line.

[15] The Appellant pleads that he was misled by the Service Canada website and that it is not acceptable that said website states misleading information to the public. It is incorrect to say that he assumed he was ineligible. Foreign workers are not "Canadians", this is a well-known fact, not an assumption, he argues. He also looked for the American, British, Irish, Australian and New Zealander websites for employment insurance/jobseeker allowance to compare it with Service Canada website. He can show that those countries used very accurate/easy terms that do not mislead a native or a foreign English speaker like the Service Canada website did to him;

[16] The Appellant essentially takes the position that the General Division ignored all his testimony and documented evidences explaining his delay.

[17] In view of the above position of the Appellant, the Tribunal considers important to reproduce the findings of the General Division when it dismissed the appeal of the Appellant:

> "[36] In this case, the Member considered that the Claimant delayed approximately 9 months, from April 28, 2013 until February 6, 2014, to submit an application for benefits. Initially, the Claimant stated to the Commission and indicated in two of his written submissions that the reason he delayed in applying on the earlier date was because he did not know that he was eligible to apply for employment insurance benefits. He stated to the Commission that he did not know that he could apply until a friend was filing an application and he enquired into his own eligibility and filed his own application for benefits. He stated to the Commission that he had not enquired about his eligibility for benefits until February 2014 (GD3-16, GD3-20 to GD3-22). In his notice of appeal, the Claimant indicates that this was his first job in Canada and as a newcomer, foreign workers' rights were not clear enough to him and he "mistakenly assumed" that only Canadian citizens are eligible to apply for employment insurance benefits because of the use of the word "Canadians" on the Service Canada website. At the hearing, the Claimant testified that he delayed in submitting his application

because he was misled by the information on the Service Canada website and not because of ignorance of the law. In support of his submission, the Claimant provided examples of references made to "Canadians" on the Service Canada website and the online application, while on the Employment and Social Development Canada website it correctly refers to "individuals" (GD5-3 to GD5-7).

[37] The Member considered all of the Claimant's reasons for the delay in making his application for benefits however, placed more weight on the Claimant's consistent, initial response/reason provided in his written submissions and to his statements to the Commission, than on the reasons he provided after a decision was rendered and communicated to him. It wasn't until he submitted his notice of appeal and testified at the hearing, that the Claimant indicated that he had mistakenly assumed that only Canadian citizens are eligible to apply for employment insurance benefits because he was misled by the information provided by Service Canada. The Member therefore, finds that the Claimant he did not know that he was eligible to apply for employment insurance benefits until he enquired further into his eligibility for benefits in February 2014. However, the Member gave the Claimant benefit of the doubt, and also considered his submission that he did make enquiries on the earlier date of April 28, 2013 but was misled by the information on the Service Canada website.

[38] The Member's consideration is supported by case law that states that:

> "An abundant and uniform case law has clearly established that a Board of Referees must attach more weight to the initial, spontaneous statements made by the persons concerned before the Commission's decision is rendered, than to the subsequent statements that are offered in an attempt to justify or put a better face on the claimant's position when the Commission renders an unfavourable decision." (CUB 25154).

[39] The Member considered the Claimant's submission that in fact, he did look into his eligibility prior to making an application on February 6, 2014. The Member considered his adamant testimony and documentary evidence that he delayed in applying for benefits, not because of ignorance, but due to the misleading references made to "Canadians" on the Service Canada website and application form. The Member noted however, that even if the Claimant was misled by the Service Canada information on the website, the Claimant would still have to demonstrate 'good cause' for the entire period of the delay. That is, he would have to show that he acted as a reasonable and prudent person would have done in the same situation to satisfy himself of his rights and obligations under the EI Act. In other words, even if the Member agreed with the Claimant that the information on the Service Canada website is misleading and inconsistent, to show good cause for the delay, the Claimant must show that he took reasonable steps to protect his right to benefits. The Claimant submitted evidence to show that there were inconsistencies between the Service Canada and the Employment and Social Development Canada websites, yet the Claimant did not make any further enquiries as to the difference between the references to "Canadians" and "individuals" and assumed he was not eligible. The Member finds that the Claimant is well-educated and resourceful and because he was

> in an unemployment situation, with foreign worker status and restricted access to employment in his field of study; it is reasonable to expect that he should have enquired further as to whether he was entitled to benefits from the employment insurance system into which he had just contributed. The Member notes that if the Claimant was confused as he submits, then there were several other sources he could have consulted including contacting Service Canada directly, as he ultimately discovered when he applied on February 6, 2014. The Member finds that the Claimant did not act as a reasonable and prudent person would have done in the same situation to satisfy himself of his rights and obligations and taken the steps required to protect his claim for benefits under the EI Act."

[18] The evidence before the General Division demonstrates that the Appellant initially stated to the Respondent and indicated in two of his written submissions that the reason he delayed in applying on the earlier date was because he did not know that he was eligible to apply for employment insurance benefits, was looking for another job and was living on his savings. He mentioned to the Respondent that he did not know that he could apply until a friend was filing an application and he enquired into his own eligibility and filed his own application for benefits. He also declared to the Respondent that he had not enquired about his eligibility for benefits until February 2014. The Appellant finally added there were no other factors that lead to his delay to consider (GD3-16, GD3-20 to GD3-21).

[19] As noted by the General Division, it was only in his notice of appeal to the General Division and during the hearing that the Appellant raised problems encountered with the website of Service Canada.

[20] The General Division placed more weight on the Appellant's consistent, initial response/reason provided in his written submissions and to his statements to the Respondent, than on the reasons he provided after a decision was rendered and communicated to him.

[21] The Tribunal finds that the General Division reasonably and correctly concluded from the initial statements of the Appellant to the Respondent that he did not act as a reasonable and prudent person would have done in the same situation to satisfy himself of his rights and obligations and taken the steps required to protect his claim for benefits under the EI *Act*.

[22] Nonetheless, the General Division still considered the argument of the Appellant regarding the Service Canada Website.

[23] The General Division concluded that the Appellant being a well-educated and resourceful person and because he was in an unemployment situation, with foreign worker status and restricted access to employment in his field of study, should have enquired further as to whether he was entitled to benefits from the employment insurance system into which he had just contributed. The General Division noted that if the Appellant was confused, as he submitted, then there were several other sources he could have consulted including contacting Service Canada directly.

[24] This Tribunal also noticed that the screenshot filed by the Appellant before the General Division in support of his position demonstrates that the Service Canada website refers to Canadians but also mentions that Employment Insurance benefits are available to individuals, people and eligible parents (GD5-3). The Employment and Social Development Canada website, filed by the Appellant, also confirms that the EI program provides temporary financial assistance for individuals (GD5-7).

[25] Furthermore, the Appellant did not dispute before the General Division that if he had continued his search, there was information available on the Service Canada website for New Comers to Canada which directs them to information on the Employment Insurance program and when you should apply for benefits.

[26] The Tribunal finds that the evidence before the General Division does not demonstrate that the information on the website was erroneous. It might have been confusing for the Appellant but the website contained enough information to have alerted a reasonable person in the Appellant's position, who had paid premiums to the program, to wonder whether he might be eligible for benefits and to contact the Respondent to find out or to make an application for benefits - *Mauchel vs Canada (A.G.)*, 2012 CAF 202.

[27] In regards to the required hours, the evidence before the General Division showed that during this qualifying period, the Appellant had accumulated 466 hours of insurable employment when 595 hours were required to qualify for employment insurance benefits pursuant to subsection 7(2) of the *Act.*

[28] The Tribunal finds that the decision of the General Division, on all issues, was open to it and is a reasonable one that complies with the law and the decided cases.

CONCLUSION

[29] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division