

Citation: *R. W. v. Canada Employment Insurance Commission*, 2015 SSTAD 1410

Appeal No. AD-13-610

BETWEEN:

**R. W.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: December 9, 2015

DECISION: Appeal dismissed

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] On August 15, 2013, a General Division member dismissed the Appellant's appeal against the previous determination of the Commission.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] On July 14, 2015, a teleconference hearing was held but the Appellant did not appear. Subsequently, the Appellant requested that a new hearing be held. This request was granted, and on October 8, 2015, a new teleconference hearing was held in the presence of both the Appellant and the Commission.

## **THE LAW**

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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.

[6] Administrative law currently establishes only two standards of review, that of correctness and that of reasonableness.

[7] As previously determined by the Federal Court of Appeal in *Canada (Attorney General) v. Jewett*, 2013 FCA 243, *Chaulk v. Canada (Attorney General)*, 2012 FCA 190, and many other cases, the standard of review for questions of law and jurisdiction in employment insurance appeals is that of correctness, while the standard of review for questions of fact and mixed fact and law in employment insurance appeals is reasonableness.

## **ANALYSIS**

[8] This appeal concerns whether or not the Appellant should have his initial claim antedated (backdated) from February 20, 2013 to January 6, 2012.

[9] The Appellant argues that, contrary to the findings of the General Division member, by hiring a lawyer to assist him in his wrongful dismissal claim he acted as a reasonable person would act. Unfortunately, his lawyer did not discuss filing an employment insurance claim with him and as a result of this he did not file a claim at that time. The Appellant asks that his appeal be allowed, and that his claim be antedated as requested.

[10] The Commission, in their submissions, supports the decision of the General Division member. They note that good faith and ignorance do not constitute “good cause” as required by the *Employment Insurance Act* (the Act). The Commission believes that the Appellant did not do what a reasonable person would do in his circumstances, namely contact the Commission to determine their rights and obligations under the Act.

[11] In her decision, the General Division member correctly stated the law and the relevant jurisprudence. She then considered the Appellants arguments before coming to the conclusion that he had not shown good cause and that for that reason his appeal could not succeed.

[12] I have carefully considered the arguments of the Appellant, especially the argument that by contacting a lawyer the Appellant acted as a reasonable person would have done. However, in oral argument before me the Appellant admitted that he retained the lawyer to advise him regarding his wrongful dismissal claim, not an employment

insurance claim, and did not ask his lawyer for counsel regarding any such claim for benefits.

[13] I cannot find in the circumstances of this case that hiring a lawyer for a related but distinct legal undertaking yet not asking that lawyer for legal advice regarding filing a claim for benefits relieves the Appellant of his general responsibility to contact the Commission to determine his rights and obligations under the Act. Nor can I find that the Appellant's actions constitute good cause for the delay.

[14] Having considered the appeal docket, the submissions of the parties, and the decision of the General Division member, I find no reviewable error. In my view, as evidenced by the decision, the member conducted a proper hearing, weighed the evidence, made findings of fact, established the correct law, and applied the facts to the law.

[15] I have found no evidence to support the ground of appeal invoked or any other possible ground of appeal. There is no reason for the Appeal Division to intervene.

## **CONCLUSION**

[16] For the above reasons, the appeal is dismissed.

*Mark Borer*

Member, Appeal Division