



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. E. G.*, 2016 SSTADEI 87

Appeal No. AD-14-434

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**E. G.**

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: February 15, 2016

DECISION: Appeal allowed

**Canada**

## **DECISION**

[1] The appeal is allowed. The General Division decision is rescinded and the determination of the Commission is restored.

## **INTRODUCTION**

[2] On November 18, 2013, a General Division member allowed the Respondent's appeal against the previous determination of the Commission.

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

[4] On November 17, 2015, a teleconference hearing was held. Both the Commission and the Respondent attended and made submissions.

## **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.

## **ANALYSIS**

[6] This is a case where the Respondent requested that her employment insurance claim be antedated (backdated). Although the Commission initially refused to do so, the General Division overturned that decision and allowed the antedate.

[7] The Commission now appeals against that decision, arguing that the General Division erred in law by failing to correctly consider and apply the correct test to determine whether or not the Respondent had shown “good cause” for her delay in applying for benefits.

[8] The Respondent supports the General Division decision and notes that during the time in question she had a part-time job. Because of this, she submits that an ordinary reasonable person would not have applied for benefits when the Commission says she should have.

[9] The General Division, in its decision, correctly stated the law regarding antedate requests and also correctly noted a number of decisions of the Federal Court of Appeal that explained how to apply that test. The General Division then made factual findings to the effect that the Respondent had no experience with employment insurance applications as she had been a long-term employee. Based upon “parliament’s intention in enacting section [sic] 10(4)” of the *Employment Insurance Act* (the Act), the General Division then found that the Respondent had “acted reasonably and shown good cause for her delay in applying for benefits”. It also found that it was not reasonable to expect a claimant to “know all the fine details” of the Act.

[10] Unfortunately, in making the above findings the General Division erred. The Federal Court of Appeal has stated many times (such as in *Canada (Attorney General) v. Kaler*, 2011 FCA 266), that unless there are exceptional circumstances a claimant must take “‘reasonably prompt steps’ to determine entitlement to benefits and to ensure [their] rights and obligations” and that “[t]his obligation imports a duty of care that is both demanding and strict”.

[11] Although the General Division cited the above case and appears to have understood the law, it failed to apply the law to the facts before it.

[12] Those facts are clear. The Respondent took no steps to determine her rights and obligations under the Act because she was busy working and did not think there was any point in applying for benefits earlier than she did. I find that her actions were not

unreasonable, but that they do not constitute good cause for the delay according to the jurisprudence of the Court. There was no evidence to suggest that the Respondent's situation was somehow exceptional, and I observe that the General Division made no finding suggesting that it was.

[13] Because of this, I find that there was only one possible conclusion that the General Division could have reached: that the Respondent should not have her claim antedated.

[14] As a result, this appeal must succeed.

## **CONCLUSION**

[15] For the above reasons, the appeal is allowed. The General Division decision is rescinded and the determination of the Commission is restored.

*Mark Borer*

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Member, Appeal Division