



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. W. v. Canada Employment Insurance Commission*, 2016 SSTA DEI 146

Appeal No. AD-14-572

BETWEEN:

A. W.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: March 15, 2016

DECISION: Appeal dismissed

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On November 10, 2014, 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 December 1, 2015, a teleconference hearing was held. The Appellant and the Commission each 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 appeal concerns whether or not the Appellant had good cause within the meaning of the *Employment Insurance Act* (the Act) to have (backdated).

[7] In her submissions the Appellant argued that, contrary to the findings of the General Division member, she took all the steps a reasonable and prudent person should take to learn about her rights and obligations under the Act. At the hearing before me (although

apparently not to the General Division member), she stated that she went online to the Commission's web page and also called the Commission and spoke to an agent but "didn't get anywhere". From this, she came to the conclusion that she was not eligible for benefits and so she did not apply. She also stated that she was continually looking for a job, but eventually needed money and so applied for benefits. She asks that her appeal be allowed and that her claim be antedated.

[8] The Commission notes that they have no record of her contacting the Commission and speaking to an agent. They further submit that the General Division member correctly stated and applied the law to the facts at hand, and support his ultimate conclusion that the Appellant should not have her claim antedated.

[9] The General Division member, in his 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 member then made factual findings to the effect that the Appellant failed to contact the Commission until just before she filed her claim. After reviewing the reasons given for the delay by the Appellant, the member found that she had not shown good cause for the delay because she should have acted to determine her rights and obligations sooner than she did.

[10] 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] The member was aware of the above series of cases and I find that, as evidenced by his decision, he understood and applied them to the facts at hand. The Appellant has failed to convince me that the member made any errors in doing so. The findings he made were entirely open to him based upon the evidence before him, and were perfectly reasonable.

[12] I have found no evidence to support the grounds of appeal invoked or any other possible ground of appeal. In my view, as evidenced by the decision and record, the member conducted a proper hearing, weighed the evidence, made reasonable findings of fact, established the correct law, and came to a conclusion that was intelligible and understandable.

[13] There is no reason for the Appeal Division to intervene.

CONCLUSION

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

Mark Borer

Member, Appeal Division