



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. D. P.*, 2016 SSTADEI 320

Tribunal File Number: AD-13-1173

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

D. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON May 10, 2016

DATE OF DECISION: June 21, 2016

DECISION

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 The decision of the board of referees is rescinded and the determination of the Commission is restored.

INTRODUCTION

[2] On April 30, 2013, a panel of the board of referees (the Board) 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 May 10, 2016, 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 [or the Board] failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division [or the Board] erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division [or the Board] 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 his employment insurance claim be antedated (backdated). Although the Commission initially refused to do so, the Board overturned that decision and allowed the antedate.

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

[8] The Respondent supports the Board decision and notes that during the time in question he was working and had no idea that he would qualify for benefits. Because of this, he submits that an ordinary reasonable person would not have applied for benefits when the Commission says he should have.

[9] In their decision, the Board correctly stated the law regarding antedate requests. They then made factual findings that the Respondent “placed too much reliance on his belief that he would not be entitled because of the earnings that he had”. Notwithstanding this, the Board then found that this belief was “reasonable” and that the Respondent had “acted responsibly” during the time in question. On this basis, the Board allowed the appeal.

[10] Unfortunately, in making the above findings the Board erred.

[11] 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”.

[12] The facts are clear. The Respondent took no steps to determine his rights and obligations. He failed to do so because he was busy working and did not think there was any point in applying for benefits earlier than he did. I find that his actions were not unreasonable, but that they do not constitute good cause for the delay according to the

jurisprudence of the Court. There is no evidence to suggest that the Respondent's situation was somehow exceptional, and I observe that the Board made no finding suggesting that it was.

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

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

CONCLUSION

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

Mark Borer
Member, Appeal Division