



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 356

Tribunal File Number: AD-15-1145

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division– Appeal Decision

DECISION BY: Pierre Lafontaine

HEARD ON: July 5, 2016

DATE OF DECISION: July 6, 2016

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

I INTRODUCTION

[2] On October 19, 2015, the General Division of the Tribunal found that the decision to refuse the Applicant's request to antedate his claim was justified under sections 10 and 50 of the *Employment Insurance Act* (the "Act") and section 26 of the *Employment Insurance Regulations* (the "Regulations").

[3] The Appellant filed an application for leave to appeal to the Appeal Division on October 26, 2015. Leave to appeal was granted on November 5, 2015.

FORM OF HEARING

[4] The Tribunal determined that this appeal would proceed by teleconference for the following reasons:

- the fact that the parties' credibility was not one of the main issues;
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice;
- the cost-effectiveness and expediency of the hearing choice

[5] The Appellant was present at the hearing. The Respondent was represented by Julie Meilleur.

THE LAW

[6] Under 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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[7] The Tribunal had to decide whether the General Division's decision to refuse the Applicant's antedate request was justified under sections 10 and 50 of the *Act* and section 26 of the *Regulations*.

ARGUMENT

[8] The Appellant's arguments in support of his appeal are as follows:

- the General Division did not consider the evidence before it;
- more specifically, the General Division did not consider the fact that his medical condition caused him to forget to complete his report cards;
- he did not submit medical evidence to the General Division apart from his testimony that he was suffering from depression during this time;
- he acknowledges that the *Act* must apply, but underscores that he did not act in bad faith by submitting his report cards late.

[9] The Respondent's arguments against the Appellant's appeal are as follows:

- Section 10(5) of the *Act* states: "A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there

was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made."

- The case law has established that, in order to establish good cause for a delay in applying for benefits, claimants must demonstrate that they have promptly taken steps to ensure as to their eligibility for benefits and that ignorance of the law or lack of experience with the Employment Insurance system does not constitute good cause for a delay in applying for benefits;
- In accordance with established case law, the Board of Referees (now the General Division) is the trier of fact in the assessment of evidence and an Umpire (the Appeal Division) is not justified in intervening unless the General Division makes an error of law or fails to consider an important part of the evidence, or its decision is contrary to the evidence;
- The General Division's decision complies with the legislation, and with the relevant case law, and it is reasonably compatible with the facts in the docket. The General Division relied on all the evidence brought before it and explained its findings in coherent and consistent reasoning.

STANDARDS OF REVIEW

[10] The Appellant made no submissions concerning the applicable standard of judicial review.

[11] The Respondent submits that the standard of judicial review applicable to questions of law is correctness, and that the standard of review applicable to questions of mixed fact and law is reasonableness (*Pathmanathan v. Office of the Umpire*, 2015 FCA 50).

[12] The Tribunal notes that in *Canada (AG) v. Jean*, 2015 FCA 242, the Federal Court of Appeal states at paragraph 19 of its decision that when the Appeal Division "acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court."

[13] The Federal Court of Appeal proceeded to note that:

[N]ot only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of “federal boards,” for the Federal Court and the Federal Court of Appeal.

[14] The Federal Court of Appeal concluded by stating that “when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.”

[15] The mandate of the Appeal Division of the Social Security Tribunal described in *Jean* was subsequently confirmed by the Federal Court of Appeal in *Maunder v. Canada (A.G.)*, 2015 FCA 274.

[16] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law or 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, the Tribunal must dismiss the appeal.

ANALYSIS

[17] When it dismissed the Appellant’s appeal, the General Division found that:

[Translation]

[23] The Appellant received an initial letter with his access code. He decided to disregard the information and set the document aside. He thought he would receive his report cards later. Bear in mind that this was not his first claim.

[24] The Appellant explained at the hearing that he was taking medication and that it occasionally impaired his judgement. The Tribunal does not doubt the Appellant’s good faith, yet he provided no evidence to confirm his medical condition. Naturally, he entered medical certificates into evidence, but these documents do not explain the Appellant’s medical condition. On the two medical certificates, we read: “Sick leave [...]” with no further details.

[25] The Tribunal considers that the Appellant's medical condition was not exceptional. The Appellant did not make a reasonable effort to reactivate his claim. He did not seek help from the people around him. He did not act as a reasonable person would have acted in similar circumstances.

[18] The General Division determined that the Appellant had failed to consider the importance of the documents sent to him by the Respondent, and that the medical evidence presented was insufficient to support his position that his judgement had been impaired by the medication he was taking. Based on the evidence before it, the General Division found that the Appellant had not shown good cause for the delay in filing his claim for benefits.

[19] The Tribunal is not empowered to retry a case or to substitute its discretion for that of the General Division. The Tribunal's powers are limited by subsection 58(1) of the *Department of Employment and Social Development Act*. Unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

[20] The Tribunal cannot conclude that the General Division made such an error. The decision of the General Division is compatible with the evidence on file and consistent with the relevant legislative provisions and the case law.

CONCLUSION

[21] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division