Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *Canada Employment Insurance Commission v. T. A.,* 2016 SSTADEI 352

Tribunal File Number: AD-15-1203

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

T. A.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

DECISION BY: Pierre Lafontaine

HEARD ON: June 21, 2016

DATE OF DECISION: July 4, 2016

Canada

REASONS AND DECISION

DECISION

[1] The appeal is allowed, the decision of the General Division dated October 22, 2015 is rescinded and the appeal of the Respondent before the General Division is dismissed.

INTRODUCTION

[2] On October 22, 2015, the General Division of the Tribunal determined that:

> - The Respondent met the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to subsection 10(4) of the *Employment Insurance Act* (the "*Act*").

[3] The Appellant requested leave to appeal to the Appeal Division on November 5, 2015. Leave to appeal was granted on November 18, 2015.

TYPE OF HEARING

[4] The Tribunal held a teleconference hearing for the following reasons:

- the complexity of the issue under appeal.
- the credibility of the parties is not anticipated being a prevailing issue.
- the information in the file, including the need for additional information.
- the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] At the hearing, the Appellant was represented by Louise Laviolette. The Respondent was also present.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (the "*DESD Act"*) states that the only grounds of appeal are the following:

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.

ISSUE

[7] The Tribunal must decide if the General Division erred when it concluded that the Respondent met the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to subsection 10(4) of the *Act*.

ARGUMENTS

[8] The Appellant submits the following arguments in support of the appeal:

- The correct legal test for good cause is not "did a claimant act reasonably in the same circumstances", but "did the claimant do what a reasonable person would do in the same circumstances, to satisfy himself as to his rights and obligations under the legislation" pursuant to subsection 10(4) of the *Act*;

- The General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner without regard to the material before it and the decision is not reasonable;

- The Federal Court of Appeal has held that claimants have a duty to enquire about their rights and obligations and the steps that should be taken or show that there were exceptional circumstances which prevented them from doing so;

- The General Division erred when it failed to clarify discrepancies between the initial statement that the Respondent was not physically prevented from filing due to hospitalization or other reasons but justified the delay based on the length of the labour standards process and no record of employment on file. The Federal Court of Appeal confirmed that good faith is not sufficient to establish good cause and that it is an error for a tribunal to ignore discrepancies without giving reasons for doing so;

- In the present case, the Respondent has not shown his circumstances were so exceptional as to prevent him from making enquiries. A reasonable person in his circumstances and knowing about EI benefits, as found by the General Division, would not have waited months to make enquiries about his obligations and rights with regard to his claim for benefits.

[9] The Respondent submits the following arguments against the appeal:

- He was never informed of the possibility to apply for EI benefits by his employer;

- He did not receive his record of employment until 2014 and his status with the employer was always unclear;

- He filed a labour standard complaint in January 2013 and it was only settled in February 2014;

- He was told to apply for EI benefits when he filed a disability application in 2014; He applied for benefits as soon as he found out;

- It was the first time he applied for EI benefits even though he has been living in Canada for 15 years.

STANDARD OF REVIEW

[10] The Appellant submits that the applicable standard of review for mixed questions of fact and law is reasonableness - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[11] The Respondent did not submit any representations regarding the applicable standard of review.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (AG) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that "[w]hen it 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 further indicated 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 Court concluded that "[w]he[n] it 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 as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (AG)*, 2015 FCA 274.

[16] Therefore, 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.

ANALYSIS

[17] When the General Division granted the appeal of the Respondent, it concluded that:

> "[29] The Tribunal finds that the Claimant was not in receipt of a record of employment from his employer.
>
> (…)
>
> [35] The Tribunal finds that all though the Commission may be accurate in their contention that a Claimant not being aware of employment insurance benefits is not considered good cause for a delay in filing for benefits, it is the Tribunal's finding that the Claimant was aware of employment insurance benefits however the time it took him to clarify his employment status was approximately a year due to the Labour Standards process regarding his case."
>
> [36] The Tribunal finds that the Claimant acted as a reasonable and prudent person would have in similar circumstances, throughout the entire period of the delay as it took the entire time of the delay to clarify the Claimant's work status through the Labour Standards office."

[18] With great respect, and for the following reasons, the decision of the General Division will be set aside.

[19] The Tribunal finds that the General Division erred when it concluded that the absence of a record of employment justified a delay in applying for benefits. A record of employment is not as a necessary precondition to applying for EI benefits. Waiting for such a document is not good cause under the *Act*.

[20] The Tribunal also finds that the General Division ignored the evidence before it when it concluded that the Appellant did what a reasonable person would have done to satisfy himself as to his rights and obligations under the *Act.* The Federal Court of Appeal re-affirmed on numerous occasions that claimants have a duty to enquire about their rights and obligations and the steps that should be taken to protect a claim for benefits - *Canada (AG) v. Kaler*, 2011 FCA 266, *Canada (AG) v. Dickson*, 2012 FCA 8.

[21] While it is true that the Respondent was initially induced in error concerning his employment status, the fact is that he was laid off in November, 2012. The employer indicated to him that they had to cut hours and that he was not the only employee

concerned by this measure. After the first month, the Appellant inquired with fellow colleagues and he was told that he was in fact the only one the cuts had impacted. After trying to communicate with his employer, it became clear that the employer was avoiding him.

[22] In view of this information, there was nothing to stop the Respondent from applying for EI benefits. He could have then continued on his benefits throughout the period while he was waiting a confirmation of his employment status. The evidence before the General Division clearly showed that following the information received from working colleagues, he filed a complaint at the labour standards and waited months and months for the process to be resolved. He did not inquire during this period about his obligations and rights with regard to a claim for benefits when no special circumstances prevented him from doing so.

[23] Having considered these circumstances, the Tribunal is satisfied that the appeal of the Appellant must be allowed as the Respondent did not show that he had good cause throughout the period from November 18, 2012 to March 29, 2014.

CONCLUSION

[24] The appeal is allowed, the decision of the General Division dated October 22, 2015 is rescinded and the appeal of the Respondent before the General Division is dismissed.

Pierre Lafontaine
Member, Appeal Division