



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. B. P.*, 2016 SSTADEI 410

Tribunal File Number: AD-16-265

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

B. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: July 21, 2016

DATE OF DECISION: August 10, 2016

REASONS AND DECISION

DECISION

[1] The appeal is allowed, the decision of the General Division is set aside and the appeal of the Respondent before the General Division is dismissed.

INTRODUCTION

[2] On January 25, 2016, the General Division of the Tribunal determined that the Respondent met the onus placed upon her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Employment Insurance Act (Act)*.

[3] The Appellant requested leave to appeal to the Appeal Division on February 11, 2016. Permission to appeal was granted on February 26, 2016.

TYPE OF HEARING

[4] The Tribunal held a telephone 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 Carol Robillard and the Respondent was present.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development 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 her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Act*.

ARGUMENTS

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

- The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner ignoring the material before it and erred in law when it misinterpreted the legal test to find good cause for the delay in filing a claim;
- The legal test for good cause under subsection 10(4) of the *Act* is not whether the claimant acted like a reasonable person in the situation would have done but did the claimant act like a reasonable person in the situation to satisfy themselves of their rights and obligations under the *Act*;

- The Respondent had sufficient insurable hours to qualify at the earlier date and may have had good cause for the initial period of delay from June 1, 2014 to October 4, 2014, while she was medically recovering and in receipt of separation monies. However, the Federal Court of Appeal has re-affirmed that good cause under subsection 10(4) of the *Act* must apply throughout the entire period of delay;
- The facts of this case are that the Respondent did not make any enquiries as to her rights and obligations with regard to a claim for benefit despite the fact that she was available for and seeking work;
- 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 to protect a claim for benefits. An intention not to claim employment insurance benefits and seek alternative employment is not good cause for delay;
- That a reasonable conclusion based on the facts of this case is that the Respondent has failed to show good cause for the entire period of delay and the correct conclusion is that the strict criteria for antedating a claim pursuant to subsection 10(4) of the *Act* has not been met;
- Consequently, the Respondent does not have sufficient insurable hours to qualify for benefits pursuant to section 7 and 8 of the *Act* as of March 30, 2015. She accumulated 319 insurable hours in the qualifying period from March 30, 2014 to March 28, 2015 but required 560 hours to qualify for regular benefits.

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

- She feels the decision of the General Division is accurate;
- She believes that the General Division made no errors in interpreting the legal test for "good cause" for the delay in applying for her benefits;

- She also feels that the General Division did not base 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;
- She has continuously looked for work and has not been successful, except for the six weeks that she was recovering from surgery, February 9 to March 22.

STANDARD OF REVIEW

[10] The Appellant did not make any representations regarding the applicable standard of review.

[11] The Respondent submits that the applicable standard of review for questions of fact and law is reasonableness and for questions of law, is correctness - *Martens v. Canada (AG)*, 2008 FCA 240.

[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] The Appellant submits that the facts of this case are that the Respondent did not make any enquiries as to her rights and obligations with regard to a claim for benefit despite the fact that she was available for and seeking work. Her intention not to claim employment insurance benefits and seek alternative employment is not good cause for delay.

[18] The Respondent submits that the General Division made no errors in interpreting the legal test for "good cause" for the delay in applying for her benefits. She has continuously looked for work and has not been successful, except for the six weeks that she was recovering from surgery.

[19] When it allowed the appeal of the Respondent, the General Division concluded that:

The Tribunal Member finds that while the length of the delay raises a concern that in consideration of the medical issues of the Claimant, the age of the Claimant, the years of uninterrupted employment and the misunderstanding of what the policy states regarding the 52 weeks that it is possible to find good cause for the entire period of the delay as the Claimant acted as a reasonable person would in those circumstances.

[20] Unfortunately for the Respondent, the decision of the General Division must be set aside. Even though the General Division cited the correct legal test in its decision, it did not apply the test properly to the facts of the present case.

[21] To establish good cause under subsection 10(4) of the *Act*, a claimant must be able to show that he did what a reasonable person in his situation 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.

[22] Furthermore, the Federal Court of Appeal has re-affirmed that good cause under subsection 10(4) of the *Act* must apply throughout the entire period of delay - *Canada (AG) v. Dickson*, 2012 FCA 8.

[23] The Tribunal finds that the General Division erred when it concluded from the evidence before it that the Respondent had acted as a reasonable and prudent person would have done in the same situation to satisfy herself of her rights and obligations and taken the steps required to protect her claim for benefits under the *Act*.

[24] The undisputed evidence before the General Division was that the Respondent did not apply for benefits because she had received a severance package so she assumed she wouldn't be entitled to anything. Once her health got better, she began to look for work. When she could not secure employment, she finally applied for benefits on March 29, 2015.

[25] Unfortunately for the Respondent, the record discloses no effort on her part to determine her entitlement or to verify her obligations under the *Act*. Furthermore, a delay in applying based on her expectation of finding employment or based on an incorrect and unverified assumption that she would not be eligible does not constitute good cause for purposes of subsection 10(4) of the *Act* - *Howard v. Canada (AG)*, 2011 FCA 116, *Canada (AG) v. Innes*, 2010 FCA 341, *Shebib v. Canada (AG)*, 2003 FCA 88.

[26] For the above mentioned reasons, the appeal is allowed and the decision of the General Division is set aside.

CONCLUSION

[27] The appeal is allowed, the decision of the General Division is set aside and the appeal of the Respondent before the General Division is dismissed.

Pierre Lafontaine
Member, Appeal Division