



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 493

Tribunal File Number: AD-15-346

BETWEEN:

M. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON July 28, 2016

DATE OF DECISION: September 29, 2016

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] Previously, 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 July 28, 2016, 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 DESDA), 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 her claim antedated (backdated).

[7] The Appellant submits that when she became unemployed she did not initially apply for benefits, but instead used her savings to support herself. She maintains that although she did not contact the Commission initially, she was both prudent and reasonable and showed good cause. The Appellant 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 submits that the General Division member correctly applied the law to the facts at hand. They also note that the Appellant did not take steps to inform herself of her rights and obligations, and for this reason they support the member's 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, applied that law to the facts, 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