



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. A. Q.*, 2016 SSTADEI 514

Tribunal File Number: AD-15-447

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**A. Q.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Mark Borer

HEARD ON October 6, 2016

DATE OF DECISION: October 19, 2016

## **DECISION**

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 The General Division decision is rescinded and the determination of the Commission is restored.

## **INTRODUCTION**

[2] Previously, a General Division member allowed the Respondent's appeal.

[3] In due course, the Commission filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] 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 her employment insurance claim be antedated (backdated). Although the Commission initially refused to do so, the General Division member overturned that decision and allowed the antedate.

[7] The Commission now appeals against that decision, arguing that the General Division member 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 member’s decision and notes that during the time in question she was experiencing financial hardship and did not know that she had been accumulating insurable hours of employment during her training course. Essentially, she argues that an ordinary reasonable person would not have applied for benefits when the Commission says she should have.

[9] In their decision, the General Division member stated the law regarding antedate requests. He then made factual findings (at paragraph 37) that the Respondent had “acted as a reasonable and prudent person would have in similar circumstances throughout the entire period of the delay as [the Respondent] was experiencing financial hardship and considered her training course to be uninsurable as she was a student and did not receive a record of employment at the conclusion of her course”. On this basis, the member allowed the appeal.

[10] Unfortunately, in making the above findings the member 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 her entitlement to benefits or her rights and obligations. She failed to do so because she was unaware that her training course counted as insurable hours of employment and was busy preparing for her final exam. I find that her actions were entirely reasonable given her circumstances, 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 General Division member made no finding suggesting that it was.

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

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

## **CONCLUSION**

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

*Mark Borer*

Member, Appeal Division