



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. A. v. Canada Employment Insurance Commission*, 2017 SSTADEI 30

Tribunal File Number: AD-16-493

BETWEEN:

**W. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Mark Borer

HEARD ON: November 24, 2016

DATE OF DECISION: January 26, 2017

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] Previously, a General Division member dismissed the Appellant's appeal.

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

[4] 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* (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* (Act) to have his claim antedated (backdated).

[7] In his submissions the Appellant argued that his family situation was extremely difficult during the time in question, and that he was dealing with many health issues

involving his children. Essentially, he argues that he acted as a reasonable and prudent person would have in his circumstances.

[8] The Appellant also made a number of allegations regarding a conspiracy and cover up undertaken by Service Canada against him.

[9] 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 himself of his rights and obligations, and for this reason they support the member's ultimate conclusion that the Appellant should not have his claim antedated.

[10] In my decision granting leave to appeal, I noted that the General Division member appeared to have made an error regarding the date of birth of the Appellant's daughter. As this is an antedate case, such an error could affect the outcome. Upon review, however, I am of the view that this was a typographical error and that the erroneous date of birth was not material to the outcome of the appeal.

[11] 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 he filed his claim. After referencing the reasons given by the Appellant for the delay, the member agreed that the Appellant had shown good cause for an initial portion of the delay. However, he ultimately concluded that the Appellant had not shown good cause for the entire period of the delay because the Appellant should have acted to determine his rights and obligations sooner than he did.

[12] 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".

[13] The member was aware of the above line 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 the member made were entirely open to him based upon the evidence, and in fact I agree with those findings.

[14] 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 findings of fact based upon the evidence, established the correct law, applied that law to the facts, and came to a conclusion that was intelligible and understandable.

[15] There is no reason for the Appeal Division to intervene.

## **CONCLUSION**

[16] For the above reasons, the appeal is dismissed.

*Mark Borer*

Member, Appeal Division