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

Citation: *M. C. v. Canada Employment Insurance Commission,* 2017 SSTADEI 295

Tribunal File Number: AD-16-1098

BETWEEN:

M. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Mark Borer

HEARD ON: July 27, 2017

DATE OF DECISION: August 2, 2017

Canada

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* (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* (Act) to have her claim antedated (backdated).

[7] In her submissions, the Appellant repeated many of the arguments she already made before the General Division member, including that she had been under tremendous mental and personal strain during the time in question. The Appellant noted that she had contacted

Service Canada late in 2013, but that the agent had been unhelpful and lacked proper training. The Appellant also restated her General Division evidence that she didn't apply for benefits immediately in 2013 because she didn't think that she would qualify and because she was worried that she would have to repay any benefits improperly received.

[8] For their part, the Commission submits that the General Division member reached the correct conclusion in dismissing the Appellant's appeal. They argue that the member stated the correct law and fully considered the Appellant's position before coming to the conclusion that her benefits application should not be antedated.

[9] As part of the present appeal, the Appellant has provided a document regarding her health condition that was not before the General Division. The new document indicates that the Appellant had been facing significant mental health challenges starting on an unstated date in 2014. The Appellant explained that she had gotten this report from her doctor in October 2016 in response to the General Division decision.

[10] Generally, the Appeal Division does not admit new documents into evidence because this is not an appeal *de novo*. In this case, I find that document is not directly relevant because it simply reinforces points that the Appellant already raised before (and were accepted by) the General Division. Further, there is no obvious reason for neglecting to prepare this document in time for the General Division hearing. For these reasons, I decline to add this document to the record.

[11] Regardless, I note that in her decision the General Division member accepted (at paragraph 34) that the Appellant had been under tremendous stress and that she had been suffering from depression. The member also noted the many other arguments made by the Appellant, cited the correct law and found that the Appellant was not physically or mentally prevented from applying for benefits in a timely manner. The member observed that the Appellant was pursuing her Alberta teaching certificate and looking for work, and she also considered the Appellant's evidence that she had neglected to apply for benefits earlier because she did not think she would qualify. After reviewing this and the other evidence,

the member concluded that the Appellant had not demonstrated good cause for every day of the almost two year delay, and dismissed the Appellant's appeal.

[12] The Federal Court of Appeal has considered the antedate issue many times (such as in *Canada (Attorney General) v. Kaler*, 2011 FCA 266) and, in *Kaler*, stated 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 Court's jurisprudence and I find that, as evidenced by her decision, she understood and applied it to the facts at hand. Although the Appellant strenuously objects to the General Division member's ultimate conclusion, she has failed to convince me that the member made any errors in coming to that conclusion. On the contrary, the findings the member made were entirely open to her 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] I am not persuaded that there is any reason for the Appeal Division to intervene.

CONCLUSION

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

Mark Borer

Member, Appeal Division