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

Citation: *D. F. v. Canada Employment Insurance Commission*, 2017 SSTADEI 333

Tribunal File Number: AD-16-1266

BETWEEN:

D. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Mark Borer

HEARD ON: July 13, 2017

DATE OF DECISION: September 18, 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 attended and made submissions, but the Commission did not. As I was satisfied that the Commission had been properly notified of the hearing, I proceeded in their absence.

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 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* to have his claim antedated (backdated).

[7] In his submissions, the Appellant repeated many of the arguments he had already made before the General Division member, including that he was told by a Service Canada

employee that he could wait up to one year before applying for Employment Insurance benefits and simply ask for his claim to be antedated. The Appellant also restated his General Division evidence that he did not apply for benefits immediately after his salary continuance ended because he "was not in a rush" to return to the job market after working for 30 years, and because he wanted to "self fund [*sic*]" for a period of time.

[8] For their part, the Commission submits (in writing) 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 his benefits application should not be antedated.

[9] In his decision, the General Division member considered the Appellant's arguments, but ultimately concluded that he had not taken sufficient steps to "enquire and understand ones responsibilities and obligations [*sic*]." Further, the member found that the explanations offered by the Appellant (that he wanted to self-fund his job search, and that he was not in a rush) did not explain every day of the delay to apply for benefits. Finally, the member refused to believe that a Service Canada employee would have told the Appellant that he could wait a year before applying for benefits, given that the standard Service Canada advice is that claimants should apply for benefits as soon as they stop working.

[10] After quoting various Federal Court of Appeal decisions, the member concluded by finding that the Appellant had not shown good cause to have his claim antedated or established any exceptional circumstances. On that basis, the member dismissed the appeal.

[11] 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."

[12] The member was aware of the jurisprudence of the Court and I find that, as evidenced by his decision, he understood and applied it to the facts at hand. Although the Appellant strenuously objects to the General Division member's ultimate conclusion, he 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 him based upon the evidence, and in fact I agree with those findings.

[13] 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.

[14] I am not persuaded that there is any reason for the Appeal Division to intervene.

CONCLUSION

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

Mark Borer

Member, Appeal Division