



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 448

Tribunal File Number: AD-17-514

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: December 19, 2017

DATE OF DECISION: December 28, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On June 9, 2017, the General Division of the Social Security Tribunal found that, given that the Appellant had not demonstrated good cause for the entire period of the delay, her claim could not be antedated under subsection 10(5) of the *Employment Insurance Act* (Act).

[3] The Appellant filed an application for leave to appeal to the Appeal Division on July 13, 2017, after receiving the General Division's decision dated June 19, 2017. Leave to appeal was granted on July 25, 2017.

TYPE OF HEARING

[4] The Tribunal determined that the appeal would be heard via teleconference for the following reasons:

- the complexity of the issue or issues;
- the fact that the parties' credibility was not a key issue;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and as quickly as possible while complying with the rules of natural justice.

[5] The Appellant attended the hearing with her representative Hugo Marquis, counsel. The Respondent was represented by Manon Richardson.

THE LAW

[6] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the only grounds of appeal are the following:

- 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.

ISSUE

[7] The issue is as follows:

- Did the General Division err in finding that the Appellant did not demonstrate good cause for the entire period of the delay and that, as a result, her claim could not be antedated under subsection 10(5) of the Act?

STANDARD OF REVIEW

[8] The Federal Court of Appeal determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the DESD Act. The Appeal Division cannot exercise the review and superintending powers reserved for higher courts—*Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

ANALYSIS

Position of the parties

[10] The Appellant submits that the General Division erred in its interpretation of what a reasonable person should have done in the circumstances produced in evidence before it.

[11] She argues that the General Division erred by expecting that a reasonable person receiving false information, which seems reasonably credible, from an agent of the Respondent should constantly be questioning the accuracy of this information. She maintains that a reasonable person is not someone who is paranoid and who anxiously doubts or disbelieves information received from an authority to the point of seeking to verify that information again and again, daily or periodically, lest it be erroneous.

[12] The Appellant also argues that the General Division's findings are contradictory, unfounded, and made without regard for the material before it.

[13] The Respondent submits that a reasonable person is not an anxiety-ridden paranoiac who doubts the first response that they receive from a telephone agent, but rather someone who, upon receiving a letter from the Respondent, validates whether an error was made because two pieces of conflicting information had been given in the span of two weeks. She chose to believe the person who had given her information by telephone rather than the formal letter from the Respondent.

[14] The General Division did not err in fact and in law and it explained that the Appellant had not proven good cause for the delay since she had received the official letter from the Respondent, because she had not taken measures to inform herself.

General Division Decision

[15] The General Division found that a reasonable person in the Appellant's situation would have considered the content of the Respondent's letter of May 31, 2015, and would have tried to contact the Respondent to enquire about her situation.

[16] The General Division found that as of May 31, 2012, the Appellant has not acted like a reasonable person in her situation would have to verify her rights and obligations under the Act.

Did the General Division err in finding that the Appellant did not have good cause for the entire period of the delay and that, as a result, her claim could not be antedated under subsection 10(5) of the Act?

[17] To establish good cause under subsection 10(5) of the Act, a claimant must be able to show that they did what a reasonable person in their situation would have done to satisfy themselves as to their rights and obligations under the Act.

[18] The Federal Court of Appeal reaffirmed claimants have a duty to enquire about their rights and obligations and the steps that should be taken to protect a claim for benefits: *Canada (Attorney General) v. Kaler*, 2011 FCA 266; *Canada (Attorney General) v. Dickson*, 2012 FCA 8.

[19] Furthermore, the Federal Court of Appeal has reaffirmed that good cause must apply throughout the entire period of the delay (*Dickson*).

[20] The Appellant submits that the General Division erred by expecting that a reasonable person receiving false information, which seems reasonably credible, from an agent of the Respondent should constantly be questioning the accuracy of this information.

[21] The Appellant submits that, given this false information, she had good cause for the entire period of the delay and that, as a result, her claim should be antedated under subsection 10(5) of the Act.

[22] Upon reading certain paragraphs of the General Division decision, the Tribunal finds that they are somewhat ambiguous and contradictory on the issue of the false information received by the Appellant (paragraphs 45, 47, and 57 of the General Division decision).

[23] However, it appears from the whole of the General Division decision that it accepted the Appellant's testimony that she had initially received false information from an agent of the Respondent regarding her eligibility for benefits.

[24] The Tribunal must therefore determine whether the General Division erred in finding that the Appellant did not have good cause throughout the entire period of the delay.

[25] The Tribunal finds that the General Division did not err in finding that the Respondent's letter of May 31, 2012, should have incited the Appellant to enquire about the situation of her claim. As the General Division concluded, the information contained in the letter is indeed personalized and is useless should the Appellant's claim be refused.

[26] The letter of May 31, 2012, gave the Appellant several indications that the information received on May 18, 2012, was false. It would therefore have been more reasonable for the Appellant to rely on that conversation. She should have made concrete efforts to understand the content of the letter and to verify her rights and obligations.

[27] The Tribunal finds that the Appellant failed to show the General Division that she did everything a reasonable person in her situation would have done to satisfy themselves as to their rights and obligations under the Act.

[28] The Tribunal therefore finds that the General Division considered the Appellant's arguments, that its decision rests on the evidence submitted before it, and that this decision complies with the legislation provisions and with the jurisprudence.

[29] For the above-mentioned reasons, it is appropriate to dismiss the appeal.

CONCLUSION

[30] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division