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

Citation: *J. S. v. Canada Employment Insurance Commission*, 2018 SST 74

Tribunal File Number: AD-17-575

BETWEEN:

J. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 26, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On July 11, 2017, the General Division of the Social Security Tribunal determined that the Appellant had failed to meet the onus placed upon her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to subsection 10(4) of the *Employment Insurance Act* (Act).

[3] The Appellant requested leave to appeal to the Appeal Division on August 14, 2017, after receiving the General Division decision on July 25, 2017. Leave to appeal was granted on August 28, 2017.

TYPE OF HEARING

[4] The Tribunal held a teleconference hearing for the following reasons:

- The complexity of the issue under appeal;
- The fact that the credibility of the parties is not anticipated being a prevailing issue;
- The information in the file, including the need for additional information;
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant attended the hearing. The Respondent did not attend the hearing, although it had received the notice of hearing.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that 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 Tribunal must decide whether the General Division erred when it concluded that the Appellant had failed to meet the onus placed upon her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to subsection 10(4) of the Act.

STANDARD OF REVIEW

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the DESD Act. The Appeal Division does not exercise a superintending power similar to that exercised by a higher court—*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

Undisputed facts

[10] The Appellant applied for maternity/parental benefits on June 20, 2016, following the birth of her child, on December 29, 2015. She was self-employed on a part-time basis and last employed in insurable employment with Made Foods Inc. until November 27, 2015. The Appellant requested an antedate of her claim to November 27, 2015.

[11] The Appellant did not enquire until March 2016 about her rights and obligations because she had been advised by family and friends that she was not eligible for benefits since she was self-employed. She also did not get her record of employment (ROE) until months later. It was only when she talked to an accountant that she realized that she may be able to receive benefits. She started calling the Respondent in March 2016 but she could not get through to talk to an agent; the lines were simply too busy and she was told to call back later and was disconnected. She called for several months without any success. She tried going to a Service Canada centre three times in March and April 2016 but it was simply too crowded and the waiting time was about three hours. She could not stay there with a newborn. Out of frustration, the Appellant finally decided to apply online in June 2016. An agent called her back shortly after she had submitted her online application.

Position of the parties

[12] The Appellant submits that the General Division based its decision on erroneous findings of fact, which are more fully detailed in her application for leave to appeal. She did not file her application sooner because her employer failed to provide her with her ROE. She also submits that the General Division put all the responsibility for the delay on her and that it failed to consider that the delay was caused by the Respondent's failure to offer claimants suitable and effective methods of communication.

[13] The Appellant puts forward that contrary to the conclusions of the General Division, she did what a "reasonable and prudent" person in her situation would have done to satisfy herself as to her rights and obligations under the Act.

[14] The Respondent submits that the evidence shows that the Appellant declared she made the assumption that she was not eligible for benefits because she was self- employed, and that she further relied on her assumption that she would not be entitled to benefits based on information received from friends and family. Case law has upheld the principle that when claimants receive incorrect advice from persons who are not at all connected with the Respondent, the burden is on them to look after themselves unless they are incapable of doing so to determine whether they are entitled to benefits and to carry out the rights and obligations that are provided to them.

[15] The Respondent submits that the General Division did not err when it came to the conclusion that the Appellant did not act like a reasonable person in her situation to verify her rights and obligations under the Act, and that she had not shown good cause for the delay throughout the entire period.

General Division decision

[16] The General Division concluded that there were simple options available to the Appellant for making enquiries from the comfort of her own home, even if visits to Service Canada were too hard: making telephone enquiries and consulting the information available online about benefit eligibility for both employed and self- employed persons. It also concluded that the Appellant had not shown, on a balance of probabilities, that there were any "exceptional" circumstances that prevented her from availing herself of these options for the entire period of the delay.

Did the General Division err when it concluded that the Appellant had failed to meet the onus placed upon her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to subsection 10(4) of the Act?

[17] To establish good cause under subsection 10(4) 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. The Federal Court of Appeal reaffirmed on numerous occasions that 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.

[18] The General Division found that relying on the advice of family and friends was not a reasonable substitute for making enquiries directly with the Respondent. If the Appellant had doubts or questions regarding her eligibility because she was self- employed, it would have been reasonable for her to contact the Respondent instead of relying on family members or friends.

[19] The Federal Court of Appeal has found that a claimant is expected to make reasonable enquiries with the Respondent to verify the information that they receive from third parties—*Canada (Attorney General) v. Innes*, 2010 FCA 341; *Canada (Attorney General) v. Trinh*, 2010 FCA 335.

[20] The Federal Court of Appeal has also found that claimants delaying in applying for benefits because their employer failed to issue, or delayed issuing, a ROE was not good cause—*Canada (Attorney General.) v. Chan*, A-185-94; *Canada (Attorney General) v. Brace*, 2008 FCA 118.

[21] The evidence shows that the Appellant waited until March, 2016, before calling or visiting her local Service Canada office to seek clarification of her rights and responsibilities although her employment had ended on November 27, 2015. Even after the Appellant had been advised by her accountant to apply for benefits, and the period of ill-health and winter conditions had ended, she still delayed taking action until June 20, 2016. There is no evidence that she was incapable of seeking clarification on her rights and responsibilities; she was able to successfully challenge her tax audit during the same period of time.

[22] The Tribunal finds that the Appellant made no concerted successful efforts throughout the entire delay to determine what her rights and responsibilities under the Act were. She could have consulted the information available online about benefit eligibility for both employed and self-employed persons. She could have called as soon as her employment ended and persisted in calling even if the lines were very busy if she could not

wait in line at the Service Canada center. It cannot be said that the Appellant acted as a reasonable and prudent person.

[23] When considering in its entirety the evidence submitted to the General Division, the Tribunal finds that the General Division did not err when it concluded that the Appellant did not act as a reasonable and prudent person would have in the same situation to satisfy herself of her rights and obligations or take the steps required to protect her claim for benefits under the Act. The Tribunal also finds that the General Division did not err when it concluded that there were no exceptional circumstances that would explain the Appellant's delay in applying for benefits.

[24] After considering all the evidence, including the appeal docket, the parties' submissions, the applicable jurisprudence and the General Division decision, the Tribunal finds that there is no evidence to support either of the grounds of appeal invoked or any other possible ground of appeal.

[25] The Tribunal must therefore dismiss the appeal.

CONCLUSION

[26] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division