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

Citation: *S. Z. v. Canada Employment Insurance Commission*, 2018 SST 671

Tribunal File Number: AD-17-876

BETWEEN:

S. Z.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 13, 2018

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, S. Z. (Claimant), applied for regular Employment Insurance (EI) benefits on April 1, 2016. His Record of Employment indicates that his last paid day was April 30, 2015. On April 1, 2016, the Claimant requested to have his claim antedated to May 1, 2015. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had failed to show good cause throughout the entire period in which he delayed filing his claim for EI benefits. The Commission further determined that the Claimant had 191 hours of insurable employment between March 29, 2015, and March 26, 2016, and needed 630 hours of insurable employment to qualify for EI benefits. The Claimant requested a reconsideration of the Commission's decision, which was denied. The Claimant appealed the decision to the General Division of the Social Security Tribunal.

[3] The General Division found that the Claimant did not have good cause for his delay in applying for EI benefits, because a reasonable person would have inquired directly with a Service Canada agent to confirm what the precise time frame would be when applying for EI benefits. The General Division recognized that the Claimant did review the Service Canada website after his employment ended. Nevertheless, the General Division concluded that a reasonable person would have contacted Service Canada directly about their rights and obligations when applying for EI benefits.

[4] The Claimant was granted leave to appeal to the Appeal Division. He submits that Service Canada was providing misleading information on its website and that this fact alone represents good cause for delay. He asserts that Service Canada eventually corrected their mistake, which he believes supports his claim that he had good cause for his delay.

[5] The Tribunal must decide whether the General Division erred in law when it concluded that a reasonable person would not have relied solely on the Commission's website and would have contacted Service Canada directly about their rights and obligations when applying for EI benefits.

[6] The Tribunal dismisses the Claimant's appeal.

ISSUES

Issue 1: Did the General Division err in law when it concluded that looking for employment prior to applying for benefits did not constitute good cause under section 10(4) of the *Employment Insurance Act* (EI Act)?

Issue 2: Did the General Division err in law when it concluded that a reasonable person would not have relied solely on the Commission's website and would have contacted Service Canada directly about their rights and obligations when applying for EI benefits?

Issue 3: Did the General Division refuse to exercise its jurisdiction by not addressing a *Canadian Charter of Rights and Freedoms* (Charter) issue?

ANALYSIS

The Appeal Division's mandate

[7] The Federal Court of Appeal has determined that, when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the Appeal Division's mandate is conferred to it by sections 55 to 69 of that act.[1]

[8] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.[2]

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[1] *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.
[2] *Idem.*

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

Issue 1: Did the General Division err in law when it concluded that looking for employment prior to applying for benefits did not constitute good cause?

[10] This ground of appeal is without merits.

[11] To establish good cause under section 10(4) of the EI 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 EI Act. The Federal Court of Appeal has re-affirmed on numerous occasions that claimants have a duty to ask about their rights and obligations and the steps that should be taken to protect a claim for benefits.[3]

[12] The General Division determined that the Claimant's initial statement to the Commission was that he was focused on looking for employment during the period of the delay. He believed he would find employment quickly, so he did not apply right away.

[13] The General Division correctly concluded that, as admirable as it might be, an intention not to claim Employment Insurance benefits and to seek alternative employment was not good cause for delay.[4]

[14] This ground of appeal is dismissed.

Issue 2: Did the General Division err in law when it concluded that a reasonable person would not have relied solely on the Commission's website and would have contacted Service Canada directly?

[15] This ground of appeal is without merits.

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[3] *Canada (Attorney General) v. Kaler*, 2011 FCA 266; *Canada (Attorney General) v. Dickson*, 2012 FCA 8.
[4] *Howard v. Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v. Innes*, 2010 FCA 341; *Shebib v. Canada (Attorney General)*, 2003 FCA 88.

[16] The Claimant submits that he did not apply sooner because he relied on the Service Canada website and understood from the information given that he did not have to apply right away.

[17] Although it is true that the Service Canada website does not mention that you have to apply right away, it does mention that, if you delay more than four weeks after your last day of work, you may lose benefits.

[18] The Claimant argues that the English version of the website is misleading and leaves room for interpretation and that the French version of the website contains a much stronger message to apply right away.

[19] The Claimant admitted that he only consulted the English version of the Service Canada website, so the Tribunal does not consider the French version to be relevant to determining whether the Claimant had good cause to delay his application for benefits.

[20] The use of the word "may" in the English version of the website clearly expresses that there is a possibility of losing benefits if individuals do not apply within four weeks.

[21] The Tribunal finds that the evidence before the General Division does not demonstrate that the information on the website was erroneous. It might have been open to interpretation, as the Claimant argues, but the website contained enough information to have caused a reasonable person in the Claimant's position to wonder when they should apply for benefits and to contact the Respondent to find out exactly when to make an application for benefits.[5]

[22] Furthermore, the Federal Court of Appeal has clearly established that, since the website does not claim to deal with the specifics of each person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent in response to an inquiry about their eligibility based on given facts.[6]

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[5] *Mauchel v. Canada (Attorney General)*, 2012 FCA 202.
[6] *Idem.*

[23] As the General Division concluded, a reasonable and prudent person in the same circumstances as the Claimant would have inquired about when to file their claim in a more diligent and thorough manner and would not have waited 11 months to seek clarification of their rights and responsibilities.

[24] This ground of appeal is dismissed.

Issue 3: Did the General Division refuse to exercise its jurisdiction by not addressing a Charter issue?

[25] This ground of appeal is without merits.

[26] The Claimant argues that the French version of the Service Canada website delivers a much stronger message to prospective claimants then the English version does. He therefore claims that this violates section 13 of the *Official Languages Act* since both language versions are supposed to be equally authoritative.[7] The end result is that the Commission treats Anglophones differently than Francophones when they apply for an antedate under the EI Act.

[27] The Tribunal finds that, although the wording on the Service Canada website is different and cannot be considered to be a direct translation, the French and English versions both equally provide that, if an individual applies for benefits after four weeks, they might lose benefits. Furthermore, no evidence was presented to the Tribunal to support the Claimant's assumption that Anglophones are treated differently than Francophones when they apply for an antedate under the EI Act.

[28] Nonetheless, the Tribunal listened to the recording of the General Division hearing. The Claimant mainly argued that he was misled by the English version of the website, which was much less informative than the French version according to him, and that that was the reason why he delayed filing his application for benefits.

[29] The Tribunal found that no Charter argument was raised by the Claimant before the General Division. Furthermore, the Claimant did not file a notice under section 20 of

[7] (R.S.C., 1985, c. 31 (4th Supp.)).

the *Social Security Tribunal Regulations* challenging the constitutional validity, applicability or operability of any provision of the EI Act.

[30] The general rule is that, except in cases of urgency, constitutional questions cannot be raised for the first time in the reviewing court if the administrative decision-maker under review had the power and the practical capability to decide them.[8]

[31] There is no doubt that the General Division had the power and the practical capability to decide a Charter challenge, and the Tribunal finds that there is no urgency in the present case, as interpreted by case law, that would justify an exception to the general rule. Furthermore, the evidentiary record before the Appeal Division is simply insufficient to decide a Charter issue.

[32] This ground of appeal is dismissed.

CONCLUSION

[33] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 31, 2018
METHOD OF PROCEEDING:	Teleconference

[8] *Erasmo v. Canada (Attorney General)*, 2015 FCA 129.