



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. A. v. Canada Employment Insurance Commission*, 2018 SST 1088

Tribunal File Number: AD-18-2

BETWEEN:

**K. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 22, 2018

## DECISION AND REASONS

### DECISION

[1] The Tribunal dismisses the appeal.

### OVERVIEW

[2] The Appellant, K. A. (Claimant), applied for regular Employment Insurance (EI) benefits on December 15, 2014, and a benefit period was established effective December 14, 2014. The Claimant did not file claim reports with the Respondent, the Canada Employment Insurance Commission (Commission).

[3] On January 26, 2016, the Claimant requested his claim be reactivated after he abandoned his wrongful dismissal suit against his employer. The Claimant requested that his application for benefits be antedated to begin on December 14, 2014. The Commission denied the antedate request at the initial and reconsideration levels because the Claimant did not show good cause throughout the entire period of the delay, from December 14, 2014 to January 26, 2016, for not filing his claim reports for EI benefits. The Claimant appealed to the Tribunal's General Division.

[4] The General Division found that the Claimant did not have good cause for his delay in filing his claim reports for EI benefits, because a reasonable person would have spoken directly with their lawyer or a Service Canada representative to make sure they were meeting the procedural requirements for filing their EI claim reports. The General Division concluded that the Claimant had not proven good cause for the delay in filing his claim reports and therefore was not entitled to have his claim antedated under s. 10(5) of the *Employment Insurance Act* (EI Act).

[5] The Claimant was granted leave to appeal to the Appeal Division. He submits that the General Division did not consider his evidence that the Commission misinformed him when he called in January 2015. If the agent had advised him to fill out the cards regardless of his pending legal case, he would have followed the advice. Instead, he alleged that the agent advised him to contact her once his circumstances had changed,

which he did. He was therefore not ignoring the law but relying on information provided by an agent of the Respondent. The Claimant also submits that the General Division erred in law when it applied the wrong test by requiring that he provide special reasons instead of a reasonable explanation for the delay.

[6] The Tribunal must decide whether the General Division failed to consider the Claimant's evidence and whether the Claimant had good cause for the entire delay in filing his claim reports in order to allow an antedate under s. 10(5) of the EI Act.

[7] The Tribunal dismisses the appeal.

## **ISSUES**

[8] Did the General Division fail to consider the Claimant's evidence that the Commission misinformed him when he called in January 2015?

[9] If so, did the Claimant prove that he had good cause for the entire delay in filing his claim reports from December 14, 2014, to January 26, 2016, in accordance with s. 10(5) of the EI Act?

## **ANALYSIS**

### **The Appeal Division's Mandate**

[10] The Federal Court of Appeal has determined that, when the Appeal Division hears appeals in accordance with s. 58(1) of the *Department of Employment and Social Development Act*, the Appeal Division's mandate is conferred to it by ss. 55 to 69 of that act.<sup>1</sup>

[11] 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.<sup>2</sup>

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<sup>1</sup> *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

[12] 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 fail to consider the Claimant's evidence that the Commission misinformed him when he called in January 2015?**

[13] In this case, the General Division had to decide whether the Claimant had proven good cause for the delay in filing his claim reports to allow an antedate for the period from December 14, 2014, to January 26, 2016, in accordance with s. 10(5) of the EI Act.

[14] The Claimant argued before the General Division that he delayed in filing claim reports because the Commission provided him with incomplete and inaccurate information over the phone and in person.

[15] The Claimant argued that the Commission should have told him, when he called in January 2015, to file his report cards regardless of his legal case against his employer and should not have told him to call back when his situation had changed.

[16] The Claimant submits that the General Division failed to consider his evidence that the Commission misinformed him when he called in January 2015 to update them on his situation.

[17] In view of the argument raised by the Claimant, the Appeal Division member listened to the recording of the General Division hearing.

[18] The General Division determined that the Claimant did not ask the Commission if he had to file his report cards while he was waiting for a resolution of his legal case and that he alone was responsible for asking about his rights and obligations under the EI Act.

[19] The Tribunal finds that the General Division ignored the evidence submitted by the Claimant that he was misinformed by the Commission in January 2015 about his rights and obligations under the EI Act when he was told to call back when his circumstances had changed.

[20] The Claimant argues that, if the agent had advised him to fill out the cards regardless of his pending legal case, he would have followed the advice. Instead, he alleges that the agent advised him to contact her once his circumstances had changed, which he promptly did after he withdrew his claim against his employer.

[21] The role of the General Division is to consider the evidence presented to it by both parties to determine the facts relevant to the particular legal issue before it and to articulate, in its written decision, its independent decision on that issue.

[22] The General Division must clearly justify the conclusions it renders. When faced with contradictory evidence, the General Division cannot disregard it; it must consider the evidence. If the General Division decides that the evidence should be dismissed or assigned little or no weight at all, it must explain its decision, failing which there is a risk that its decision will be marred by an error of law or qualified as capricious.<sup>3</sup>

[23] Given that the General Division erred when it ignored the evidence of the Claimant, the Tribunal is justified in intervening in this case. Since the evidentiary record is complete, the Tribunal will render the decision that the General Division should have rendered.

**Issue 2: Did the Claimant prove that he had good cause for the entire delay in filing his claim reports?**

[24] The Claimant applied for regular EI benefits on December 15, 2014, and a benefit period was established effective December 14, 2014. The Claimant did not file claim reports with the Commission. He then left the country from April 4 to August 4, 2015, to help his sick father and from November 19 to December 22, 2015, to attend his father's funeral. On January 26, 2016, the Claimant asked for his claim to be reactivated after he decided to withdraw his wrongful dismissal suit against his former employer. The Claimant then requested that his application for benefits be antedated to begin on December 14, 2014.

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<sup>3</sup> *Bellefleur v. Canada (Attorney General)*, 2008 FCA 13.

[25] To establish good cause under s. 10(5) 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 inquire about their rights and obligations and the steps that should be taken to protect a claim for benefits.<sup>4</sup>

[26] The Tribunal would like to reiterate that the Commission denied the antedate request at the initial and reconsideration levels because the Claimant did not show good cause throughout the entire period of the delay, from December 14, 2014, to January 26, 2016, for not filing his claim reports for EI benefits. .

[27] In his initial statement to the Commission dated January 18, 2016, the Claimant declared that he had filed a legal claim against his employer for wrongful dismissal at about the same time he applied for regular EI benefits. His lawyer had advised him that there was a possibility of a quick financial settlement, so he did not follow up on his EI application. However, the legal process dragged on, impacting his health negatively. In addition, the legal fees started to accumulate beyond his financial means. Finally, he had no choice but to withdraw his claim against his employer without receiving any severance package. The claim was withdrawn in January 2016.<sup>5</sup>

[28] On April 11, 2016, during an interview conducted by the Commission, the Claimant reiterated that the sole reason for his delay in filing reports between December 2014 and January 2016 was his expectation of a financial settlement from his last employer. He stated that his lawyer had led him to believe that it would occur quickly within a month, but it kept being delayed. He did not believe that he would be entitled to benefits if he received this settlement because the payments would “cancel out.”<sup>6</sup>

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<sup>4</sup> *Canada (Attorney General) v. Kaler*, 2011 FCA 266; *Canada (Attorney General) v. Dickson*, 2012 FCA 8.

<sup>5</sup> GD3-15

<sup>6</sup> GD3-17

[29] On December 22, 2016, the Claimant reiterated that he was expecting a quick settlement with his employer and that he had not completed his report cards because he “did not want to double dip in tax payer’s [sic] money.”<sup>7</sup>

[30] The Tribunal finds that the evidence before the General Division clearly demonstrates that the Claimant chose to delay filing reports between December 2014 and January 2016 because he was expecting a quick financial settlement from his last employer and that he did not believe that he would be entitled to benefits if he received this settlement as the payments would “cancel out.”

[31] The Federal Court of Appeal has established that a claimant is expected to make reasonable inquiries with the Commission to verify personal assumptions and the information that they receive from third parties.<sup>8</sup>

[32] The Claimant puts forward that he had good cause for the entire delay under the EI Act because he relied on the information given to him by the Commission’s representative who misled him by telling him to call back when his situation had changed.

[33] The Tribunal finds that, even if the Claimant was in fact advised by the Commission in January 2015 to call back when his situation had changed, he does not have good cause throughout the entire period of the delay, as required by the EI Act.<sup>9</sup> The Claimant’s situation did in fact change when the quick settlement he was expecting within a month did not occur and the legal procedures against his employer were dragging on for months.

[34] The Claimant should then have promptly followed up with the Commission about his EI claim after not receiving his settlement within the month as his lawyer had promised and should not have waited over a year after starting the wrongful dismissal suit that ended with the Claimant withdrawing his claim. At the very least, he should have

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<sup>7</sup> GD3-27

<sup>8</sup> *Canada (Attorney General) v. Innes*, 2010 FCA 341; *Canada (Attorney General) v. Trinh*, 2010 FCA 335; *Howard v. Canada (Attorney General)*, 2011 FCA 116; *Shebib v. Canada (Attorney General)*, 2003 FCA 88.

<sup>9</sup> *Canada (Attorney General) v. Dickson*, 2012 FCA 8.

clarified his situation with the Commission before leaving the country in April 2015 to help his sick father.

[35] The Tribunal finds that a reasonable and prudent person in the same circumstances as the Claimant's would have inquired with the Commission about when to file his claim reports, in a more diligent and thorough manner, and would not have waited over 12 months to seek clarification of his rights and responsibilities.

[36] For the reasons mentioned above, the appeal is dismissed.

### **CONCLUSION**

[37] The Tribunal dismisses the appeal.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	October 11, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	K. A., Appellant