



Citation: *A. D. v. Canada Employment Insurance Commission*, 2018 SST 1155

Tribunal File Number: AD-18-351

BETWEEN:

A. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 16, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] On September 30, 2016, the Appellant, A. D. (Claimant), made an initial claim for sickness benefits. Following an antedate request, a benefit period was established for June 19, 2016, and the Claimant received sickness benefits for 15 weeks.

[3] On May 9, 2017, [the Respondent,] the Canada Employment Insurance Commission [(Commission),] agreed to convert the Claimant's sickness benefits into regular benefits. The Claimant also asked for his subsequent claims for benefits to be antedated from November 6, 2016, to May 8, 2017. The Commission refused the Claimant's antedate request because he had not shown good cause for the delay.

[4] The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[5] The General Division found that the Claimant had not shown good cause for not applying for benefits before the established deadline because he did not act as a reasonable person in the same circumstances would have done.

[6] The Tribunal granted leave to appeal. The Claimant argues that the General Division made an important factual error that erroneously influenced its decision. He also argues that the General Division failed to respect Federal Court of Appeal jurisprudence and that it made a decision without regard for the material before it.

[7] The Tribunal must determine whether the General Division erred in its interpretation of section 10(5) of the *Employment Insurance Act* (EI Act).

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

ISSUES

[9] Did the General Division ignore the Claimant's evidence and thereby make an important factual error that erroneously influenced its decision?

[10] Did the General Division ignore Federal Court of Appeal jurisprudence and thereby err in its interpretation of section 10(5) of the EI Act?

ANALYSIS

Appeal Division's Mandate

[11] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[12] 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.

[13] 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 had 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 ignore the Claimant's evidence and thereby make an important factual error that erroneously influenced its decision?

[14] The Tribunal finds that this ground of appeal is without merit.

[15] The Claimant argues that the General Division made an important factual error that erroneously influenced its decision. He maintains that the General Division disregarded evidence that he was distressed about the situation and that he contacted numerous people who guided him and sometimes even acted on his behalf with various organizations. The General Division did not

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

mention these important clarifications when it used these events to reject the relevance of the Claimant's medical evidence.

[16] The General Division found that the medical evidence in the file does not show the consequences of the Claimant's injury on his ability to apply for benefits or to request information from various organizations.

[17] The General Division based this finding on the fact that the Claimant, who experienced a relapse in June 2016 that led him to stop working and who was under the effects of powerful pain relief medication, had still applied for sickness benefits in September 2016 with a request to antedate to June 2016. He was paid 15 weeks of sickness benefits, up to November 5, 2016.

[18] The General Division considered that the Claimant was able to find an organization to help him file a request for reconsideration with the Commission de la sécurité et de la santé au travail, which refused to recognize his disability. It considered that the Claimant had filled out the necessary documents for disability benefits with the group insurance coverage company Manulife.

[19] The General Division also considered that in May 2017, the Claimant contacted the Commission des normes du travail (CNT) to inquire about his rights. He was advised to apply for regular Employment Insurance benefits, which he did immediately, and he was paid from May 7, 2017, until the end of the benefit period: June 17, 2017.

[20] The evidence before the General Division also shows that, despite being on medication, the Claimant went to Morocco from February 5 to March 10, 2017, to visit his father, who had had an operation.

[21] The Tribunal is of the opinion that the General Division considered all of the evidence before it when it found that the language barrier and the medication were not determining factors in this case because they did not prevent the Claimant from going through various other procedures or from applying for regular benefits, as the CNT suggested.

[22] As the General Division found, the Claimant's situation did not prevent him from contacting the Commission directly for information during the delay to verify the information he received from the employer that he was not entitled to receive regular benefits, especially given that he had already made an antedated request for sickness benefits on the grounds that he did not know he was eligible for Employment Insurance.

Issue 2: Did the General Division ignore Federal Court of Appeal jurisprudence and thereby err in its interpretation of section 10(5) of the EI Act?

[23] The Tribunal finds that this ground of appeal is without merit.

[24] Section 10(5) of the EI Act provides that a claim for benefits made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

[25] To establish good cause under subsection 10(5) of the EI Act, claimants 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.

[26] As recent Federal Court of Appeals jurisprudence has stated, a claimant is to take "reasonably prompt steps" to determine whether they are entitled to Employment Insurance benefits and to satisfy themselves as to their rights and obligations under the EI Act. They must also take reasonable measures with the Commission to verify their personal beliefs or information that they might have received from an intermediary or third person. This obligation involves a duty of care that is both demanding and strict.²

[27] The General Division found that a reasonable person would have tried to verify their eligibility with the Commission instead of relying exclusively on the opinion of a third party.

² *Canada (Attorney General) v Dickson*, 2012 FCA 8; *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Attorney General of Canada v Trinh*, 2010 FCA 335; *Canada (Attorney General) v Carry*, 2005 FCA 367; *Canada (Attorney General) v Larouche* (1994), 176 N.R. 69 (FCA); *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Albrecht* [1985] 1 FC 710 (CA).

[28] As the General Division decided, nothing prevented the Claimant from contacting the Commission for information during the delay to validate the information he received from his employer to the effect that he was not entitled to receive regular benefits.

[29] This is especially true given that the Claimant had contacted the Commission in the past to apply for sickness benefits with an antedate to September 2016 on the grounds that he did not know that he could apply for Employment Insurance benefits.

[30] The Tribunal is of the opinion that a reasonable person in a situation similar to the Claimant's, especially after having received sickness benefits to which they did not think they were entitled, would have contacted the Commission promptly and directly to ask if they could also be entitled to regular benefits, rather than waiting six months after their sickness benefits expired.

[31] After considering all of the evidence submitted to the General Division, the Tribunal finds that the General Division did not err when it found that the Claimant did not act as a prudent person would have done in the same situation to satisfy himself of his rights and obligations and taken the necessary steps to protect his claim for benefits under the EI Act.

[32] The Tribunal also finds that the General Division did not err when it found that there were no exceptional circumstances to explain the late submission of the Claimant's applications for regular benefits.

CONCLUSION

[33] After considering all of 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 the grounds of appeal that the Claimant has identified or any other possible ground of appeal.

[34] The Tribunal must therefore dismiss the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	October 25, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	Alex Boudreault-Leclerc, Representative for the Appellant A. D., Appellant