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

[TRANSLATION]

Citation: *W. S. v. Canada Employment Insurance Commission*, 2018 SST 1257

Tribunal File Number: AD-18-491

BETWEEN:

W. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 29, 2018

Canada

DECISION AND REASONS

DECISION

[1]   The Tribunal dismisses the appeal.

OVERVIEW

[2]   On March 30, 2017, the Appellant, W. S. (Claimant), renewed an initial claim for Employment Insurance benefits submitted on April 17, 2016. He then filed an antedate request for November 20, 2016, the day he lost his employment. The [Respondent, the] Canada Employment Insurance Commission [, (Commission)] refused to antedate the claim for benefits because the Claimant failed to show good cause for his delay. The Claimant requested a reconsideration of this decision, but the Commission maintained its original decision. The Claimant appealed that decision to the Tribunal's General Division.

[3]   The General Division found that a reasonable and prudent person in the Claimant's situation would have contacted the Commission to learn about their rights. It deemed that the Claimant should have checked the information he received from his employer—that he was not entitled to Employment Insurance benefits—with the Commission. The General Division did not consider the fact that he was working part-time to be good cause for his delay either. The General Division found that the Claimant had not had good cause for his delay during the entire period in question.

[4]   The Tribunal granted the Claimant leave to appeal. He argues that the General Division made an error in law by misapplying the legal criteria that determines what constitutes good cause under section 10(5) of the *Employment Insurance Act* (EI Act). He also argues that the General Division made an error by failing to consider all of the circumstances. The Claimant argues that the General Division imposed an excessive burden on him by requiring that he show an incapacity to act.

[5]   The Tribunal must determine whether the General Division made an error in its interpretation of section 10(5) of the EI Act.

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

ISSUE

[7]   Did the General Division ignore Federal Court of Appeal case law and therefore make an error in its interpretation of section 10(5) of the EI Act?

ANALYSIS

The Appeal Division's Mandate

[8]   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* (DESDA).[1]

[9]   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.

[10]   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.

PRELIMINARY MATTERS

[11]   The appeal hearing was held in French, and this decision is written in French at the request of the Claimant and his representative.

Issue: Did the General Division ignore Federal Court of Appeal case law and therefore make an error in its interpretation of section 10(5) of the EI Act?

[12]   This ground of appeal is without merit.

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

[13]   Section 10(5) of the [EI] Act states 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.

[14]   To establish good cause under section 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 learn about their rights and obligations under the EI Act.

[15]   As stated in recent Federal Court of Appeal case law, a claimant must take reasonably prompt steps to determine whether they are entitled to Employment Insurance benefits, as well as their rights and obligations under the EI Act. They must also take reasonable steps to confirm with the Commission their personal beliefs or any information received from third parties. This obligation involves a duty of care that is both demanding and strict.[2]

[16]   On appeal, the Claimant argued that it was reasonable for him to trust his employer's statements that he was not entitled to benefits given the alleged misconduct and his union's silent approval.

[17]   The General Division found that a reasonable person in a situation similar to the Claimant's would have tried to check their eligibility with the Commission instead of relying only on someone else's opinion.

[18]   As the General Division determined, nothing prevented the Claimant from asking the Commission during the period of the delay to confirm the information he obtained from his employer to the effect that he was not eligible for regular benefits, especially

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[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; *Canada (Attorney General) v Trinh*, 2010 FCA 335; *Canada (Attorney General) v Carry*, 2005 FCA 367; *Canada (Attorney General) v Larouche* (1994), 176 N.R. 69 at para 6 (FCA); *Canada (Attorney General) v Brace*, 2008 FCA 118, *Canada (Attorney General) v Albrecht*, [1985] 1 F.C. 710 (C.A.).

since he was wrongfully dismissed, according to his union. A reasonable person would not have trusted the information their employer provided in such circumstances.

[19]   Furthermore, the Claimant stated in his testimony before the General Division that he had chosen to wait before submitting his antedate request so that he would not have to repay any Employment Insurance benefits he received in the event he reached a settlement with his employer.[3] According to the Claimant's initial statements, he did not think he was entitled to Employment Insurance benefits because he was working part-time.[4] This does not constitute good cause within the meaning of the EI Act.

[20]   The Tribunal finds that a reasonable person in a situation similar to the Claimant's—specifically after a contested dismissal—would have contacted the Commission promptly and directly to ask whether they could be entitled to regular benefits as well.

[21]   After considering all 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 reasonable person would have done in the same situation to determine their rights and obligations and take the steps required to protect their claim for benefits under the EI Act.

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

[23]   The General Division considered all of the evidence indicating that, despite his difficult personal situation, the Claimant was able to work and that nothing prevented him from knowing and understanding his rights and obligations concerning benefits after he was fired by his employer.

CONCLUSION

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[3] General Division decision at para 22.
[4] GD3-19, GD3-31.

[24]   After considering all of the evidence, including the appeal docket, the parties' submissions, case law, and the General Division's decision, the Tribunal finds that none of the evidence supports the grounds of appeal cited or any other possible ground of appeal.

[25]   The Tribunal must therefore dismiss the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	November 22, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	W. S., Appellant Richard-Alexandre Laniel, Counsel for the Appellant Manon Richardson, Representative for the Respondent