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

[TRANSLATION]

Citation: *M. C. v Canada Employment Insurance Commission*, 2019 SST 300

Tribunal File Number: AD-18-625

BETWEEN:

M. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 21, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] On July 11, 2017, the Applicant, M. C. (Claimant), filed an antedate request with the Canada Employment Insurance Commission so that his claim for benefits could begin on July 7, 2016. The Commission informed him that he was not entitled to benefits as of June 26, 2016, because he had not shown good cause for the delay, from June 26, 2016, to July 10, 2017, in applying for benefits.

[3] The Claimant requested a reconsideration of this decision on the basis that the August 5, 2016, letter the Commission sent him did not give him sufficiently complete information about the establishment of his claim for benefits and that he believed he would not receive benefits despite the number of hours he had accumulated.

[4] The General Division found that a reasonable person would have contacted the Commission right away to clarify the process. The General Division found that there were no exceptional circumstances that prevented the Claimant from asking about his rights and obligations during the delay.

[5] The Tribunal granted the Claimant leave to appeal. The Claimant maintains that the General Division erred by failing to consider the specific context of the file. The Claimant argues that, at first, the Commission's agent told him that he was not entitled, that 14 months passed before he received his Record of Employment from an employer, and that an unpublicized legislative change occurred during that time. He argues that the General Division made an error because he did what a reasonable person would have done in his situation.

[6] The Tribunal must decide whether the General Division erred in disregarding the material before it and in its interpretation of section 10(4) of the *Employment Insurance Act* (EI Act).

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

ISSUE

[8] Did the General Division err in disregarding the material before it and in its interpretation of section 10(4) of the EI Act?

ANALYSIS

Appeal Division's Mandate

[9] 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]

[10] 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.

[11] 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: Did the General Division err in disregarding the material before it and in its interpretation of section 10(4) of the EI Act?

[12] This ground of appeal is without merit.

[13] After working for two employers, the Claimant applied for Employment Insurance benefits on June 21, 2016. In the claim, he indicated that he had worked for X from September 9, 2015, to June 20, 2016, and for X from May 21, 2016, to June 11, 2016. On August 5, 2016, the Commission informed him that he had not accumulated sufficient hours of insurable employment to be entitled to benefits. It also told him that if he had accumulated other hours of insurable

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

employment between June 28, 2015, and June 25, 2016, and provided another Record of Employment, he might be entitled to benefits.

[14] On June 28, 2017, the Claimant filed another claims for benefits, indicating that he had worked for X from September 5, 2016, to June 16, 2017, and for X from May 20, 2016, to July 8, 2016. On July 11, 2017, he filed an antedate request with the Commission so that his claim for benefits could start on July 7, 2016. The Commission informed him that he was not entitled to benefits starting June 26, 2016, because he had not shown good cause for the delay, from June 26, 2016, to July 10, 2017, in applying for benefits.

[15] The Claimant argues that he filed an antedate request so that his claim for benefits could start on July 7, 2016, and that the Commission incorrectly established that he had not provided good cause for the period from June 26, 2016, to July 11, 2017. He maintains that the July 7, 2016, antedate request concerns his claim for benefits for July 2017 and not the one for June 21, 2016, which he said had been rightly denied.

[16] The Claimant also submits that the General Division erred by failing to consider the particular circumstances of the file. The Claimant argues that, at first, the Commission's agent told him that he was disentitled, that 14 months passed before he received his Record of Employment from an employer, and that an unpublicized legislative change occurred during that time. He argues that the General Division erred because he did what a reasonable person would have done in his situation.

[17] In a letter addressed to the Claimant and dated August 5, 2016, the Commission informed him that he had accumulated 652 insurable hours of employment between June 28, 2015, and June 25, 2016, but that he needed 665 insurable hours of employment to be entitled to benefits. The Commission also informed him that, if he had accumulated other hours of insurable employment between June 28, 2015, and June 25, 2016, he needed to provide a Record of Employment to potentially become entitled to benefits.

[18] The Claimant explained before the General Division that he did not contact the Commission after receiving that letter because he knew that he did not need 665 hours but 910 hours based on what an agent for the Commission had told him in June 2016 before he

received the letter. He stressed that the 910-hour rule was still in force when he applied for benefits on June 21, 2016.

[19] Furthermore, the Claimant argues that the information he received in the August 5, 2016, letter from the Commission was incomplete because it did not mention the July 3, 2016, change to the EI Act, which resulted in him no longer needing 910 hours to establish his benefit period. In his view, the Commission should have informed him, in that letter, that the rule stating that he needed to have accumulated 910 hours to establish his benefit period no longer existed, especially since the change occurred shortly after he filed for benefits on June 21, 2016.

[20] Section 10(4) of the EI Act states that a claim for benefits made after the time prescribed for making the claim will 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.

[21] 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 ask about their rights and obligations under the EI Act.

[22] 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]

[23] Furthermore, the Federal Court of Appeal has reaffirmed that good cause must apply throughout the entire period of the delay.[3]

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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 NR 69, par. 6 (FCA); *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Albrecht*, [1985] 1 FC 710 (FCA).
[3] *Canada (Attorney General) v Dickson*, 2012 FCA 8.

[24] The Claimant maintains that, given the information received from the Commission's agent in June 2016, he had good cause during the entire period of the delay, from July 7, 2016, to July 10, 2017, and that, as a result, he was able to antedate his claim to July 7, 2016, under section 10(4) of the EI Act.

[25] The Tribunal is of the view that the General Division did not err in finding that the Commission's letter of August 5, 2016, should have caused the Claimant to question the situation surrounding his claim for benefits. As the General Division found, even if an agent of the Commission had previously informed the Claimant that he needed 910 hours for a benefit period to be established, the letter indicates the conditions based on which he could receive benefits.

[26] The Claimant argues that it was reasonable to ignore the August 5, 2016, letter because it contained incorrect information. He argues that the 910-hour rule was still in force when he applied for benefits on June 21, 2016.

[27] The August 5, 2016, letter, which the Claimant received during the relevant delay, gives a number of indications that the information he received over the telephone on June 21, 2016, was questionable at the very least. It was therefore no longer reasonable for the Claimant to rely on that conversation. He should have made concrete efforts to have the content of the letter explained to him and to verify his rights and obligations under the EI Act.

[28] The Federal Court of Appeal also established that an employer's failure to issue a Record of Employment or late issuance of a Record of Employment is not good cause.[4]

[29] The Tribunal is of the view that the Claimant failed to show that he did what any reasonable person in the same situation would have done to ask about their rights and obligations under the EI Act. He failed to show that he had good cause from July 7, 2016 to July 10, 2017, for the delay in filing his claim for benefits.

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[4] *Canada (Attorney General) v Chan*, A-185-94; *Canada (Attorney General) v Brace*, 2008 FCA 118.

[30] The Tribunal therefore finds that the General Division considered the Claimant's arguments, that its decision is based on the evidence before it, and that this decision complies with the legislation and with the case law.

[31] For the reasons mentioned above, it is appropriate to dismiss the appeal.

CONCLUSION

[32] The Tribunal dismisses the appeal.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	February 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. C., Appellant D. P., Representative for the Appellant Manon Richardson, Representative for the Respondent