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

[TRANSLATION]

Citation : *M. R. v Canada Employment Insurance Commission*, 2019 SST 1292

Tribunal File Number: AD-19-552

BETWEEN:

M. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: October 29, 2019

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, M. R. (Claimant), applied for benefits on September 4, 2015, although he had stopped working for the school board on June 28, 2015. He asked the Commission to consider his application retroactive to June 28, 2015. On May 15, 2019, the Canada Employment Insurance Commission (Commission) found that the Claimant had not had good cause for his delay in filing his application.

[3] The General Division found that the application could not be antedated to June 28, 2015, because he had not had good cause for the delay in filing his claim for benefits.

[4] The Tribunal granted leave to appeal. The Claimant submits that the General Division erred in law and that it 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.

[5] The Tribunal must decide whether the General Division erred in its interpretation of section 10(4) of the *Employment Insurance Act* (EI Act) and whether it ignored the Claimant's evidence.

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

ISSUES

[7] Did the General Division ignore the Claimant's evidence and, in so doing, make an important error of fact that erroneously influenced its decision?

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

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has established 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*.[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, made an error of 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 REMARKS

[12] This decision concerns files AD-19-551 and AD-19-552.

Issue 1: Did the General Division ignore the Claimant's evidence and, in so doing, make an important error of fact that erroneously influenced its decision?

Issue 2: Did the General Division err in its interpretation of section 10(4) of the EI Act?

[13] The appeal is dismissed.

[14] The Claimant told the Commission that, since he was not entitled to receive benefits in 2014 and his situation was the same in 2015, he was convinced that he was not entitled to receive benefits. He explained that, after consulting the Commission's website

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

and speaking with the school board's secretary, it was clear to him that he had not been entitled to receive benefits as of June 28, 2015.

[15] The Claimant was convinced that, as soon as he had assurance of a contract, he was not entitled to receive benefits and that it was useless to apply. That is why he had not received benefits during the summer of 2014, and this explains why he did not submit his claim on June 28, 2015.

[16] The General Division determined that the Claimant had not shown that he had acted as a reasonable person would have acted in the same circumstances. It deemed that, despite his personal beliefs and the information received from a third party, the Claimant should have asked the Commission about his rights and obligations concerning his June 28, 2015, file.

[17] The Claimant argues that the General Division made an error of law in its interpretation of section 10(4) of the EI Act. He argues that, contrary to the General Division's finding, he was not ignoring the legislation that applied to the periods at issue and that it was useless for him to submit a claim in June 2015, because he was not entitled at that time. He argues that he acted as a reasonable person would have based on the law in effect and that it was unreasonable for the General Division to ask him to know the future interpretations of the EI Act.

[18] 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.

[19] 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 learn about their rights and obligations under the EI Act.

[20] As stated in 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 their personal beliefs or any information received from third parties with the Commission. This obligation involves a duty of care that is both demanding and strict.[2]

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

[22] As the General Division decided, nothing prevented the Claimant from getting information from the Commission during the delay period so that he could verify his personal beliefs and the information he obtained from the employer that he was not entitled to regular benefits on June 28, 2015.

[23] The Claimant argues that the Commission's website clearly indicated that he was not eligible for benefits. The Federal Court of Appeal has established that, since the Commission's 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 entitlement based on given facts.[3]

[24] The Claimant also argues that he learned in 2018 that he had been prejudiced in his right to receive benefits because of an error of the school board for which he worked, since it offered him contracts that did not comply with the teachers' collective agreement, namely a task percentage less than 33.3%. He notes that it is a new interpretation of the collective agreement by the employer, which is different from that of 2015. The Claimant argues that, in the absence of a valid contract in 2015, he had therefore been entitled to benefits.

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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 FC 710 (CA).
[3] *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

[25] Unfortunately for the Claimant, this does not change the fact that he should have contacted the Commission promptly and directly to ask whether he could have been entitled to benefits in June 2015 instead of waiting until September 2015. This is especially true because he knew the characteristics of his situation and the complexity of teachers' claims for benefits.

[26] After considering all of the evidence submitted to the General Division, the Tribunal finds that the General Division did not make an error when it found that the Claimant had not acted as a reasonable person would have done in the same situation to satisfy themselves of their rights and obligations and taken the necessary steps to protect their claim for benefits under the EI Act.

[27] The Tribunal also finds that the General Division did not make an error when it found that there were no exceptional circumstances to explain the late submission of the Claimant's claim for benefits.

CONCLUSION

[28] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	October 22, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. R., Appellant J. L., Representative for the Respondent