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

[TRANSLATION]

Citation: *M. R. v Canada Employment Insurance Commission*, 2019 SST 1350

Tribunal File Number: AD-19-456

BETWEEN:

**M. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 18, 2019

Canada

## DECISION AND REASONS

### DECISION

[1] The Tribunal dismisses the appeal.

### OVERVIEW

[2] The Appellant, M. R. (Claimant), took a leave of absence on August 10, 2018, because of illness. She could have made a gradual return to work as of July 30, 2018, but she decided to leave her employment. On October 11, 2018, the Claimant asked for her Employment Insurance sickness benefits to be converted to regular benefits. However, she did not file the renewal of her claim until November 22, 2018. The Canada Employment Insurance Commission (Commission) considered her conversion request and established her claim for benefits effective October 21, 2018.

[3] The Claimant then submitted a request to antedate to July 30, 2018. She claimed that she was available for work as of that date but that she had not been able to return to her usual employment. The Commission refused to antedate to July 30, 2018, claiming that the Claimant did not do what a reasonable person would have done because she had not tried to confirm her entitlement to benefits with the Commission.

[4] The General Division found that the claim could not be antedated to July 30, 2018, because she had not shown that she had good cause for the delay in filing her claim.

[5] The Tribunal granted the Claimant leave to appeal. She argues that the General Division erred in law in its interpretation of section 10(5) of the *Employment Insurance Act* (EI Act) and in its interpretation of the applicable antedate case law.

[6] The Tribunal must decide whether the General Division erred in its interpretation of section 10(5) of the EI Act.

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

## ISSUE

[8] Did the General Division err in its interpretation of section 10(5) 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, 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 its interpretation of section 10(5) of the EI Act?

[12] This ground of appeal is without merit.

[13] Section 10(5) 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.

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

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

[15] As the General Division stated, a claimant must take "reasonably prompt" steps to determine their entitlement to Employment Insurance benefits and to ensure the rights and obligations the EI Act imposes on them. 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] What is more, the Federal Court of Appeal has stated that good cause must apply to the entire period of the delay.[3]

[17] The Claimant accuses the General Division of failing to consider the cumulative effect of the reasons given for the delay. She argues that the General Division shrugged off the ground advanced by the Claimant because she ignored the EI Act.

[18] The Claimant argues on appeal that she made the necessary efforts to find out about the issues of her voluntary leaving and her interruption of earnings by consulting the Commission's website. She argues that she had no obligation to inquire by calling or by going directly to a service centre. She also filed a medical certificate showing that she was not in her usual condition, that the situation was abnormal for her, and that she was still clearly affected by the illness. Her rationality, logic, and ambition were altered. The Claimant argues that she did what any reasonable person in the same situation would have done to ask about her rights and obligations under the EI Act.

[19] The Claimant explained to the General Division that, based on her knowledge and the public's general understanding, she had not been entitled to benefits because she had

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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.).
[3] *Canada (Attorney General) v Dickson*, 2012 FCA 8.

voluntarily left her employment. Furthermore, she always believed that she was bound to her employer because of sales commissions that it owed her and because it had not issued her Record of Employment. She verified her beliefs on the Commission's website and was reassured. The Claimant also explained that she had experienced difficulties following the death of her mother and her leave of absence.

[20] Therefore, it was not until the Commission's agent contacted her to ask her about her availability that she knew that she could receive Employment Insurance benefits. She then took steps in that regard. She met with her doctor to get a medical certificate to justify her voluntary leaving. She went to a service centre to request the conversion of her benefits and followed up three weeks later. She acted promptly after the Commission informed her.

[21] The evidence before the General Division shows that the Claimant decided in July 2018 not to return to her employer to preserve her health. The Tribunal is of the view that, because the Claimant had already received 15 weeks of sickness benefits, she should have contacted the Commission to verify her personal beliefs and whether she could convert her sickness benefits into regular benefits following her voluntary leaving. This is especially true because she left her employment for reasons that are, at the very least, defensible.

[22] It was also unreasonable for the Claimant to trust general information on the Commission's site, given her particular situation.[4] She should have clarified with the Commission the issues of her voluntary leaving and her interruption of earnings, given the upcoming payment of her sales commission. The fact that the employer had not given her Record of Employment does not constitute good cause in the circumstances, especially since it was a benefit renewal.

[4] *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

[23] The Tribunal is of the view that the General Division did not err in finding that the Claimant should have made concrete efforts with the Commission to verify her rights and obligations under the EI Act.

[24] The Claimant claims fervently that her physical and psychological health is the cornerstone of the reasons for her delay. However, the evidence shows that the Claimant had been able to actively look for employment since July 2018, despite her condition and the distress of having lost her mother in the spring of 2018.

[25] During a telephone conversation with the Commission on October 11, 2018, the Claimant confirmed that she was thinking of returning to the labour market in the near future and that she did not want regular benefits for the moment.[5]

[26] Despite the Tribunal's sympathy for the Claimant, she failed to show before the General Division that she did what any reasonable person in the same situation would have done to find out about their rights and obligations under the EI Act. The Claimant failed to show that, for the entire period from July 30, 2018, to October 20, 2018, she had good cause for her delay in submitting her claim.

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

[28] For the reasons stated above, it is appropriate to dismiss the appeal.

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[5] GD3-20.

**CONCLUSION**

[29] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

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| HEARD ON: | November 5, 2019 |
| METHOD OF PROCEEDING: | Videoconference |
| APPEARANCES: | Héloïse Varin, Representative for the Appellant<br><br>Josée Lachance, Representative for the Respondent |