



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. M. v Canada Employment Insurance Commission*, 2020 SST 17

Tribunal File Number: AD-19-582

BETWEEN:

R. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 13, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, R. M. (Claimant), stopped working for her employer on October 12, 2018. She waited until January 4, 2019, to file a claim for Employment Insurance regular benefits.

[3] The Canada Employment Insurance Commission (Commission) reviewed the claim. It determined that the Claimant had not had good cause for the delay in filing her claim. As a result, the Commission refused to backdate the claim to the date she stopped working. It upheld its initial decision on reconsideration. The Claimant appealed to the General Division.

[4] The General Division found that the claim could not be antedated to October 12, 2018, because she had not shown good cause for the delay in filing her claim.

[5] The Claimant was granted leave to appeal. She argues that the General Division 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.

[6] The Tribunal must determine whether the General Division erred 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 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 mandate of the Appeal Division is 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.

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

[12] This ground of appeal is without merit.

[13] 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.

[14] 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 inform themselves of their rights and obligations under the EI Act.

[15] As the General Division noted, a claimant must [translation] “promptly” verify whether they are entitled to receive benefits and satisfy themselves of their rights and obligations under the EI Act. They must also take reasonable steps to confirm with the

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

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

[17] The Claimant accuses the General Division of not considering the real reasons for her trip abroad. She did not leave to treat her anemia. The Claimant argues that her overall health is not good and that she must frequently use traditional medicine to effectively care for many of her problems. She had to abandon her studies and incur the loss of her tuition fees. The Claimant argues that she also had difficulty getting her Record of Employment from her employer. She argues that it was difficult for her in those circumstances to manage her health, her schooling, her trip, her employer, and her Employment Insurance claim.

[18] The General Division considered it unlikely that the Claimant's medical issues prevented her from filing a claim for benefits throughout the entire period of the delay. The Claimant confirmed that she went to her university classes until at least early November, after she stopped working on October 12, 2018. She was then able to arrange a trip and travel abroad for nearly six weeks, from November 13 to December 28, 2018.

[19] In support of her antedate request, the Claimant initially reported to the Commission that, between October 14, 2018, and January 4, 2019, she was waiting for her Record of Employment from the employer. She confirmed that she had not tried to contact the Commission during that period.⁴

[20] The Federal Court of Appeal has clearly established that a claimant who delays filing a claim for benefits because their employer fails to give them a Record of

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

⁴ GD3-25, GD3-27.

Employment or gives them a Record of Employment late, does not have good cause for the delay.⁵

[21] Although the Tribunal is sympathetic to the Claimant, she has failed to show that she did what a reasonable person in the same situation would have done to ask about their rights and obligations under the EI Act. The Claimant has not shown that, for the entire period between October 14, 2018, and January 4, 2019, she had good cause for her delay in filing her claim.

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

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

CONCLUSION

[24] The Tribunal dismisses the appeal.

Pierre Lafontaine

Member, Appeal Division

HEARD ON:	January 9, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	R. M., Appellant Julie Lachance, Representative for the Respondent

⁵ *Canada (Attorney general) v Chan*, A-185-94; *Canada (Attorney general) v Brace*, 2008 FCA 118.