



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. L. v Canada Employment Insurance Commission*, 2020 SST 69

Tribunal File Number: AD-19-423

BETWEEN:

R. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 31, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] On November 15, 2018, the Appellant, R. L. (Claimant), asked to have her claim for benefits antedated to February 26, 2018, so that her benefits could be paid for the weeks of February 26 and March 4, 2018. The Canada Employment Insurance Commission (Commission) refused to antedate the claim because it determined that the Claimant had not provided reasons for her delay in submitting her reports. This decision was upheld on reconsideration. The Claimant appealed to the Tribunal's General Division.

[3] The General Division determined that although the Claimant had received a notice of debt relating to an overpayment of previous benefits, and that she first wished to resolve the overpayment issue with the Commission, it did not constitute good cause for the delay.

[4] The Claimant was granted leave to appeal. She submits that the General Division made an error in law and that it made its decision without regard for the material before it.

[5] In the meantime, the Claimant filed an application to rescind or amend the General Division decision. The application was denied. However, the Claimant did not appeal that decision. The Tribunal will decide on this appeal by considering only the evidence that was before the General Division.

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

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

ISSUE

[8] Did the General Division make an error 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 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 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 make an error 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 must 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.

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] The Claimant argued at the General Division that, if she had applied for benefits in February 2018, the overpayment resulting from her benefit period established in 2016 would have been deducted from her benefits, and she would have received only half the benefits she was owed. According to the Claimant, a reasonable and prudent person would not have applied for benefits knowing that they would receive only half the benefits.

[16] A claimant has an obligation to take “reasonably prompt” steps to determine entitlement to Employment Insurance benefits and to ensure their rights and obligations under the EI Act. They must also take reasonable steps to confirm with the Commission their personal beliefs. This obligation involves a duty of care that is both demanding and strict.²

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

[18] The General Division found that the Claimant had not shown good cause for the delay since she had made the choice from the beginning not to apply for benefits. The undisputed evidence shows that the Claimant did not want to complete her reports since she could not refuse payments because she was working part-time.

[19] The Federal Court of Appeal has confirmed that the issues related to a previous overpayment, of which a claimant is aware, is irrelevant when deciding whether a claimant has good cause for their delay in applying for benefits.⁴

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 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 *Bradford v Canada Employment Insurance Commission*, 2012 FCA 120.

[20] Furthermore, the evidence shows that the Claimant made her antedate request only on November 15, 2018, after having received a letter from the Canada Revenue Agency. She therefore wished to pay off her debt.

[21] Although the Tribunal is sympathetic to the Claimant, she has failed to show that she did what a reasonable person in her situation would have done to ask about their rights and obligations under the EI Act. The Claimant did not show that she had good cause for her delay in making a claim for benefits for the entire period from February 26 to November 15, 2018.

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

CONCLUSION

[23] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	September 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	R. L., Appellant