



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *E. M. v Canada Employment Insurance Commission*, 2020 SST 224

Tribunal File Number: AD-19-895

BETWEEN:

**E. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION : March 17, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal dismisses the appeal.

### **OVERVIEW**

[2] The Appellant, E. M. (Claimant), applied for benefits on February 2, 2019, even though he stopped working on November 3, 2018. He asked the Canada Employment Insurance Commission (Commission) to consider his application retroactively to November 4, 2018. The Commission found that the Claimant did not have good cause for his delay in filing his application. The Claimant asked for a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that, despite some health problems, the Claimant was still capable of applying for benefits. It also determined that the Claimant should have verified his entitlement with the Commission as soon as he stopped working. The General Division found that a reasonable person would have contacted the Commission without delay.

[4] The Claimant obtained leave to appeal the General Division decision. He argues that the General Division made an error in law by failing to consider the case law and the cumulative effect of the reasons for his delay.

[5] The Tribunal must decide whether the General Division made an error in its interpretation of section 10(4) of the *Employment Insurance Act* (EI Act).

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

### **ISSUE**

[7] Did the General Division make an error in its interpretation of section 10(4) of the EI Act?

## ANALYSIS

### Appeal Division's Mandate

[8] 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*.<sup>1</sup>

[9] The Appeal Division acts as an administrative appeal tribunal for decisions given by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10] 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(4) of the EI Act?**

[11] The Claimant submits that the General Division made an error in law by failing to consider the case law applicable to his file. The Claimant submits that the General Division made an error in its interpretation of the legal test for the antedate because he did what a reasonable person would have done in his situation. He also argues that the General Division failed to consider all the factors explaining his delay.

[12] Section 10(4) of the EI Act states that a claim for benefits made after the time specified 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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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] 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 find out about their rights and obligations under the EI Act.

[14] A claimant must take “reasonably prompt” steps to determine whether they are entitled to Employment Insurance benefits and ensure 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.<sup>2</sup> Furthermore, good cause must apply to the entire period of the delay.<sup>3</sup>

[15] The General Division considered that the Claimant initially stated to the Commission that he thought he would find employment quickly and that he did not think he would need Employment Insurance benefits. It also considered that the Claimant did not think he was entitled to benefits because he was the owner of a company even though it was inactive. He applied for benefits at his friends’ suggestion. The General Division also considered that the Claimant had gone through a difficult time brought about by his unsuccessful job searches and severe depression after a friend’s suicide.

[16] The General Division rightly determined that the Claimant’s efforts to find other employment were commendable but did not constitute good cause for the delay in applying for benefits. It also determined that despite the difficult situation the Claimant experienced, there was nothing preventing him from asking the Commission about his rights because he was capable of looking for employment during the period at issue.

[17] Unfortunately for the Claimant, the file shows no effort on his part to verify his entitlement or determine his obligations under the EI Act after he lost his employment. Given that his company was inactive, the Claimant should have promptly verified his

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<sup>2</sup> *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).

<sup>3</sup> *Canada (Attorney General) v Dickson*, 2012 FCA 8.

entitlement with the Commission. Especially since he had accumulated the required number of insurable hours through another employer.

[18] Furthermore, the Federal Court of Appeal has clearly established that a claimant's delay in filing a claim based on the expectation of finding employment or the mistaken belief that they are not entitled to benefits does not constitute good cause under section 10(4) of the EI Act.<sup>4</sup>

[19] Despite the Tribunal's sympathy for the Claimant, he failed to show that he 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 November 4, 2018, to January 26, 2019, he had good cause for his delay in filing his claim.

[20] 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.

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

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<sup>4</sup> *Howard v Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Shebib v Canada (Attorney General)*, 2003 FCA 88.

**CONCLUSION**

[22] The Tribunal dismisses the appeal.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	March 11, 2020
METHOD OF PROCEEDING :	Teleconference
APPEARANCES:	E. M., Appellant  Manon Richardson, Representative for the Respondent