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

Citation: *IR v Canada Employment Insurance Commission*, 2021 SST 187

Tribunal File Number: AD-21-56

BETWEEN:

I. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 10, 2021

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits on December 11, 2020. He requested that the application start earlier, on October 8, 2020. The Respondent, the Canada Employment Insurance Commission (Commission), refused his request. The Commission maintained its initial decision after reconsideration. The Claimant appealed the Commission's reconsideration decision to the General Division.

[3] The General Division found that the Claimant did not make reasonable prompt steps to determine his rights and obligations under the *Employment Insurance Act* (EI Act). It determined that the Claimant delayed his application for benefits because he was waiting for his Record of Employment (ROE). The General Division found that the Claimant's circumstances were not exceptional. It concluded that the Claimant did not prove he had good cause for the delay in making his claim for benefits throughout the entire period of the delay and that the claim could not be antedated.

[4] The Appeal Division granted the Claimant leave to appeal. He submits that the General Division erred in fact and law in its interpretation of section 10(4) of the EI Act.

[5] I must decide whether the General Division failed to consider the Claimant's evidence and whether the Claimant had good cause for the entire delay in filing his claim to allow an antedate pursuant to section 10(4) of the EI Act.

[6] I dismiss the appeal.

ISSUES

Issue 1: Did the General Division fail to consider the Claimant's evidence, more precisely, that he had called the Commission and had received instructions to contact his employer in order that his ROE be re-submitted?

Issue 2: If so, did the Claimant prove that he had good cause for the entire delay in filing his claim to allow an antedate for the period of October 8, to December 20, 2020, pursuant to section 10(4) of the EI Act?

A**NALYSIS**

Appeal Division's mandate

[7] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.[1]

[8] 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.[2]

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, I must dismiss the appeal.

Issue 1: Did the General Division ignore the Claimant's evidence, more precisely, that he had contacted the Commission and had received instructions to contact his employer in order that his ROE be re-submitted?

[10] The General Division had to decide whether the Claimant had proven good cause for the entire delay in filing his claim to allow an antedate for the period of October 8 to December 10, 2020, pursuant to section 10(4) of the EI Act.

[11] The Claimant submits that the General Division ignored the fact that he did call the Commission and received instructions to contact his employer in order that his ROE

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[1] *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274 (CanLII).
[2] *Idem*.

be re-submitted. He submits that the General Division did not consider that the Commission did not tell him he could immediately apply and not wait for this document.

[12] The General Division determined that the Claimant did not contact the Commission specifically for information about EI benefits while he awaited for his ROE and that he had the onus of inquiring about his rights and obligations under the EI Act.

[13] I find that the General Division ignored the Claimant's evidence that he did call the Commission and received instructions to contact his employer in order that his ROE be re-submitted and that the initial agent did not inform him to apply for benefits immediately.[3]

[14] I am also of the view that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner when it concluded that Claimant did not call to inquire about his EI benefits because he only discussed his ROE with the agent.

[15] The only reasonable finding that one can draw from the evidence is that the Claimant called the Commission to inquire about his ROE because he wanted to apply for benefits. Otherwise, why would he have called the Commission to inquire about his ROE? This is why the second agent properly informed the Claimant that he did not need his ROE to apply for benefits.

[16] Given the aforementioned errors, I am justified in intervening in this case. Since the parties had the opportunity to fully present their case before the General Division, and considering the evidentiary record is complete, I will render the decision that should have been rendered by the General Division.

Issue no 2: Did the Claimant prove that he had good cause for the entire delay in filing his claim to allow an antedate for the period of October 8, to December 20, 2020, pursuant to section 10(4) of the Act?

[3] GD3-23: In his application for reconsideration, the Claimant stated that only the second agent informed him that he did not need his ROE to submit a claim.

[17] The Claimant puts forward that the General Division erred in law in its interpretation of section 10(4) of the EI Act. He submits that he had good cause for the delay in applying for benefits because he acted, as a reasonable and prudent person in the same circumstances would have throughout the period of the delay.

[18] To establish good cause under section 10(4) of the EI Act, a claimant must be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the EI Act. The Federal Court of Appeal has re-affirmed on numerous occasions that claimants have a duty to enquire about their rights and obligations and the steps that need to be taken to protect a claim for benefits.[4]

[19] On December 12, 2020, the Claimant declared that he did not apply because he thought that the ROE was coming in the mail as a paper copy but then his employer said they were filing it electronically.[5]

[20] In his written application for reconsideration, the Claimant stated that when he applied for the first time in 2016, he had to wait for a paper copy of his ROE to be mailed to him so he "naturally assumed that was still the case."[6]

[21] On January 6, 2021, during an interview conducted by the Commission, the Claimant reiterated that the sole reason for his delay was that he had to wait for his ROE before applying for benefits. This belief was based on his 2016 experience of applying for benefits. The Claimant further stated that for those two months, he was simply waiting for his ROE to show up in the mail, which it never did due to it being submitted electronically.[7]

[22] In his application to appeal the reconsideration decision to the General Division, the Claimant reiterated that he waited for his ROE to be mailed out to him based on his 2016 experience with EI benefits.[8]

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[4] *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Dickson*, 2012 FCA 8.
[5] GD3-14.
[6] GD3-23.
[7] GD3-24.
[8] GD2-2.

[23] During the hearing before the General Division, the Claimant testified that he waited for his ROE because he believed that it was necessary to complete the application based on his 2016 experience. He further testified that he knew he had to apply as soon as possible but he was not aware of any deadline to apply.

[24] The Claimant further stated that during the relevant period, he was busy looking for another employment, caring for his mother, and studying for challenge exams. However, he testified that these circumstances did not contribute to his delay in applying for benefits.

[25] I find that the evidence before the General Division clearly demonstrates that the Claimant knew he had to apply as soon as possible but delayed filing his claim because he mistakenly believed, based on his 2016 EI claim, that he had to wait for his ROE before applying for benefits.

[26] The Federal Court of Appeal has established that a claimant is expected to make reasonable and prompt inquiries with the Commission to verify personal assumptions or beliefs.[9]

[27] The Federal Court has also clearly established that waiting for a ROE does not constitute "good cause" that can justify a claim for benefits to be antedated.[10]

[28] The Claimant argues that he had good cause under the EI Act because he received instructions by the Commission to contact his employer in order that his ROE be re-submitted. He submits that the Commission did not tell him he could immediately apply and not wait for this document.

[29] I find that even if the Claimant did receive instructions by the Commission to contact his employer to re-submit his ROE instead of applying immediately for benefits,

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[9] *Canada (Attorney general) v Innes*, 20110 FCA 341, *Canada (Attorney general) v Thrinh*, 2010 FCA 335, *Howard v Canada (Attorney General)*, 2011 FCA 116, *Shebib v Canada (Attorney General)*, 2003 FCA 88.
[10] *Blanchette v Canada (Attorney General)*, 2021 FC 115, *Canada (Attorney General) v Chan*, A-185-94, *Canada (Attorney General) v Brace*, 2008 FCA 118, *Canada (Attorney general) v Ouimet*, 2010 FCA 83.

which is regrettable, he does not have good cause throughout **the entire period of the delay**, as required by the EI Act.[11]

[30] The Claimant stated that he contacted his employer around mid-November to inquire why he had not received his ROE. The employer got back to him one week or so later to say they had sent the ROE electronically. The Claimant therefore contacted the Commission for the first time around the end of November 2020. By that time, he had already stopped working for the employer since October 8, 2020.[12]

[31] I find that a reasonable and prudent person, under the same circumstances as the Claimant, would have made prompt inquiries with the Commission about his rights and obligations after his separation of employment and not wait for a period of approximately eight weeks because he mistakenly believed that he needed his ROE to apply for EI benefits.

[32] For the above-mentioned reasons, I have no choice but to dismiss the appeal.

CONCLUSION

[33] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 6, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	I. R., Appellant Mélanie Allen, Representative for the Respondent

[11] *Canada (Attorney General) v Dickson*, 2012 FCA 8.
[12] GD2-2.