



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v PT*, 2021 SST 532

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Anick Dumoulin
Respondent: P. T.

Decision under appeal: General Division decision dated
July 2, 2021 (GE-21-947)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference
Hearing date: September 29, 2021
Hearing participants: Appellant's representative
Respondent

Decision date: October 4, 2021
File number: AD-21-250

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Claimant) was late in submitting his reports to get Employment Insurance (EI) benefits. He then asked that the reports be treated as though they had been submitted earlier, on December 7, 2020.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant did not have good cause for the delay for the period from December 7, 2020, to February 19, 2021, and that, as a result, he was not entitled to EI benefits.

[4] The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division allowed the Claimant's appeal in part. It found that the Claimant had shown good cause for the delay in submitting his reports until January 28, 2021. However, it found that the Claimant had not shown good cause for the delay in submitting his reports for the rest of the period, from January 29 to February 19, 2021.

[6] The Commission was granted leave to appeal the General Division decision. It argues that the General Division made an error of law when it found that the Claimant's reports could be considered as having been submitted on an earlier day.

[7] I have to decide whether the General Division made an error when it found that the Claimant's reports could be considered as having been submitted on an earlier day.

Issue

[8] Did the General Division make an error when it found that the Claimant's reports could be considered as having been submitted on an earlier day?

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 made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of 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, I must dismiss the appeal.

Did the General Division make an error when it found that the Claimant's reports could be considered as having been submitted on an earlier day?

[12] The Commission argues that the General Division made an error of law by allowing the Claimant's appeal in part because the part of the period for which the Claimant had good cause was before the part of the delay for which good cause did not exist. It submits that the General Division should have denied the Claimant's request.

[13] A report that is submitted after the deadline must be considered as having been submitted on an earlier day if the claimant shows that there was good

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

cause for the delay **throughout the period beginning on the earlier day and ending on the day when the claim was made.**²

[14] The period of the delay is from December 7, 2020, to February 19, 2021.

[15] The General Division found that the Claimant had shown good cause for the delay in submitting his reports from December 7, 2020, to January 28, 2021. However, it found that the Claimant had not shown good cause for the delay in submitting his reports for the rest of the period, from January 29 to February 19, 2021. It allowed the Claimant's appeal in part.

[16] In my view, the General Division made an error of law by allowing the appeal in part after finding that the Claimant had not shown that he had good cause for delaying his reports for the period that was immediately before the day when the antedate request was filed.

[17] An antedate request must be denied when the good cause for part of the delay disappears over time after that period. The situation is different when the reason given applies to only part of the antedate period, and that part was immediately before the antedate request. In such a case, the request can be allowed to that limited extent.

[18] This means that I should intervene.

Remedy

[19] Since the Claimant had the opportunity to present his case before the General Division, and this appeal raises an issue of interpretation of the law, I will give the decision that the General Division should have given.³

[20] Even though it has been established that the Claimant had good cause for the first part of his delay, it disappeared during the second part of his delay,

² Section 10(5) of the *Employment Insurance Act*.

³ In accordance with the powers set out in section 59(1) of the *Department of Employment and Social Development Act*.

which was immediately before the day when the antedate request was filed. So, the Claimant has not shown that there was good cause for the delay throughout the entire period between December 7, 2020, and February 19, 2021.

[21] This means that the Claimant's antedate request should be denied.

Conclusion

[22] The appeal is allowed.

[23] The Claimant's antedate request is denied.

Pierre Lafontaine
Member, Appeal Division