



[TRANSLATION]

Citation: *LC v Canada Employment Insurance Commission*, 2024 SST 198

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: L. C.

Respondent: Canada Employment Insurance Commission
Representative: Jessica Earles

Decision under appeal: General Division decision dated
October 21, 2023 (GE-23-2128)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference

Hearing date: February 20, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: March 1, 2024

File number: AD-23-1014

Decision

[1] The appeal is dismissed. The law does not allow the Claimant's claim to be antedated to March 29, 2020.

Overview

[2] The Appellant (Claimant) made a claim for benefits on April 14, 2020. A benefit period for the Employment Insurance (EI) Emergency Response Benefit (ERB) was established effective March 29, 2020. However, the Claimant did not submit her claimant reports. On April 4, 2022, she asked the Respondent (Commission) to treat her claim as though she had been submitting her claimant reports since March 29, 2020. She made a request to antedate her claim.

[3] The Commission decided that the Claimant had not established good cause for the delay in making her claim for the period from March 29, 2020, to April 4, 2022. The Claimant asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the law did not allow the Claimant's claim to be antedated to March 29, 2020. It found that the Claimant qualified on September 27, 2020, and had shown that she had good cause for the delay at that time. The General Division decided that the Claimant's claim could only be antedated to September 27, 2020.

[5] The Claimant was given permission to appeal the General Division decision. She argues that the General Division made an error because she never asked to antedate her claim to September 27, 2020. She asked for an antedate to March 29, 2020.

[6] I have to decide whether the General Division made an error of law when it decided that the law did not allow the Claimant's claim to be antedated to March 29, 2020.

[7] I am dismissing the Claimant's appeal.

Issue

[8] Did the General Division make an error of law when it decided that the law did not allow the Claimant's claim to be antedated to March 29, 2020?

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, the Tribunal must dismiss the appeal.

Did the General Division make an error of law when it decided that the law did not allow the Claimant's claim to be antedated to March 29, 2020?

[12] The Claimant made an initial claim for benefits on April 14, 2020, and a benefit period for the EI ERB was established effective March 29, 2020. Although a benefit period was established, the Claimant did not submit any claimant reports.

[13] On April 4, 2022, the Claimant asked the Commission to treat her claim as though she had been submitting her claimant reports since March 29, 2020. She made a request to antedate her claim.

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

[14] At the General Division hearing, the Claimant explained that it was only after several treatments and tests that she was diagnosed with a chronic illness. During that period, she took medication prescribed to her by her doctor, but it was not suitable because she was still in pain and experienced many side effects. She mentioned experiencing side effects that were very rare when taking this medication.

[15] The Claimant also explained that she was completely confused and that her memory was affected. Despite taking this medication, she still had symptoms and had to be weaned off before her doctor could direct her to an alternative. She said that she also experienced side effects during withdrawal and that she had surgery afterwards.

[16] A medical certificate dated November 3, 2022, and signed by her doctor indicates that the Claimant failed to complete the EI process because of the “heavy medication” she had to take during that period, which made her drowsy. The doctor wrote that this failure was “really” due to the effects of the medication.

[17] The General Division accepted the Claimant’s explanations for the delay in submitting her claimant reports because there were exceptional circumstances that prevented her from submitting them on time.

[18] The General Division considered that section 153.8(2) of the *Employment Insurance Act* (EI Act) says that a claim for the EI ERB must not be made after December 2, 2020. The General Division found that the Claimant did not qualify for the EI ERB because it was too late to claim it when she made her claim for benefits on April 4, 2022.

[19] However, the General Division found that the Claimant could get her claim antedated to September 27, 2020, when the EI ERB period set by Parliament ended.²

[20] Section 10(5) of the EI Act says that **a claim for benefits**, other than an initial 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

² If you had not received the EI ERB, you could claim EI regular benefits from September 27, 2020.

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

[21] It is true that the purpose of section 10(5) of the EI Act is to allow a late claim to be treated as though it was made on time if the claimant had good cause for the delay.³

[22] However, when the Claimant made her claim for benefits, temporary measures were in place because of the COVID-19 pandemic. A claimant who made a claim for benefits during that period got the EI ERB instead.⁴

[23] Unfortunately for the Claimant, section 10(5) of the EI Act falls under Part I of the EI Act. Parliament has specifically provided that this provision does not apply to EI ERB claims.⁵

[24] I can only note that the law does not permit the Tribunal to allow the Claimant an antedate for the period before September 27, 2020.

[25] I have great sympathy for the Claimant, who seems to be in a situation that Parliament did not anticipate when the temporary pandemic measures were introduced. However, I do not have the authority to change the law so that her claim can be antedated to March 29, 2020.

[26] I have no choice but to find that the General Division did not make an error of law when it decided that the law did not allow the Claimant's claim to be antedated to March 29, 2020.

³ See *Canada (Attorney General) v Piche*, A-248-80.

⁴ The law says that for the period beginning on March 15, 2020, and ending on September 26, 2020, no benefit period is to be established for EI benefits under Part I. See section 153.8(5) of the *Employment Insurance Act*.

⁵ See sections 153.6(1), 153.6(2), and 153.6(3) of the *Employment Insurance Act*.

Conclusion

[27] The appeal is dismissed. The law does not allow the Claimant's claim to be antedated to March 29, 2020.

Pierre Lafontaine
Member, Appeal Division