

Federal Court



Cour fédérale

Date: 20210419

Docket: T-381-20

Citation: 2021 FC 333

Ottawa, Ontario, April 19, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DORIAN PANARITI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Panariti lost his employment on September 30, 2018. He applied for Employment Insurance benefits [EI] on January 13, 2019, and asked the Employment Insurance Commission [the Commission] to treat his application as if it had been made on September 30, 2018. The Commission refused to antedate his application because it found that he had not proven that he had good cause for delaying his application.

[2] An appeal to the Social Security Tribunal-General Division [SST-GD] was denied. The SST-GD described the test for antedating an application, as follows:

[6] Claimants have to prove two things to have an application for benefits antedated:

1. They had good cause for the delay during the whole period of the delay.
2. They qualified for benefits on the earlier day.

...

[8] To show good cause, the Claimant has to prove that he acted like a reasonable and prudent person would have in similar circumstances. The Claimant has to show this for the entire period of the delay. For the Claimant, the period of delay is from September 30, 2018, to January 12, 2019.

[9] The Claimant also has to show that he took reasonably prompt steps to understand his entitlement to benefits and obligations under the law. If the Claimant did not take these steps, then he must show that there were exceptional circumstances that explain why he did not do it. The Claimant has to prove that it is more likely than not that he had good cause. [footnotes omitted]

[3] Mr. Panariti explained that he did not have a Record of Employment [ROE] from his employer when his employment ended, as his employer was taking the position that he was employed by an American employer and not a Canadian one. Mr. Panariti thought that he could not apply for EI benefits unless he had an ROE to show that he had insurable employment. He had retained a lawyer and was negotiating a severance package and it was also his understanding that he could not apply for EI benefits until his severance was exhausted.

[4] The SST-GD found that Mr. Panariti did not prove that he had good cause for the delay in applying for EI benefits because he failed to take reasonably prompt steps to understand his

entitlement to benefits, and could not show any exceptional circumstances that explained why he did not.

[5] Mr. Panariti filed an appeal with the Social Security Tribunal - Appeal Division [SST-AD]. An appellant has a right to appeal only if the SST-AD grants leave to appeal.

[6] Leave to appeal must be refused if the appeal has no reasonable chance of success under the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34. Under this provision, the only grounds of appeal are that:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

[7] Having a “reasonable chance of success” means having some arguable ground upon which the proposed appeal might succeed: *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

[8] Mr. Panariti advanced two submissions regarding the General Division’s decision before the SST-AD and this Court.

[9] First, he submits that it failed to consider or seriously consider the fact that his employer had not issued him a ROE and was taking the position that he was an employee of an American company, thus having no insurable earnings for EI purposes.

[10] The SST-AD observed that the SST-GD did consider the fact that there was no ROE. In fact, the employer did not issue an ROE until April 29, 2019, many months after Mr. Panariti filed his application. He did so then on the advice of his lawyer.

[11] The SST-GD held that even without an ROE in hand, Mr. Panariti failed to take the steps a reasonable and prudent person would to determine his rights and obligations. Specifically, it held that he ought to have contacted the Commission to determine his entitlement. The SST-AD found this to be consistent with the case law.

[12] Mr. Panariti submits that while he did not directly contact the Commission, he did review its website and it was on that basis that he came to understand that an ROE was necessary to file an application. The Court notes, however, that the web page he points to under the heading “Eligibility” reads as follows:

The following information is a guideline. We encourage you to apply for benefits so our processing agents can determine if you are eligible.

[13] While Mr. Panariti may have acted in good faith, I am unable to conclude that the decision of the SST-AD, that his appeal did not have a reasonable chance of success, is unreasonable.

[14] The Defendant informed the Court that it was not seeking costs in this matter.

[15] Both parties agreed that the Social Security Tribunal of Canada is not the proper Respondent and that the Attorney General of Canada should be substituted for it.

JUDGMENT IN T-381-20

THIS COURT'S JUDGMENT is that:

1. The Style of Cause is amended with immediate effect to name as the Defendant the Attorney General of Canada;
2. This application is dismissed; and
3. Each party shall bear its own costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-381-20

STYLE OF CAUSE: DORIAN PANARITI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO AND TORONTO, ONTARIO

DATE OF HEARING: APRIL 7, 2021

JUDGMENT AND REASONS: ZINN J.

DATED: APRIL 19, 2021

APPEARANCES:

Dorian Panariti

APPLICANT
ON HIS OWN BEHALF

Benjamin Wong

FOR THE RESPONDENT

SOLICITORS OF RECORD:

- Nil -

SELF-REPRESENTED APPLICANT

Attorney General of Canada
Department of Justice Canada
Toronto, Ontario

FOR THE RESPONDENT