

Citation: *D. K. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 80

Appeal #: GE-14-2192

BETWEEN:

D. K.

Appellant
[Claimant]

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Katherine Wallocha

DATE OF DECISION: July 29, 2014

DECISION

[1] The Tribunal finds that the claimant has shown that the decision was rendered in appeal GE-13-900 on a mistake of fact and this decision is rescinded in accordance with section 66 of the *Department of Employment and Social Development Act* (DESD Act).

INTRODUCTION

[2] An initial claim for EI benefits was established on March 3, 2013. The Canada Employment Insurance Commission (Commission) denied the claim because it was determined that the claimant lost his employment due to his own misconduct. The claimant sought reconsideration of the Commission's decision, which the Commission maintained in their letter dated August 20, 2013. The claimant appealed to the Social Security Tribunal (SST) and this was appeal GE-13-900.

[3] A hearing for appeal GE-13-900 was scheduled for May 13, 2014 however neither the claimant nor his representative attended the hearing. The Tribunal was satisfied that the claimant's representative received the Notice of Hearing and the decision was rendered on May 15, 2014.

[4] The claimant has now requested that the decision rendered in GE-13-900 be rescinded or amended. Pursuant to section 48 of the *Social Security Tribunal Regulations*, this decision is being made on the record.

ISSUE

[5] The Tribunal must decide whether the decision in appeal GE-13-900 should be rescinded or amended.

THE LAW

[6] Subsection 66(1) of the DESD Act states that the Tribunal may rescind or amend a decision given by it in respect of any particular application if

- a) in the case of a decision relating to the *Employment Insurance Act*, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; or
- b) in any other case, a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

[7] Section 48 of the *Social Security Tribunal Regulations* states that after every party has filed a notice that they have no documents or submissions to file, or at the end of the period set out in section 47, whichever comes first, the General Division or the Appeal Division, as the case may be, must without delay

- a) make a decision on the application; or
- b) if it determines that further hearing is required, send a notice of hearing to the parties.

[8] Subsection 14(1) of the *Social Security Tribunal Regulations* states that subject to subsection (2) a person may withdraw their appeal or application at any time before a decision is rendered by filing a notice with the Tribunal. Subsection 14(2) provides that, in the case of a hearing held by teleconference, videoconference, other means of telecommunication or the personal appearance of the parties, a party may not withdraw their appeal or application after the conclusion of the hearing.

EVIDENCE

[9] The claimant's representative stated that the claimant sent an email to the Tribunal dated May 6, 2014 requesting that the appeal GE-13-900 be withdrawn. This document was not placed in the appeal file.

[10] Neither the claimant, nor his representative attended the scheduled hearing. The Tribunal Member, being satisfied that notice of the hearing had been given, proceeded with the hearing on May 13, 2014 and a decision was rendered on May 15, 2014.

[11] The claimant's representative received the appeal decision and after some investigation by an officer at the Tribunal, it was confirmed on May 27, 2014 that the Tribunal had, in fact, received this email.

[12] The email, dated May 6, 2014 was date stamped received by the Tribunal on May 6, 2014.

SUBMISSIONS

[13] The claimant submitted that a request had been sent well prior to the appeal hearing date of May 13, 2014 requesting that the appeal be withdrawn. He is requesting that the decision made on appeal GE-13-900 be rescinded in its entirety, or at least amended to remove any mention of the claimant and his representative failed to appear on this matter.

[14] The Respondent submitted that:

- a) The information the claimant submitted does not constitute new facts for the purpose of reconsideration and the requirements of section 66 of the DESD Act have not been met.
- b) In this instance, regardless of the SST's decision, the Commission would not be impacted as it would not change the claimant's entitlement to benefits.

ANALYSIS

[15] In order to rescind or amend a decision, the claimant must present new facts or show that the decision was rendered based on a mistake as to some material fact.

[16] In order for facts to be considered "new facts" the facts must have happened after the decision was rendered or happened prior to the decision being rendered but could not have been discovered by a claimant acting diligently. The new facts must be decisive of the issue to be decided (**Chan A-185-94**).

[17] In this case, the claimant submitted an email informing the Tribunal that he wished to withdraw his appeal. This email was sent more than a week in advance of the scheduled hearing.

However, the Tribunal Member was not advised of this information and therefore proceeded with the hearing and rendered a decision.

[18] The Tribunal finds that the claimant has shown that the earlier decision was made based on a mistake of a material fact. The claimant had wished to withdraw his appeal and did so in a timely manner in accordance with section 14 of the *Social Security Tribunal Regulations*. The claimant should not have a decision rendered in a case he did not wish to pursue because of an administrative error brought about by the SST.

[19] The Commission contends that in this case these are not new facts. The Tribunal agrees that these are not new facts however, section 66 also provides that a decision can be rescinded or amended when the decision was rendered based on a mistake of material fact.

[20] For these reasons, the Tribunal finds that the claimant withdrew his appeal before the hearing and therefore, the matter is not before the Tribunal.

CONCLUSION

[21] The decision in GE-13-900 is rescinded.

K. Wallocha

Member, General Division