[TRANSLATION]

Citation: *Y. B. v. Canada Employment Insurance Commission*, 2014 SSTAD 402

Appeal No. AD-13-939

BETWEEN:

Y. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Rescinding or Amending a Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai CHENG

DATE OF DECISION: December 27, 2014

DECISION

[1] The application to rescind or amend the decision rendered by the Umpire is rejected.

INTRODUCTION

[2] On February 23, 2012, a Board of Referees found that the Commission had correctly refused to grant an extension of the 30-day period for filing an appeal from the decision to impose a disqualification from receiving benefits. The decision and the reasons for his disqualification were communicated to the applicant on October 15, 2010. The applicant sent a letter of appeal on June 8, 2011. The Board of Referees found that the decision rendered by the Commission was consistent with the *Employment Insurance Act* (the Act) and the case law.

[3] On March 7, 2012, the applicant appealed the Board of Referees' decision to the Umpire.

[4] The appeal was heard on November 16, 2012, and the applicant attended the hearing.

[5] The Umpire's decision, dated January 23, 2013, found that the Board of Referees' decision was well founded on the evidence before it and on the applicable legislation as interpreted in the case law. The appeal was dismissed.

[6] The Office of the Umpire notified the applicant that the Umpire's decision was final and not subject to appeal, but that it may be subject to an application for judicial review under the *Federal Courts Act*. The applicant was advised to appeal to the Federal Court of Appeal if in disagreement with the decision. However, on presentation of new facts, the Umpire may rescind or amend his or her decision in accordance with section 120 of the Act.

[7] On December 2, 2013, the applicant filed an application for leave to appeal to the Appeal Division of the Social Security Tribunal.

[8] On December 2, 2013, the Tribunal acknowledged receipt of the application as an application to rescind or amend the decision.

[9] The applicant filed a number of documents and a large volume of electronic communications (emails). He sent more than 115 emails from December 2, 2013, to December 23, 2014, often several a day.

THE LAW

[10] Section 66 of the Act provides 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."

ISSUE

[11] The Tribunal must determine whether the applicant's application contains new facts or whether the decision rendered is based on a mistake as to some material fact.

ANALYSIS

[12] The applicant was advised to appeal to the Federal Court of Appeal if in disagreement with the Umpire's decision.

[13] Rather than applying for a judicial review under the *Federal Courts Act*, the applicant filed an appeal with the Tribunal. The Tribunal may treat this application only as an application to rescind or amend the decision.

[14] Section 66 of the Act, in effect since April 1, 2013, provides the following:

> 66. (1) 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.

[15] The test for determining whether "new facts" exist within the meaning of this provision has long been established. It was reiterated in *Canada (Attorney General) v. Chan*, [1994] F.C.J. No 1916 (Fed. C.A.), where Décary J.A., referring to the statutory predecessor to section 120, which bears essentially the same language, stated the following (paragraph 10):

> "New facts", for the purpose of the reconsideration of a decision of an umpire sought pursuant to section 86 of the Act, are facts that either happened after the decision was rendered or had happened prior to the decision but could not have been discovered by a claimant acting diligently and in both cases the facts alleged must have been decisive of the issue put to the umpire.
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> *Canada (A.G.) v. Hines*, 2011 FCA 252.

[16] The documents filed by the applicant in support of this application include documents presented previously to the Commission, the Board of Referees or the Umpire. These documents are not new facts.

[17] The filed documents that were not previously presented include:

1) a hospitalization summary for a hospital admission in August 2014 (from August 22 to September 9, 2014);

2) articles from searches conducted by the applicant; and

3) emails written by the applicant that contain personal statements.

[18] The hospitalization summary indicates a principal diagnosis of paranoid schizophrenia and observations dated September 9, 2014. The Commission's decision dates from October 2010, and the applicant's letter of appeal dates from June 2011. The medical observations regarding the applicant's health in August and September 2014 are not relevant to an extension applied for in 2010 and 2011.

[19] The articles from the searches conducted by the applicant are general in nature and not specific to the applicant. They are not relevant in this case.

[20] The emails written by the applicant contain statements, observations, arguments, thoughts and other things. There are copies of emails sent to the heads of state of various countries, to the United Nations and to Canadian prime ministers. There are the applicant's memories that date far back. There are requests for support sent to various people and organizations. There are repeated requests for money and sexual references. There are theories of personal persecution.

[21] These statements, observations, arguments, thoughts and other things are not facts. The contents of these emails do not represent facts as set out in section 66 of the Act.

[22] The applicant did not submit any new facts and failed to demonstrate in his application that the decision is based on a mistake as to some material fact. The Tribunal has no choice other than to reject his application to rescind or amend the decision.

CONCLUSION

[23] The application to rescind or amend the decision of January 23, 2013, rendered by the Umpire, is rejected.

Shu-Tai Cheng

Member, Appeal Division