

Citation: *A. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 907

Date: July 23, 2015

File number: AD-13-911

APPEAL DIVISION

Between:

A. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

Application to rescind or amend

REASONS AND DECISION

DECISION

[1] The application to rescind or amend the decision of the Board of Referees, rendered on February 22, 2013, is referred to the General Division of the Social Security Tribunal of Canada (Tribunal).

INTRODUCTION

[2] On February 22, 2013, a panel of the Board of Referees (Board) determined that the Applicant had an interruption of earnings pursuant to section 7 of the *Employment Insurance Act* (EI Act) and section 14 of the *Employment Insurance Regulations*.

[3] The Applicant filed the form entitled “Notice of Appeal to the Umpire” on April 19, 2013, and in the transition from the Office of the Umpire to the Tribunal, the Notice was filed with the Appeal Division of the Tribunal. It was determined, subsequently, by the Tribunal that the wrong form was used, and the Applicant’s application was accepted and acknowledged as a request to rescind or amend a decision, pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[4] The Tribunal must decide whether the request to rescind or amend a decision of the Board is properly considered by the Appeal Division of the Tribunal.

[5] If it is, then the Appeal Division of the Tribunal must decide if the additional information and documents supplied by the Applicant in support of her application to rescind or amend constitute new facts or if the decision rendered was made without knowledge of, or was based on a mistake as to, some material fact.

SUBMISSIONS

[6] The Applicant submits a number of documents in support of her application.

[7] The Respondent submits the following:

“Although the Commission is of the opinion that the claimant’s request does not meet the definition of new facts ... it does not oppose the SST-AD returning the file to the SST- General Division for determination pursuant to s. 66(4) of the Department of Employment and Social Development Act.”

LAW AND ANALYSIS

[8] Section 66 of the DESD Act, in effect since April 1, 2013, states the following :

“Amendment of decision

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;”

[9] This provision of the Act essentially reproduces the terms of repealed section 120 of the EI Act, in force prior to April 1, 2013, that read as follows :

“Amendment of decision

120. The Commission, a board of referees or the umpire may rescind or amend a decision given in any particular claim for benefit if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.”

[10] Subsections 66(2) and (4) of the DESD Act state:

(2) An application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to the appellant.

(4) A decision is rescinded or amended by the same Division that made it.

[11] The request of the Applicant pursuant to section 66 of the Act was filed within one year after the day on which the Board decision was communicated to her. However, the Appeal

Division cannot rescind or amend that decision; only the Division which made the decision is empowered to do so.

[12] For our purposes, the decision of the Board is considered to be a decision of the General Division. As such, the General Division is the appropriate division of the Tribunal to consider this application.

CONCLUSION

[13] The Applicant's request to rescind or amend the decision of the Board, rendered on February 22, 2013, is referred to the General Division of the Tribunal.

Shu-Tai Cheng
Member, Appeal Division