Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *G. S. v. Canada Employment Insurance Commission,* 2016 SSTADEI 106

Appeal No.: AD-15-1057

BETWEEN:

G. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division– Rescind or Amend Application

SOCIAL SECURITY TRIBUNAL MEMBER:: Mark BORER

DATE OF DECISION: February 23, 2016

DECISION: Application granted

DECISION

[1] On consent, leave to appeal is granted and the application is granted. The matter is returned to the General Division for redetermination, and my previous decision is amended accordingly.

INTRODUCTION

[2] On December 11, 2014, I refused the Applicant's application for leave to appeal a previous decision of the board of referees (the Board).

[3] In due course, the Applicant filed a rescind or amend application with the Appeal Division.

[4] This matter was decided on the record.

ANALYSIS

[5] In her application, the Applicant submitted a decision of the Canada Revenue Agency (the CRA) to the effect that she had additional hours of insurable employment that both the Board and I were unaware of at the time we rendered our respective decisions, and that she now qualifies for benefits.

[6] The Commission concedes that the CRA decision is binding upon both the Commission and the Tribunal, that it was not available at the time of the Board hearing, and that the CRA has indicated that the Applicant has additional hours of insurable employment not previously taken into account. As the decision does not say exactly how many additional hours there are, the Commission asks that a new hearing be ordered before the General Division to evaluate the evidence.

[7] Section 66 of the *Department of Employment and Social Development Act* requires that new evidence contain "new facts" to be admitted, and in *Canada (Attorney General)*

v. Chan, [1994] FCJ No 1916, the Federal Court of Appeal stated at paragraph 10 that new facts 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…

[8] Having reviewed the document, and noting the consent of the Commission, I find myself in agreement with the parties that the CRA decision is a new fact that must be admitted in evidence. Although I would have much preferred to simply resolve the appeal myself, I reluctantly agree with the Commission that there is insufficient clear and uncontested evidence with which I could do so. A new hearing before the General Division is therefore required.

CONCLUSION

[9] For the above reasons and on consent, leave to appeal is granted and the application is granted. The matter is returned to the General Division for redetermination, and my previous decision is amended accordingly.

Mark Borer

Member, Appeal Division