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

Citation: *W. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 314

Tribunal File Number: AD-15-1102

BETWEEN:

W. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division– Appeal Decision

DECISION BY: Pierre Lafontaine

HEARD ON June 7, 2016

DATE OF DECISION: June 16, 2016

Canada

REASONS AND DECISION

DECISION

[1] The appeal is allowed.

INTRODUCTION

[2] On September 8, 2015, the General Division of the Tribunal determined that:

> - The request under section 66 of the *Department of Employment and Social Development Act* (the "*DESD Act*") for the decision in GE-14-3250 to be rescinded or amended was to be dismissed.

[3] The Appellant requested leave to appeal to the Appeal Division on October 13, 2015. Leave to appeal as granted by the Appeal Division on November 13, 2015.

ISSUE

[4] The Tribunal must decide if the General Division erred when it dismissed the Appellant's request to rescind or amend the decision in GE-14-3250 pursuant to section 66 of the *DESD Act*.

THE LAW

[5] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

> (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.

ANALYSIS

[6] On September 18, 2015 the General Division dismissed the Appellant's request to rescind or amend the decision in GE-14-3250 finding that there were no new facts and that the decision was not made on a mistake as to some material fact pursuant to section 66 of the *DESD Act*.

[7] The Appellant submits in appeal that the General Division failed to observe a principle of natural justice by ignoring the Respondent's representation in GD6-l and by not taking the document into account in its decision.

[8] The position of the Respondent in the present appeal is the following:

> "Pursuant to s. 10(13) of the *Employment Insurance Act* (*EI*) if a) regular benefits were not paid, b) benefits were paid for more than one reason enumerated in s.12 EIA (sickness, maternity and parental) and c) the maximum number of weeks established for those reasons exceeded 50 weeks, the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.
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> At the time the claimant filed for special benefits, having not received any regular benefits, qualified for an extension of her benefit period pursuant to s. 10(13) to allow for 59 weeks of benefits to be paid. However, an administrative process required a claim change from parental to regular to allow for a system input of referred training.
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> After Ms. P. filed an enquiry with her Member of Parliament, the Commission reviewed the facts of the file and it was determined that nothing in the *EI Act* prevents a claimant in receipt of special benefits from being referred to training under section 25 of the *EI Act*. The claimant is considered entitled to the payment of special benefits as long as they continue to meet the entitlement conditions of those benefits. Having determined this, it was agreed it was an error for the Commission to require a claim change to regular benefits, thus resulting in Ms. P. no longer meeting the benefit period extension pursuant to s. 10(13) EIA, for the sole purpose of inputting the training.

> The Commission maintains that Ms. P. 's claim should have remained a parental claim (the Commission has subsequently updated referred training input procedures to correctly reflect the legislation) while attending referred training. She therefore, would have continued to meet the entitlement conditions of s. 10(13) EIA for an extension of her benefit period to allow the payment of 59 weeks of special benefits".
>
> (Underlined by the undersigned)

[9] The General Division found that the Respondent did not provide any submission to support that there were any new facts or facts that had occurred and therefore concluded that no new facts that would allow the extension of benefits under section 10 and extend the number of weeks the Claimant was entitled to during the benefit period pursuant to subsection 12(2) of the *Employment Insurance Act* (the "*Act*").

[10] However, the Respondent did supply relevant submissions in regards to the Appellant's rescind or amend application (Exhibit GD6-1).

[11] Section 66 of the *Act*, into effect since April 1st, 2013, mentions 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
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> (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;"

[12] Said provision of the *Act* essentially reproduces the terms of the now repealed section 120 of the *Employment Insurance 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."

[13] The Federal Court of Appeal has previously articulated the test for "new facts" in *Canada v. Chan*, (1994) F.C.J. No 1916 (C.A.) and it was recently confirmed in *Canada v. Hines*, 2011 FCA 252:

> "[14] 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, where Décary J.A., referring to the statutory predecessor to section 120 which bears essentially the same language, said (para. 10):
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> … "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."

[14] The Tribunal is of the view that the General Division erred in fact and in law in determining that no new facts existed to allow the application to rescind or amend its decision in GE-14-3250.

[15] It is clear to the Tribunal that the General Division, at the time that it rendered its decision in GE-14-3250, was not aware of the fact that the Respondent made an administrative error to require a claim change to regular benefits, thus resulting in the Appellant's no longer meeting the benefit period extension pursuant to subsection 10(13) of the *Act*, for the sole purpose of inputting the training.

[16] Therefore, the decision of the General Division in GE-14-3250 was made without knowledge of, or was based on a mistake as to, some material fact. Furthermore, the Tribunal finds that the new evidence presented by the Appellant in her application to rescind or amend was likely to have a decisive influence on the result of the case.

[17] In view of this error, the Tribunal will proceed to render the decision that should have been rendered by the General Division.

[18] The request of the Appellant pursuant to section 66 of the *Act* to rescind or amend the decision GE-14-3250 is granted. The Appellant meets the entitlement conditions of

subsection 10(13) of the *Act* for an extension of her benefit period to allow the payment of 59 weeks of special benefits.

CONCLUSION

[19] The appeal is allowed.

[20] The request of the Appellant pursuant to section 66 of the *Act* to rescind or amend the decision GE-14-3250 is granted. The Appellant meets the entitlement conditions of subsection 10(13) of the *Act* for an extension of her benefit period to allow the payment of 59 weeks of special benefits.

Pierre Lafontaine
Member, Appeal Division