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

Citation: *L. N. v. Canada Employment Insurance Commission*, 2017 SSTADEI 331

Tribunal File Number: AD-17-519

BETWEEN:

L. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 8, 2017

Canada

REASONS AND DECISION

DECISION

[1] The application to rescind or amend the leave to appeal decision of the Appeal Division of the Social Security Tribunal of Canada (Tribunal) rendered on October 7, 2016, is refused.

INTRODUCTION

[2] On April 12, 2016, the General Division held a teleconference hearing for reasons mentioned in its decision. The Applicant did not attend the hearing even though he had received the notice of hearing.

[3] On April 13, 2016, the General Division determined:

> -that an indefinite disqualification of the Applicant pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act) for having voluntarily left his employment without just cause was justified; and
>
> -that a disentitlement imposed on the Applicant pursuant to sections 18 and 50 of the Act and section 9.001 of the *Employment Insurance Regulations* (Regulations) was justified because he had failed to prove his availability for work while attending a course of instruction.

[4] In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division.

[5] On October 7, 2016, the Tribunal's Appeal Division refused the Applicant's request for leave to appeal on the basis that he had failed to allege a reviewable error and that he was actually requesting that the Appeal Division re-weigh the evidence and come to a different conclusion from the one that the General Division had reached.

[6] On July 13, 2017, within one year, the Applicant filed an application to rescind or amend the leave to appeal decision of the Tribunal's Appeal Division pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

THE LAW

[7] Section 66 of the DESD Act indicates that "[t]he Tribunal can 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

[8] The Tribunal must decide whether the information that the Applicant has supplied in support of his application to rescind or amend constitutes new facts or whether the decision that the Appeal Division rendered was made without knowledge of, or whether it was based on a mistake as to, some material fact.

SUBMISSIONS

[9] The Applicant submits the following arguments in support of his application:

- He would like to show that, while working full-time at FedEx and attempting to complete a semester of university courses that were mandatory for his degree, he was, via a set of circumstances, pushed unjustly out of his job.
- He is aware that his exit letter from FedEx shows that he resigned, but the resignation is the end result and does not contain the events that led up to it.
- He had not wished to resign, and he first pursued a very reasonable leave of absence and was denied without explanation or accommodation.
- Additionally, there was prior inappropriate verbal animus from his manager, who was responsible for addressing his leave request through human resources. This

animus at least tainted and, at worst, could have negatively influenced the outcome of his leave of absence application from FedEx.

- The denial of leave and the lack of work restructuring is what drove him to exit FedEx, which he had never wanted to do.

[10] The Respondent submits the following arguments against the application:

- The information submitted in support of the Applicant's application to rescind or amend does not constitute new facts or evidence of a mistake as to a material fact that would justify reconsideration pursuant to section 66 of the Act.

- It is also submitted that section 66 of the DESD Act is not intended to enable a claimant to re-argue his or her appeal before the Tribunal when the Appeal Division member has already rendered a decision, unless there is new evidence of a decisive nature that was not available at the time of the hearing before the Appeal Division or unless there is an obvious error that the Appeal Division made as to some material fact that would change the decision.

ANALYSIS

[11] The Tribunal carefully reviewed the arguments that the Applicant has submitted in support of his application to rescind or amend the leave to appeal decision of the Tribunal's Appeal Division.

[12] Section 66 of the Act, in effect since April 1, 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
>
> (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;

[13] Said provision of the Act essentially reproduces the terms of the now-repealed section 120 of the Act, in force prior to April 1, 2013, that reads 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.

[14] 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):
>
> > … "New facts", for the purpose of the reconsideration of a decision of an umpire sought pursuant to section 86 of the Act, <u>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.</u>

[15] The Applicant submits in his application that he had been working full-time at FedEx and that he had been attempting to complete a semester of university courses that were mandatory for his degree, when, via a set of circumstances, he was pushed unjustly out of his job. He had not wished to resign, and he first pursued a very reasonable leave of absence and was denied without explanation or accommodation.

[16] Additionally, there was prior inappropriate verbal animus from his manager, who was responsible for addressing his leave request through human resources. This animus at least tainted and, at worst, could have negatively influenced the outcome of his leave of absence application from FedEx. The denial of leave and the lack of work restructuring is what drove him to exit FedEx, which he had never wanted to do.

[17] The Tribunal notes that the Applicant did not attend the teleconference hearing before the General Division, even though he had received the notice of hearing.

[18] The General Division concluded from the evidence before it that the Applicant had made a personal choice to leave his employment to return to school, and that he had not provided any evidence of exceptional circumstances that would allow him to accept full-time work without leaving his full-time courses.

[19] The Federal Court of Appeal has consistently confirmed the principle that quitting one's job to go to school does not amount to just cause for leaving one's employment under the Act—*Canada (Attorney General) v. Beaulieu*, 2008 FCA 133, *Canada (Attorney General) c. Bois*, 2001 FCA 175, *Canada (Attorney General) v. Macleod*, 2010 FCA 301.

[20] The Appeal Division found that the Applicant had failed to allege a reviewable error, and that he was actually requesting that the Appeal Division re-weigh the evidence and come to a different conclusion from the one that the General Division had reached. It therefore refused the Applicant's request for leave to appeal.

[21] The Tribunal finds that the Applicant, in his application to rescind or amend, is not raising any facts that either happened after the decision had been rendered or that had happened prior to the decision but that could not have been discovered by him acting diligently.

[22] The Applicant also has not demonstrated in his application that the decision was given without knowledge of, or that it was based on a mistake as to, some material fact. It is undisputed that the Applicant quit his employment to return to school.

[23] Section 66 of the DESD Act is clearly not intended to enable a claimant to re-argue his or her application for leave to appeal when the Appeal Division member has already rendered a leave to appeal decision.

[24] Therefore, for the above-mentioned reasons, the Tribunal has no other choice but to refuse the Applicant's application to rescind or amend.

CONCLUSION

[25] The application to rescind or amend the leave to appeal decision of the Tribunal's Appeal Division rendered on October 7, 2016, is refused.

Pierre Lafontaine

Member, Appeal Division