



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 436

Tribunal File Number: AD-17-509

BETWEEN:

J. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: December 5, 2017

DATE OF DECISION: December 14, 2017

REASONS AND DECISION

DECISION

[1] The application to rescind or amend the decision of the Appeal Division of the Social Security Tribunal of Canada (Tribunal), rendered on June 12, 2017, is granted.

INTRODUCTION

[2] On February 21, 2017, the General Division found that the Applicant had not proven her availability for work pursuant to paragraph 18(1)(b) of the *Employment Insurance Act* (Act) because, if it was not for her illness, she would have been available for work.

[3] The Applicant filed an application for leave to appeal with the Appeal Division on March 23, 2017. On May 9, 2017, leave to appeal was granted.

[4] On June 12, 2017, the Tribunal's General Division allowed the Applicant's appeal.

[5] On July 4, 2017, the Applicant filed an application to rescind or amend the decision of the Tribunal's Appeal Division pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

THE LAW

[6] Section 66 of the DESD Act indicates that “[t]he 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

[7] The Tribunal must decide whether to grant the application to rescind or amend the Appeal Division's decision of June 12, 2017.

SUBMISSIONS

[8] The Applicant submits the following arguments in support of her application to rescind or amend:

- Despite its understanding of the issues, the General Division failed to decide on the Applicant's entitlement to regular benefits and dismissed the appeal;
- In its written concession for the Appeal Division, the Respondent reiterates the General Division's omission and mentions only the eligibility for sickness benefits and not the fact that the Applicant had also been deemed ineligible for regular benefits;
- The matter of regular benefits is totally absent from the Appeal Division decision;
- She requests that the Appeal Division decision of June 12, 2017, be amended.

[9] The Respondent submits the following arguments against the Applicant's application to rescind or amend:

- It reviewed the file again and agrees with the Applicant's representative that it mistakenly did not make any arguments for regular benefits.

- It asks the Appeal Division to amend its decision of June 12, 2017, pursuant to section 66 of the DESD Act.

ANALYSIS

[10] The General Division failed to decide on the Applicant's entitlement to regular benefits; however, it dismissed the Applicant's appeal.

[11] The Applicant filed an application for leave to appeal to the Appeal Division on March 23, 2017, in which she noted that the General Division did not make any findings on the matter of regular benefits. On May 9, 2017, leave to appeal was granted.

[12] The Respondent, which made a concession on the issue of sickness benefits, recognizes that it mistakenly did not submit any written arguments before the Appeal Division concerning the Applicant's regular benefits.

[13] On June 12, 2017, the Appeal Division rendered a decision on the issue of sickness benefits, but did not make any findings on the issue of regular benefits. Following the Tribunal's decision, the Respondent granted the Applicant the 15 weeks of sickness benefits.

[14] The Respondent therefore asks the Tribunal to amend its decision of June 12, 2017, pursuant to section 66 of the DESD Act, to make the Applicant eligible to receive regular benefits three days per week based on her full availability, and to make her ineligible the other two days pursuant to paragraph 18(1)(a) of the Act.

[15] The Tribunal is of the opinion that the Appeal Division's decision of June 12, 2017, was rendered without knowledge of a material fact or was based on an error relating to that fact.

[16] It is therefore appropriate to grant the Applicant's application to rescind or amend.

CONCLUSION

[17] The application amend the Appeal Division's decision of June 12, 2017, is granted.

[18] The Applicant is eligible to receive sickness benefits during the period in question because, if it were not for her illness, she would have continued to work for her regular employer.

[19] The Applicant is eligible to receive regular benefits, three days per week, for the weeks of May 16 and 23, 2016.

Pierre Lafontaine
Member, Appeal Division