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

Citation: *F. K. v. Canada Employment Insurance Commission*, 2018 SST 51

Tribunal File Number: AD-17-904

BETWEEN:

F. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 18, 2018

Canada

DECISION AND REASONS

DECISION

[1] The application to rescind or amend the leave to appeal decision rendered by the Appeal Division of the Social Security Tribunal of Canada on September 21, 2017, is refused.

INTRODUCTION

[2] On April 18, 2017, the General Division held a videoconference hearing for the reasons mentioned in its decision. The Applicant attended the hearing.

[3] On April 27, 2017, 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.

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

[5] On September 21, 2017, 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 than the one the General Division had reached.

[6] On October 26, 2017, 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 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* (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 was based on a mistake as to, some material fact.

ANALYSIS

[9] The Tribunal has 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.

[10] Section 66 of the DESD Act, in effect since April 1, 2013, reads as follows:

> 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;

[11] The said provision of the DESD Act essentially reproduces the terms of the now-repealed section 120 of the 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.

[12] 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, 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.

[13] The Applicant submits in his application that he has found new facts and evidence to support having explored reasonable alternatives prior to leaving his employment. He submits that at the time the application was made to the General Division, he was not able to submit these facts because his computer was not set up properly since he had moved several times and he was not readily able to access old emails. He is therefore filing job applications that he made before leaving his job.

[14] Additionally, he states that he was very dissatisfied with his employment and that he could not address this issue with his superiors before leaving because of the risk that his employment would be terminated.

[15] The Tribunal notes that the Applicant attended the videoconference hearing before the General Division, and that he had every opportunity to present all the facts in support of his case.

[16] The General Division concluded from the evidence before it that the Applicant had made a personal choice to leave his employment because he was unhappy with his new team leader. The Tribunal found that on a balance of probabilities, the Applicant had reasonable alternatives to leaving his employment. First, the Applicant could have secured

alternate employment before leaving his employment. Second, the Applicant could have requested a leave of absence from the employer and attempted to find other employment during this leave. Third, the Applicant could have submitted a written request for a transfer to either Human Resources or his manager. Fourth, the Applicant could have submitted a written request to Human Resources asking whether some resolution to his conflict with the team leader could be explored.

[17] The General Division gave more weight to the initial statements of the Applicant, who confirmed that he had not spoken to the employer about the conflict with his co-worker because he thought that doing so would damage his reputation and that it was better to leave on agreeable terms. He explained that he did not quit his employment to become a consultant and that this was something he told the employer to ensure they parted on good terms. He also indicated initially that he did not look for other employment before leaving the employer.

[18] The Federal Court of Appeal has consistently held that a claimant who wishes to leave employment due to differences with the employer or co-workers has a duty to first try to reconcile those differences before leaving. The claimant must also make efforts to seek other employment prior to leaving his or her job.

[19] 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 than the one the General Division had reached. It therefore refused the Applicant's request for leave to appeal.

[20] The Tribunal finds that in his application to rescind or amend the Appeal Division decision, the Applicant has not raised 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.

[21] He also has not demonstrated in his application that the decision was given without knowledge of, or was based on a mistake as to, some material fact. It is undisputed that the

Applicant quit his employment because he was unhappy with his new team leader and that he did not try to reconcile those differences before leaving.

[22] The Applicant's application and enclosures are merely an attempt to re-argue his case based on facts that existed at the time of the hearing before the General Division.

[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 rendered by the Tribunal's Appeal Division on September 21, 2017, is refused.

Pierre Lafontaine
Member, Appeal Division