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

Citation: *M. H. v. Canada Employment Insurance Commission*, 2018 SST 491

Tribunal File Number: AD-18-90

BETWEEN:

M. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: May 3, 2018

Canada

DECISION AND REASONS

DECISION

[1] The application is refused.

OVERVIEW

[2] M. H. (Claimant) application for Employment Insurance benefits was denied on the basis that he voluntarily left his employment without just cause. The Respondent Canada Employment Insurance Commission maintained this decision on reconsideration, and an appeal to the General Division was dismissed. The Claimant appealed the dismissal to the Appeal Division, but no error was found in the General Division decision and this appeal was also dismissed.

[3] The Claimant now requests that the Appeal Division rescind or amend its decision.

ISSUES

[4] Has the Claimant presented new facts that would have been relevant to the Appeal Division determination?

[5] Was the Appeal Division decision made without knowledge of, or based upon a mistake as to a material fact?

ANALYSIS

[6] According to s. 66(1) of the *Department of Employment and Social Development Act* (DESD Act), the Appeal Division may rescind or amend a decision if new facts are presented to the Tribunal or if the Tribunal is satisfied that the decision was made without knowledge of, or was based upon a mistake as to, a material fact. Subsection 66(4) states that a decision may be amended only by the Division that made the decision.

[7] This means that I have no jurisdiction to rescind or amend a General Division decision. I am permitted to rescind or amend only the Appeal Division decision.

[8] The Appeal Division decision was concerned only with whether the General Division committed any of the errors described in s. 58(1) of the DESD Act. In my original decision, I found that the General Division did not err in any of the ways described in s. 58(1) of the DESD Act. In order to rescind or amend my decision, I would have to be satisfied that the new facts in question would have had a decisive impact on my finding had I been aware of them, or that I misunderstood some fact that was material to my decision.

Existence of new facts

[9] The Claimant's January 29, 2018, submission relies on his December 27, 2017 "translation" and analysis of two documents: handwritten notes taken by L. M. (Notes) and a second document entitled "Synopsis of situation with M. H." (Synopsis). The Claimant states that he only obtained these documents at a hearing of the Ontario Labour Relations Board on October 26, 2017. The Claimant asserted that his December 27, 2017, letter was faxed to the Appeal Division on December 27, 2017, but there is no record at the Appeal Division of receipt of this letter, except for the copy attached to his January 29, 2018, submission.

[10] The "new facts" submitted by the Claimant are presumably represented by the December 27, 2017, letter. However the December 27, 2018, letter purports to translate and analyze the Notes and Synopsis. Both the Notes and the Synopsis were submitted to the Appeal Division on December 3, 2017, prior to the Appeal Division hearing (at AD9-119, and AD-126, respectively).

[11] The Federal Court of Appeal considered the meaning of "new facts" in relation to s. 120 of the former *Employment Insurance Act*, whose wording is very similar to that of s. 66(1)(*a*) of the DESD Act, in *Chan.* According to *Chan*, for facts to be "new", they must have happened after the decision was rendered or, if they had happened before the decision, the "new facts" could not have been discovered by a claimant acting diligently. Furthermore, they would have to be decisive of the issue at hand.[1]

[1] *Canada (Attorney General) v. Chan*, A-185-94

[12] The Notes and Synopsis were obtained by the Claimant well in advance of the Appeal Division hearing. In fact, they were presented to the Appeal Division. The Claimant's "translation" and analysis of this evidence may be new *argument*, but it is not new evidence.

[13] Even if that analysis had contained anything that might be considered new evidence, there would be no reason to believe that it could not have been discovered and submitted prior to the Appeal Division hearing.

[14] Finally, the evidence and argument within the December 27, 2017, letter was provided in support of the Claimant's position on the substantive issue of whether he left his employment without just cause. This material could not be decisive of any issue to be determined by the Appeal Division: the Appeal Division decision was concerned only with whether the General Division committed an error and could consider only the material that was before the General Division at the time it made its decision.

[15] I find that the Claimant has not provided new facts.

Lack of knowledge or mistake of material fact

[16] The General Division decision was issued in February 2017, but the Claimant only obtained the Notes and Synopsis in late October 2017. Therefore, this evidence was not before the General Division. The General Division could not have erred in failing to consider documents that were not before it.

[17] These same documents were associated with substantial supplementary submissions that were submitted to the Appeal Division two days prior to the hearing. I reviewed these final submissions before making the original Appeal Division decision but I was unable to consider the new evidence because it was not material to establishing any of the grounds of appeal provided for in s. 58(1) of the DESD Act. As I indicated in the hearing, it is a rare circumstance where the Appeal Division may consider new evidence.

[18] These documents were not material to whether the General Division erred and they could not be considered in the original Appeal Division decision. As a result, they can have no bearing on the decision to rescind or amend the original Appeal Division decision.

[19] In order to grant the Claimant's request, I would have to be satisfied that I did not know of a material fact or that I based my decision on a mistake as to a material fact. I have reviewed the Claimant's submissions, but they are largely concerned with the interpretation of the Notes and Synopsis. The submissions do not suggest to me any fact that was outside of my knowledge or that might have influenced my decision that the General Division did not err. Nor do the Claimant's submissions identify in what manner I based my decision on a mistake of material fact in relation to the evidence that was before the General Division.

CONCLUSION

[20] The application to rescind or amend is refused.

Stephen Bergen
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	M. H., Applicant