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

Citation: *H. H. v. Canada Employment Insurance Commission*, 2018 SST 678

Tribunal File Number: AD-18-241

BETWEEN:

H. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Exclusive Transfer Enterprise

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 18, 2018

Canada

DECISION AND REASONS

DECISION

[1] The application to rescind or amend the appeal decision of the Social Security Tribunal of Canada's Appeal Division rendered on June 29, 2017, is refused.

OVERVIEW

[2] On April 26, 2016, the General Division held an in-person hearing. The Applicant and the Added Party (employer) attended the hearing. The General Division determined that an indefinite disqualification of the Applicant, pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act), for having voluntarily left his employment without just cause was justified.

[3] In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division, which was granted. After a hearing, the Tribunal's Appeal Division dismissed the Applicant's appeal on the basis that his separation from work was a direct consequence of his telling the employer he was not going to perform his assigned duties and of his leaving the work premises. The Appeal Division concluded that had the Applicant not left the work premises and had he performed his assigned duties, he would have still been employed.

[4] On October 26, 2017, within the legal delay of one year, the Applicant filed an application to rescind or amend the appeal decision of the Tribunal's Appeal Division pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[5] 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

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

[7] Section 66 of the DESD 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;

[8] Said provision essentially reproduces the terms of the now-repealed section 120 of the EI Act, in force until April 1, 2013, which 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.

[9] 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</u>

> 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.

[10] The Applicant submits in his application that the Respondent, the Canada Employment Insurance Commission (Commission), supported his claim before the General Division and the Appeal Division. There was no opposition in the form of submissions, participation, or legal arguments that prevented the Appeal Division from rendering the decision that the General Division should have rendered. He argues that the Appeal Division member did not respect the Code of Conduct for Tribunal members by rendering an unfavourable decision in his file even though he and the Commission both agreed that his claim should be allowed.

[11] The Applicant argues that no statement of any kind implying resignation was uttered when he left to "cool off" or when he returned to the workplace. He submits that it was the employer who wrongly terminated the relationship and accused him of quitting by job abandonment. He claims no resignation was ever tendered.

[12] The Applicant puts forward that, without the missing materials (Board of Referees Original Docket), the General Division and the Appeal Division could not see as the Commission did in its assessment of the submissions how the employer was being even more inconsistent in its evidence.

[13] The role of the General Division is to assess the evidence and come to a decision. It is not bound by how the Applicant, Commission, or a third party might characterize the grounds on which an employment has been terminated.

[14] The Tribunal notes that the Applicant attended the hearing before the General Division, that he had every opportunity to present all the facts of his case and file all the documents he wanted in support of his case, and that he had the opportunity to question the employer.

[15] The General Division placed considerable weight on and preferred the submissions provided by the employer and its witnesses regarding the timeline and the circumstances surrounding the Applicant's departure and return to his workplace.

[16] The General Division determined from the evidence that the Applicant voluntarily left his employment and that he did not exhaust all reasonable alternatives before leaving his employment. The General Division concluded that it was his choice to leave his position when he walked off the job and then returned some time later.

[17] The Applicant's appeal was dismissed on the basis that the Applicant's separation from work was a direct consequence of his telling the employer he was not going to perform his assigned duties and of his leaving the work premises. Had the Applicant not left the premises and had he performed his assigned duties, he would have still been employed. The Appeal Division concluded that the General Division decision was clear, legible, and supported by the evidence. Furthermore, it complied with the law and with other decided cases.

[18] The Appeal Division further concluded that if exhibits were missing from the previous board of referees file, the Applicant should have filed them, requested that the General Division obtain them before the hearing, or requested an adjournment of the hearing instead of taking a passive stance before the General Division.

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

[20] The Applicant 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 left his workplace and that, upon his return, his run had been given to another driver.

[21] 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.

[22] Section 66 of the DESD Act is clearly not intended to enable a claimant to re-argue their appeal when the Appeal Division member has already rendered a decision.

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

CONCLUSION

[24] The application to rescind or amend the appeal decision of the Tribunal's Appeal Division rendered on June 29, 2017, is refused.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the record