



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. C. v Canada Employment Insurance Commission*, 2018 SST 1326

Tribunal File Number: GE-18-2537

BETWEEN:

G. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Frenette

HEARD ON: December 14, 2018

DATE OF DECISION: December 21, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] On October 5, 2017, the Tribunal's General Division dismissed the Appellant's appeal. The Appellant appealed that decision to the Tribunal's Appeal Division. During the hearing before the Appeal Division, the Appellant discovered that the evidence before the Tribunal did not include a letter dated February 3, 2013. The Appellant was convinced that the General Division had consulted that document before giving its decision. The Tribunal's Appeal Division placed the appeal on hold so that the Appellant could file a request to rescind or amend his decision because of the letter (section 66(1)(a) of the *Department of Employment and Social Development Act* (Act).

[3] The letter dated February 3, 2013, is addressed to [translation] "Employment Insurance" and written by the Appellant. The letter states that the Appellant is disputing the claim for \$11,318. The contents of the letter is identical to the one dated February 20, 2013, which the Commission submitted into evidence in the General Division's file (GD3-21).

[4] The Appellant sent the February 20, 2013, letter in support of his claim that he had sent the Commission a reconsideration request on February 4, 2013, through UPS. The Commission received that letter on June 16, 2016.

PRELIMINARY MATTERS

[5] On September 27, 2018, the Tribunal sent the Appellant a notice of hearing. According to the Canada Post notice the Appellant signed, he received the notice of hearing on October 9, 2018.

[6] On the day of the hearing, the Appellant did not attend. The Tribunal waited for the Appellant for 30 minutes. Given the Canada Post notice, the Tribunal is satisfied that the Appellant was informed of the hearing date. As a result, the Tribunal proceeded in his absence (section 12 of the *Social Security Tribunal Regulations*).

ISSUES

[7] Could the February 3, 2013, letter the Appellant provided not have been discovered by a claimant acting diligently?

[8] If so, is the February 3, 2013, letter decisive of the issue?

ANALYSIS

[9] The Tribunal may rescind or amend a decision given by it if new facts are presented (section 66(1)(a) of the Act).

[10] The Federal Court of Appeal has established two criteria that enable the Tribunal to rescind or amend its decision when a new fact happened before the decision was issued (*Canada (Attorney General) v Chan*, A-185-94):

a) the fact could not have been discovered by a claimant acting diligently; and

b) the fact must be decisive of the issue.

Could the February 3, 2013, letter the Appellant provided not have been discovered by a claimant acting diligently?

[11] The Tribunal must ask whether the Appellant could have produced this evidence if he had acted diligently (*Canada (Attorney General) v Hines*, 2011 FCA 252).

[12] Regarding a claimant's behaviour, the Federal Court of Appeal said a claimant [translation] "must determine, prior to a hearing, what documents should be produced to establish his or her case and [...] must exercise reasonable diligence to locate these documents" (*Reinhardt v Canada (Attorney General)*, 2016 FCA 158).

[13] The Appellant is asking the Tribunal to rescind or amend its decision because of the February 3, 2013, letter. The Appellant also reminded the Tribunal of the four criteria for granting an extension of time that must be analyzed in the interest of justice under *Canada v Gattellaro*, FC 883 [sic] and *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[14] Straightaway, the Tribunal would like to explain that the decisions the Appellant raised apply in the case of a request for an extension of time to file an appeal to the Tribunal, which is not the case here. Indeed, the Tribunal the decision [*sic*] must be rescinded or amended because of a new fact (section 66(1)(a) of the Act; *Chan, supra; Hines, supra*).

[15] The Tribunal is of the view that the letter dated February 3, 2013, could have been discovered by a claimant acting diligently.

[16] First, the Appellant had the letter dated February 3, 2013, in his possession because he wrote it. Therefore, the Appellant was aware of the letter's existence well before the hearing.

[17] Next, the Appellant could have observed that the letter dated February 3, 2013, was not among the evidence. The Appellant had in fact received all of the evidence and had the opportunity to consult and assess it.

[18] Furthermore, the Appellant sent the Commission the letter dated February 20, 2013, instead of the one dated February 3, 2013.

[19] The Appellant therefore needed to assess the evidence he received and decide whether other documents needed to be filed, which the Appellant did not do (*Reinhardt, supra*).

[20] Given that the Appellant knew the letter existed, could have observed that it was not part of the evidence the Commission filed, and did not file it into evidence himself, the Tribunal is of the view that the Appellant did not act as a claimant acting diligently would have (*Chan, supra*). As a result, this criterion has not been satisfied.

If so, is the February 3, 2013, letter decisive of the issue?

[21] Since it has found that the February 3, 2013, letter could have been discovered by a claimant acting diligently, the Tribunal does not need to answer this question.

CONCLUSION

[22] The appeal is dismissed.

Catherine Frenette
Member, General Division – Employment Insurance Section

HEARD ON:	December 14, 2018
METHOD OF PROCEEDING:	Teleconference