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

Citation: *L. T. v Canada Employment Insurance Commission*, 2019 SST 198

Tribunal File Number: GE-18-2417

BETWEEN:

L. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: November 5, 2018, and January 8, 2019

DATE OF DECISION: January 10, 2019

DECISION

[1] The application to rescind or amend the July 6, 2018, decision is refused.

OVERVIEW

[2] The Claimant filed an appeal with the Employment Insurance General Division of the Social Security Tribunal (Tribunal) on April 9, 2018, under appeal number GE-18-1365. The issue under dispute was the Respondent's (Commission's) decision that the Claimant voluntarily left her employment without just cause.

[3] The Claimant's appeal was scheduled to be heard via teleconference on July 3, 2018. When neither party appeared at the teleconference hearing, the Member proceeded to determine the merits of the appeal in the absence of both parties.[1] The decision was rendered on July 6, 2018.

[4] On July 18, 2018, the Claimant submitted an application to the Tribunal to rescind or amend the July 6, 2018, decision, stating that she has **new** facts that were not previously considered.

ISSUES

[5] Has the Claimant presented evidence that meets the test of **new** facts?

[6] Was the July 6, 2018, decision made without knowledge of or based on a mistake as to some **material fact** relating to the issue under appeal?

ANALYSIS

[7] A decision issued by the Tribunal may be rescinded or amended if the Tribunal Member is satisfied that all 4 of the following criteria are met.[2]

1) 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;

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[1] Subsection 12(1) of the *Social Security Tribunal Regulations*
[2] Section 66 of the *Department of Employment and Social Development Act* (*DESD Act*)

2) If an application to rescind or amend a decision is made within one year after the day on which the decision is communicated to the Claimant;
3) Each person subject of the decision may make only one application to rescind or amend; and
4) The request to rescind or amend is before the General Division of the Tribunal, as that is the division which rendered the decision.

[8] There is no dispute that the Claimant's application to rescind or amend meets the requirements of the second criteria, as it was received by the Tribunal twelve days after the decision was rendered.[3]

[9] Based on the Tribunal records, and as submitted by the Claimant, this is the first application to rescind or amend the July 6, 2018, decision that was submitted by the Claimant. Further, this matter is being heard before the Employment Insurance General Division; which is the Division that rendered the July 6, 2018, decision. Accordingly, I find the Claimant's application to rescind or amend meets the third and fourth criteria.[4]

[10] As stated during the hearing, an application to rescind or amend is not an opportunity to argue or reargue the merits of the issue under appeal. The decision rendered on July 6, 2018, is final and binding and in order to open this decision to rescind or amend it, the Claimant must present evidence that meets the test of **new** facts or the Tribunal Member must be satisfied that the decision was made without knowledge of or mistake as to some **material fact** relating to the original issue under appeal[5]; which in this case was whether or not the Claimant voluntarily left her employment without just cause.

A) Did the Claimant present new facts?

[11] No. The test for **new** facts requires that, for the facts to be **new**, they must have happened after the decision was rendered or prior to the decision being rendered and could not have been

[3] Subsection 66(2) of the *DESD Act*
[4] Subsections 66(3) and (4) of the *DESD Act*
[5] *Green v. Canada (Attorney General)*, 2012 FCA 313

discovered by a claimant acting diligently. These **new** facts must also be decisive of the issue to be decided.[6]

[12] The Claimant stated on her application to rescind or amend that, because the hearing proceeded on the record, she has not yet presented her facts. The Claimant argues that the facts she wishes to present are **new** facts because the Tribunal has not yet heard them. The Claimant also argued that she has a medical note that constitutes **new** facts.

[13] The Commission submits that the Claimant's statements do not equate to **new** facts because she was given an opportunity to provide statements during the reconsideration process and those facts were considered in rendering a decision.

[14] The Claimant confirmed during the hearing that the facts she states are **new** facts, are facts which occurred prior to her leaving her employment. Therefore, these facts occurred prior to the Commission's reconsideration process and prior to the Tribunal's July 6, 2018, decision. Although these facts may be decisive of whether or not the Claimant voluntarily left her employment without just cause; they did not occur after the July 6, 2018, decision was rendered. Further, I find that these facts could have been discovered and presented prior to the July 6, 2018, decision, either in writing with her appeal, or orally at the hearing, had the Claimant acted diligently. Therefore, these facts do not meet the test of **new** facts.

[15] The Claimant's representative argued that the Claimant's March 21, 2018, medical certificate, which was submitted to the Commission on or around March 22, 2018, is **new** evidence or facts. The representative stated that this medical certificate is a material fact relating to the Claimant's mental distress and anxiety which resulted from compounding factors which occurred after she left her employment on September 19, 2017; which included her inability to secure another job during the following six months.

[16] A copy of the medical certificate dated March 21, 2018, was submitted to the Tribunal by each party, after the November 5, 2018, hearing. This medical certificate was signed by the Claimant's physician on March 21, 2018, and states, in part, that the Claimant was seen in the

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[6] *Canada (Attorney General) v. Chan*, [1994] F.C.J. No. 1916

doctor's office on March 21, 2018; she has an active medical disability; and is unable to be employed full time for 12 weeks total.

[17] The Commission submits that the March 21, 2018, medical certificate is not relevant to the issues under appeal because both the date of the medical certificate and the period of the required medical leave occurred well after the Claimant quit her employment.

[18] The Claimant testified that she provided the Commission with the medical certificate in March 2018, so that she could request medical benefits. The Claimant confirmed that she did not seek assistance or guidance from her doctor, or any other outside agencies, prior to leaving her employment. I do not accept the Claimant's assertion that she was unable to submit this medical certificate to the Tribunal, prior to the hearing date. Rather, I find that had the Claimant truly intended on relying upon this certificate as evidence in support of her appeal, she could have obtained a copy prior to the hearing, either from her physician or from the Commission, if she had acted diligently.

[19] The Claimant testified that the medical certificate covers her medical stress and anxiety which resulted from her inability to secure employment during the six-month period after she voluntarily left her employment, and that this condition was not directly related to the issues why she voluntarily left her employment. Therefore, the Claimant's medical certificate does not meet the test of **new** facts because it is not relevant or decisive of the issue to be decided; which is whether the Claimant voluntarily left her employment without just cause.

B) Was the decision made without knowledge of or based on a mistake as to some material fact relating to the issue under appeal?

[20] No. I find the Claimant provided insufficient evidence to prove that the July 6, 2018, decision was made without knowledge of or based on a **mistake** of a **material fact** relating to the issue under appeal.

[21] The Claimant argued that the July 6, 2018, decision was based on two **mistakes** as to some **material fact**. The Claimant states that the first mistake was the Commission's failure to accurately document her explanation of the events which caused her to voluntarily leave her employment, in their November 27, 2017, Supplementary Record of Claim. The Claimant states

that the second mistake was the Tribunal's failure to act upon the representative's request for an administrative change to the July 3, 2018, hearing date.

[22] An application to rescind or amend a decision is not an opportunity for the Claimant to reargue her case or to challenge the Commission's evidence that was before the Tribunal during the initial hearing. As set out above, having failed to meet the test of **new evidence,** in order for this application to succeed, the Claimant must present evidence that the July 6, 2018, was based on a **mistake of a material fact** relating to the issue under appeal.[7]

[23] The time to challenge the Commission's evidence was at the July 3, 2018, hearing, where the merits of the appeal were being determined, and not through an application to rescind or amend. Accordingly, I do not accept that the content of the November 27, 2017, Supplementary Record of Claim, is evidence that the July 6, 2018, decision was based on a **mistake** of a **material fact** relating to the issue under appeal.

[24] Regarding the second mistake identified by the Claimant, while it is true that the July 6, 2018, decision was rendered without the Tribunal's knowledge of the representative's request for an administrative change to the July 3, 2018, hearing date; or a failure to action such a request; these are not **material facts** relevant or decisive of whether the Claimant voluntarily left her employment without just cause, which is the issue under appeal.

[25] It is unfortunate that the representative acted on information obtained from the Tribunal's call centre operator and submitted an application to amend or rescind the July 6, 2018, decision; instead of requesting leave to appeal the July 3, 2018, decision, to the Appeal Division. However, as stated during the hearing, these factors do not change the requirement to meet the strict legal test in order to succeed with an application to amend or rescind a decision.

[26] Accordingly, upon consideration of the evidence, as set out above, I find the Claimant has failed to present **new** facts and has not satisfied me that the July 6, 2018, decision was made without knowledge of, or was based on a **mistake** as to some **material fact** relating to the issue under appeal.

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[7] *Badra v. Canada* (*Attorney General)*, 2012 FCA 140

CONCLUSION

[27] The application to rescind or amend is refused. The July 6, 2018, decision, remains unchanged, and in full force and effect.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	November 5, 2018, and January 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES: November 5, 2018 January 8, 2019	 E. L., Representative for the Appellant (Claimant) L. T., Appellant (Claimant) E. L., Representative for the Appellant (Claimant)