



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. Z. v Canada Employment Insurance Commission*, 2019 SST 891

Tribunal File Number: GE-19-240

BETWEEN:

E. Z.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

DATE OF DECISION: February 25, 2019

DECISION

[1] The Tribunal finds that the Claimant has not shown that there are “new facts” or that the decision in GE-18-2311 was made without knowledge of or based on a mistake of a material fact; therefore, the decision is not rescinded or amended.

OVERVIEW

[2] The Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving employment insurance regular benefits from February 11, 2018 onward. The Claimant appealed that decision to the General Division of the Social Security Tribunal of Canada (Tribunal). His appeal (file GE-18-2311) was allowed in part. The Claimant showed that he had just cause for leaving his employment from February 6, 2018 onward. However, he did not prove his availability from April 5, 2018 until May 3, 2018. The Claimant now requests that this decision be rescinded or amended. The Claimant indicated that the Commission agent did not request that he provide evidence of his job search efforts from April onward. He also noted that he is providing new information (RADG2-4 to RADG2-8).

PRELIMINARY MATTERS

[3] On January 18, 2019, the parties were invited to file any additional documents or submissions within 30 days in response to the Claimant’s application under section 66 of the DESD Act (section 47 of the *Social Security Tribunal Regulations* (SST Regulations)). On January 23, 2019, the Tribunal received a response from only the Commission (RADG3). The Claimant did not provide any further submissions.

[4] The Tribunal proceeded with making the following decision on the record (section 48 of the SST Regulations).

ISSUE

[5] The Tribunal must decide:

Should the decision in appeal file GE-18-2311 be rescinded or amended?

(a) Were new facts presented to the Tribunal?

- (b) Was the decision made without knowledge of, or a mistake as to some material fact?

ANALYSIS

Issue: Should the decision in appeal file GE-18-2311 be rescinded or amended?

[6] The Tribunal may rescind or amend a decision it rendered in an employment insurance matter, if (a) new facts are presented to the Tribunal or, (b) the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake, as to some material fact (paragraph 66(1)(a) of the *Department of Employment and Social Development Act* (DESD Act)).

(a) Were new facts presented to the Tribunal?

[7] No. The information submitted by the Claimant with his present application, is not considered “new facts”.

[8] According to the Federal Court of Appeal, in order for facts to be considered “new facts” the facts must (a) have happened after the decision was rendered or (b) happened prior to the decision being rendered but could not have been discovered by a claimant acting diligently. Additionally, the new facts must be decisive of the issue (*Chan A-185-94*).

[9] The evidence being brought forth now happened prior to when the decision was rendered. The Claimant had already advised both the Commission and the Tribunal that on April 13, 2018 he was interviewed for the job he started on May 3, 2018. He submits now that he had also registered and attended a job search workshop from April 17 – 20, 2018 where he was assisted with his resume on April 19, 2018. The Claimant knew these facts had occurred prior to the decision being rendered on November 30, 2019. He therefore could have brought them forward at any time prior to that decision.

[10] The Claimant argues that when he talked to the Commission, he was not asked to submit evidence of his job search efforts. The Commission however, submitted that on June 5, 2018 it specifically requested that the Claimant provide evidence of his job search starting from April 5, 2018. The Claimant provided a list of his efforts from January 23, 2018 to April 13, 2018. The Commission further notes that on April 26, 2018 when he was asked about the workshop of April

17 – 20, 2018, he stated that he had not yet attended and that it was scheduled for the next week when he was to start working (RADG3). The Tribunal confirms again, that these facts were known to the Claimant (and the Commission) prior to the Tribunal rendering its decision.

[11] Further, the Tribunal finds that this evidence is not decisive of the issue regarding his availability. The Tribunal maintains that the even if the Claimant did register and attend the workshop, it is not sufficient evidence of a sustained job search where he was making reasonable and customary efforts during the period of April 5, 2018 to May 2, 2018.

[12] For all these reasons, the Tribunal finds that the evidence/facts now being brought forth are not “new facts”.

(b) Was the decision made without knowledge of, or a mistake as to some material fact?

[13] Although not necessary, the Tribunal also considered whether the decision rendered was made without knowledge of, or was based on a mistake as to some material fact.

[14] The Tribunal notes that the same evidence that was previously submitted to the Commission (GD3-21 and GD3-39) was before the Tribunal at the time the decision was rendered. The Claimant submitted that he attended the workshop but has not provided evidence of attending. The Tribunal reviewed this same evidence again and finds that there was no mistake of material fact. For this reason, the Tribunal is not satisfied that the decision in GE-18-2311 was made without knowledge of, or was based on a mistake, as to some material fact.

[15] The Tribunal concludes that the decision in appeal GE-18-2311 will not be rescinded or amended. The Claimant has neither presented new facts nor is the Tribunal satisfied that it was based on a mistake or without the knowledge of a material fact.

CONCLUSION

[16] The decision in appeal file GE-18-2311 is not rescinded or amended.

Tribunal, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	On the Record
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