



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *F. M. v Canada Employment Insurance Commission and X*, 2019 SST 264

Tribunal File Number: GE-19-383

BETWEEN:

F. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

DATE OF DECISION: February 28, 2019

DECISION

[1] The application to rescind or amend a decision is refused.

OVERVIEW

[2] The Appellant worked for the X before being dismissed. The Commission found that the Appellant was disqualified from receiving Employment Insurance benefits because he had stopped working due to his misconduct. The Appellant appealed that decision, and the General Division of the Social Security Tribunal dismissed the appeal, finding that the Appellant had stopped working due to his misconduct. As a result, on January 17, 2019, the Appellant filed an application to rescind or amend the Tribunal's decision based on a new or material fact. In support, the Appellant included a memorandum of understanding between the employer and him that was signed on June 8, 2016.

[3] The Tribunal must therefore determine whether the decision that it initially gave should be rescinded or amended.

ISSUES

[4] Does the Appellant meet the conditions for the Tribunal to be able to consider his application to rescind or amend its decision?

[5] If so, has the Appellant presented a new fact, or is the Tribunal satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact?

[6] If so, should the decision initially given by the Tribunal be rescinded or amended?

ANALYSIS

[7] In accordance with section 48 of the *Social Security Tribunal Regulations*, the Tribunal has proceeded with a decision on the record.

Issue 1: Does the Appellant meet the conditions for the Tribunal to be able to consider his application to rescind or amend its decision?

[8] The Tribunal is of the view that the Appellant does not meet the necessary conditions for the Tribunal to be able to consider his application to rescind or amend its decision.

[9] The *Department of Employment and Social Development Act* specifies three conditions for the Tribunal to be able to consider an application to rescind or amend its decision. An application to rescind or amend a decision must be made within one year of the decision being communicated to the appellant. In addition, a person who is the subject of a decision may make only one application to rescind or amend that decision. Finally, a decision must be rescinded or amended by the same Division that made it (sections 66(2), 66(3), and 66(4) of the *Department of Employment and Social Development Act*).

[10] A decision made is deemed to have been communicated to a party 10 days after the day on which it is mailed to the party, if sent by ordinary mail (section 19(1)(a) of the *Social Security Tribunal Regulations*).

[11] The Tribunal notes that the Tribunal's General Division made a decision on June 26, 2014. The Appellant confirmed that he received the decision on February 20, 2014 (RADG2-4). The Appellant filed an application to rescind or amend the decision with the Tribunal's General Division on January 17, 2019. To the Tribunal's knowledge, this is the Appellant's first application to rescind or amend.

[12] The Tribunal has considered the fact that the Appellant indicated that the date the decision was received was incorrect. However, the Tribunal notes that the Appellant has not changed his address and no mail concerning the June 26, 2014, decision was returned. The decision is deemed to have been received on July 6, 2014.

[13] Based on the evidence presented, the Tribunal is satisfied that the Appellant had indeed received the decision by July 2014 (section 19(1)(a) of the *Social Security Tribunal Regulations*). The Tribunal is of the view that the application to rescind or amend does not meet the conditions established by the *Department of Employment and Social Development Act*. The Tribunal is of the view that the application to rescind or amend was filed more than one year after the date on

which the Appellant received the decision because the application was filed more than four years after the decision was communicated to the Appellant.

[14] Therefore, the Tribunal is of the view that the application to rescind or amend does not meet the necessary conditions under section 66(2) of the *Department of Employment and Social Development Act*.

[15] As a result, the Tribunal cannot rescind or amend the decision that it gave.

CONCLUSION

[16] The application to rescind or amend a decision is refused.

Charline Bourque
Member, General Division – Employment Insurance Section

METHOD OF PROCEEDING:	On the record
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