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

Citation: *M. E. v Canada Employment Insurance Commission*, 2019 SST 313

Tribunal File Number: AD-18-386

BETWEEN:

M. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 1, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application to rescind or amend the leave to appeal decision of the Appeal Division of the Social Security Tribunal of Canada (Tribunal) rendered on May 29, 2018, is refused.

OVERVIEW

[2] The Applicant, M. E., worked at X until March 11, 2016. The following day, he applied for Employment Insurance benefits. On April 4, 2016, the Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's claim for benefits because it determined that he had voluntarily left his employment without just cause. On January 31, 2017 — more than 30 days after the Commission's decision had been communicated to him — the Claimant requested that the Commission reconsider its decision. The Commission found that the Claimant was late in seeking a reconsideration, so it refused to conduct a reconsideration. The Claimant appealed to the General Division.

[3] The General Division held a teleconference hearing. The Claimant attended the hearing. It examined whether the Commission was justified in refusing to extend the time within which the Claimant could seek a reconsideration. The General Division found that the Commission had not exercised its discretion judicially. The General Division then considered whether the Claimant had provided a reasonable explanation for requesting more time and had demonstrated a continuing intention to request a reconsideration. The General Division determined that he had not. It refused to extend the time for the Claimant to file a reconsideration request and thereby dismissed the appeal.

[4] In due course, the Claimant filed an application requesting leave to appeal to the Appeal Division. On May 29, 2018, the Appeal Division refused leave to appeal. The Appeal Division found that the Claimant's appeal did not have a reasonable chance of success. It concluded that the Claimant had failed to adduce any evidence at all that the General Division had deprived him of a full and fair hearing, that the General Division had erred in law, or that any erroneous advice he might have received was relevant to the issues before the General Division.

[5] On June 6, 2018, within the legal delay of one year, the Claimant filed an application to rescind or amend the Appeal Division's leave to appeal decision pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

[6] On June 26, 2018, the Claimant filed an application for judicial review of the Appeal Division's leave to appeal decision at the Federal Court. The Appeal Division therefore suspended the Claimant's application to rescind or amend.

[7] On February 18, 2019, the Federal Court dismissed the Claimant's application for judicial review for delay.

[8] On March 24, 2019, the Claimant requested that the Appeal Division render a decision on his application to rescind or amend the Appeal Division's leave to appeal decision rendered on May 29, 2018.

ISSUE

[9] The Tribunal must decide whether the information that the Claimant 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 whether it was based on a mistake as to, some material fact.

ANALYSIS

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

[11] Section 66 of the DESD Act mentions the following :

> Amendment of decision
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> 66. (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if
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> (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;

[12] Said provision of the Act essentially reproduces the terms of the now-repealed section 120 of the *Employment Insurance Act*, in force prior to April 1, 2013, that 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.

[13] 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):
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> > … "New facts", for the purpose of the reconsideration of a decision of an umpire sought pursuant to section 86 of the Act, are facts that either happened after the decision was rendered or had happened prior to the decision but could not 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.

[14] In support of his application, the Claimant submits that he received on May 2, 2018 a letter from the Appeal Division dated April 25, 2018, requesting that he explain why he was late in filing his application for leave to appeal. He was given a delay of forty days to reply. He puts forward that the leave to appeal decision was rendered before he had a chance to seek legal counsel and reply to the letter. He was shocked that the Appeal Division rendered its decision before the forty days deadline. He therefore wants the opportunity to reply to the Appeal Division's letter.

[15] The Claimant did receive a letter from the Appeal Division requesting that he explain why he had possibly filed his application for leave to appeal late. Since the Appeal Division

later concluded that the application was file on time, it no longer needed the Claimant to reply to the letter of April 25, 2018, and proceeded with the leave to appeal application. Therefore, the Claimant did not suffer any prejudice in not responding to the late filing letter.

[16] The Claimant submitted on two separate occasions his grounds of appeal in support of his application for leave to appeal before the Appeal Division rendered its May 29, 2018 decision.[1]

[17] The Claimant's leave to appeal was dismissed on the basis that the appeal did not have a reasonable chance of success. The Appeal Division found that the Claimant had failed to adduce any evidence at all that the General Division had deprived him of a full and fair hearing, that the General Division had erred in law, or that any erroneous advice he might have received was relevant to the issues before the General Division.

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

[19] The General Division found that the Claimant did not provide a reasonable explanation for the delay in filing his reconsideration request. It also found that the Claimant had not demonstrated a continuing intention to request a reconsideration. The General Division concluded that the Claimant should not be allowed further time to file his reconsideration request.

[20] The Appeal Division finds that the Claimant, in his application to rescind or amend, is not raising any facts that either happened after the decision had been rendered or that had happened prior to the decision but that could not have been discovered by him acting diligently.

[21] Furthermore, the Claimant has not demonstrated that the Appeal Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact.

[22] The Claimant's application to rescind or amend the Appeal Division's leave to appeal decision appears to be an attempt to re-argue his application for leave to appeal.

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[1] AD1-3, AD1A-1

[23] Section 66 of the DESD Act is clearly not intended to enable a claimant to re-argue his application for leave to appeal when the Appeal Division has already rendered a leave to appeal decision.

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

CONCLUSION

[25] The application to rescind or amend the Appeal Division's decision rendered on May 29, 2018, is refused.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	M. E., Self-represented