



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. B. v Canada Employment Insurance Commission*, 2019 SST 572

Tribunal File Number: GE-19-1000

BETWEEN:

V. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: April 4, 2019

DATE OF DECISION: April 12, 2019

DECISION

[1] The application to rescind or amend the decision given by the Tribunal's General Division is dismissed.

OVERVIEW

[2] In a decision given on July 20, 2018 (File GE-17-2186), following a hearing on May 1, 2018, the Tribunal's General Division found that money the Applicant received constituted earnings under section 35 of the *Employment Insurance Regulations* (Regulations) and that those earnings had been allocated in accordance with the provisions set out in section 36 of the Regulations.

[3] On August 14, 2018, the Applicant appealed that decision to the Tribunal's Appeal Division (RAGD2-4). The January 17, 2019, Appeal Division hearing was adjourned to allow the Applicant to file an application to rescind or amend the General Division's decision. The Applicant argued that new facts justified that request. On February 14, 2019, the Applicant filed an application to rescind or amend the General Division's July 2018 decision. That application is the focus of the Tribunal's analysis that follows. The Tribunal is of the view that the application must be dismissed.

ISSUE

[4] The Tribunal must determine whether the application to rescind or amend the decision it gave against the Applicant is justified under section 66 of the *Department of Employment and Social Development Act* (DESD Act).

[5] To make this finding, the Tribunal must answer the following questions:

- a) Are the additional information and documents the Applicant provided "new facts" based on the criteria set out in case law?
- b) If there is a "new fact," was the General Division decision made without knowledge of some material fact, or was it based on a mistake as to some material fact?

ANALYSIS

[6] To rescind or amend a Tribunal decision, an applicant must present “new facts,” present a new material fact that was discovered after the decision was made, or show that the decision was made based on a mistake as to some material fact (section 66(1)(a) of the DESD Act).

[7] In *Canada (Attorney General) v Chan*, [1994] FCJ No. 1916, “new facts” are facts that

- a) happened after the decision was rendered; or
- b) happened before the decision but could not have been discovered by a claimant acting diligently; and
- c) are decisive of the issue to be decided.

Are the additional information and documents the Applicant provided “new facts” based on the criteria set out in case law?

[8] No. The Tribunal considers that the additional information and documents the Applicant provided are not new facts (RAGD2-1 to RAGD2-185).

[9] The Tribunal finds that, despite the Applicant’s arguments, the Canada Revenue Agency (CRA) notice of assessment that was sent to the Applicant on May 14, 2018, and the letter Service Canada sent him on September 24, 2018, are not new facts relating to the General Division’s July 20, 2018, decision.

[10] The Tribunal finds that, although the Service Canada letter is a document that was filed after the General Division decision was issued on July 20, 2018, it is not decisive, given the issue to be decided. Therefore, the facts as related by that letter do not meet the third criterion from *Chan* mentioned above because the purpose of that letter is essentially to inform the Applicant that his 2017 income, combined with his partner’s income for the same year, was too high for him to receive the Guaranteed Income Supplement (GIS) after July 2018 (RAGD2-97) (*Canada (Attorney General) v Chan*, [1994] FCJ No 1916).

[11] The May 14, 2018, CRA notice of assessment sent to the Applicant is a document that was filed after the May 1, 2018, General Division hearing but before the General Division decision was given on July 20, 2018. The Tribunal does not consider this document to be relevant, given the issue to be decided, because its contents are not decisive since that document merely outlines information relating to the Applicant's income tax and benefit return for the 2017 tax year (RAGD2-84 and RAGD2-85). Moreover, the Applicant could have also sent that document to the Tribunal before it gave its decision.

[12] The Tribunal finds that the Applicant has failed to show in what way those two documents clarify his claim that he received earnings because he had a right to reinstatement and the Commission did not allocate those earnings properly.

[13] The Tribunal finds that the Applicant has failed to show in what way those documents might affect the General Division decision. Instead, the Tribunal finds that those two documents simply illustrate the repercussions of allocating the Applicant's earnings following the Commission's decision against him.

[14] As for the other documents relating to complaints the Applicant filed with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) about his dismissal and the information he provided regarding this, the Tribunal points out that, at the hearing, the Applicant himself acknowledged that those documents were not new facts relating to the July 20, 2018, General Division decision.

[15] The Tribunal is of the view that, through his application to rescind or amend the General Division decision, the Applicant is attempting to re-argue his original position or present his case because he disagrees with that decision.

[16] On this matter, the Tribunal notes that an application to rescind or amend a decision is not an opportunity for the Applicant to review the findings of that decision. Even though the Applicant's approach is entirely legitimate, his application still cannot be used as a way of re-arguing his position or presenting his case a second time.

[17] The Tribunal finds that, as a whole, the documents the Applicant submitted (RAGD2-1 to RAGD2-185), despite being abundant, and the reasons the Applicant provided in support of his application to rescind or amend the General Division decision are not “new facts” according to the *Chan* criteria.

[18] Based on the Tribunal’s finding that there are no new facts, it is unnecessary to assess their materiality. As a result, the July 20, 2018, General Division decision cannot be amended under section 66 of the DESD Act.

CONCLUSION

[19] The application is refused.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	April 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	V. B., Applicant