



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. M. v Canada Employment Insurance Commission*, 2019 SST 1593

Tribunal File Number: GE-19-1513

BETWEEN:

G. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

DATE OF DECISION: May 17, 2019

DECISION

[1] I do not find that the Appellant's additional information represents new facts to support amending or rescinding the decision of the Tribunal dated July 22, 2018.

OVERVIEW

[2] During three benefit periods, the Appellant became employed and earned wages. The earnings provided by the employer, when matched with the Appellant's declarations, revealed that the Appellant did not declare any earnings while receiving benefits. The Respondent notified the Appellant that the money he received from his employer as wages constituted earnings and allocated them to the weeks worked. Furthermore, they imposed penalties and a violation. The Appellant appealed to the Social Security Tribunal.

[3] The General Division of the Social Security Tribunal dismissed the Appellant's appeal, finding that the money the Appellant received from his employer as wages constitutes earnings, the penalties are justified because the Appellant knowingly made false statements or representations to the Respondent and that the Respondent exercised its discretion judicially when it assessed a serious violation on the Appellant. The Appellant made an application to rescind or amend the decision of the General Division of the Social Security Tribunal.

ISSUES

[4] Issue 1: Did the Appellant meet the conditions to have the Tribunal consider his application to rescind or amend its decision?

[5] Issue 2: Did the Appellant present new facts based on which the Tribunal can rescind or amend its decision 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] Issue 3: Are the new facts material to the decision?

[7] Issue 4: If there are new facts, should the Tribunal rescind or amend its decision?

ANALYSIS

[8] The Tribunal may rescind or amend a decision if new facts are presented to it, or if the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to some material fact.¹

[9] The Federal Court of Appeal has confirmed that for facts to be new, they must have happened after the decision was rendered or before the decision was rendered, but could not have been discovered by a claimant acting diligently, and the new facts must be decisive of the issue to be decided.²

Issue 1: Did the Appellant meet the conditions to have the Tribunal consider his application to rescind or amend its decision?

[10] I find that the Appellant has met the conditions required to have his application to rescind or amend the Tribunal's decision considered.

[11] An application to rescind or amend a decision must be made within one year after the day on which the decision is communicated to the appellant.³ Each person who is the subject of a decision can only make one application to rescind or amend that decision.⁴ A decision is rescinded or amended by the same Division that made it.⁵

[12] The General Division of the Social Security Tribunal dismissed the Appellant's appeal on July 22, 2018. The Appellant did not indicate when he received the decision on his appeal. His request to have the appeal decision rescinded or amended is dated March 27, 2019.

[13] In the absence of evidence that the Appellant has made another application to rescind or amend, I find that this is the first application the Appellant has made, and that he made the application within one year after the day on which the decision was communicated to him. Finally, it is the same Division to whom the application to rescind or amend has been directed.

¹ (Paragraph 66(1)(a), Department of Employment and Social Development Act)

² (Canada (AG) v. Chan, A-185-94)

³ (subsection 66(2), Department of Employment and Social Development Act)

⁴ (subsection 66(3), Department of Employment and Social Development Act)

⁵ (subsection 66(4), Department of Employment and Social Development Act)

Therefore, I find that all conditions of section 66 of the Department of Employment and Social Development Act have been met.

Issue 2: Did the Appellant present new facts based on which the Tribunal can rescind or amend its decision or is the Tribunal satisfied that the decision was made without knowledge of or was based on a mistake as to some material fact?

[14] I do not find that the Appellant has presented new facts based on which I can rescind or amend the decision, nor am I satisfied that the decision was made without knowledge of or was based on a mistake as to some material fact.

[15] In his application to rescind or amend the Tribunal's decision, the Appellant stated that according to his bank on August 17, 2012 he opened a joint chequing account with his wife X. His single ownership account X was closed on Aug 20, 2012. The report from his bank "unquestionably supports third party fraud". However, the Appellant did not detail the issues in the decision that he felt were not correct and how the information from his bank supports third party fraud.

[16] Although the Tribunal notified the Appellant in a letter dated April 1, 2019, when it acknowledged the Appellant's request to have the appeal decision reconsidered, that he could file additional documents or submissions within 30 days of the date of the letter, the Appellant did not do so.

[17] The Respondent submitted that there is no change in its position as it outlined its submissions related to the appeal.

[18] In the absence of specific information from the Appellant based on which a determination can be made if the evidence constitutes new facts, I find that there are no new facts based on which I can rescind or amend my decision. In addition, because the Appellant has not given any detail concerning issues in the decision that he says were not correct, I am not satisfied that the decision was made based on a mistake as to some material fact.

[19] In view of the above finding, the issues concerning whether the new facts are material to the decision and whether the Tribunal should rescind or amend its decision are moot and will not

be considered.

CONCLUSION

[20] The application to rescind or amend is dismissed.

Takis Pappas

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	On the Record
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