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

Citation: *D. G. v Canada Employment Insurance Commission*, 2019 SST 979

Tribunal File Number: AD-19-544

BETWEEN:

D. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 9, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application to rescind or amend the Appeal Division's decision rendered on July 31, 2019, is refused.

OVERVIEW

[2] The Applicant, D. G. (Claimant), was employed as a floorhand/roughneck with an oilfield drilling company. He quit shortly after he obtained the position because he discovered he was being paid less than some of his co-workers and felt mistreated by the employer as a result. The Canada Employment Insurance Commission (Commission) disqualified the Claimant from receiving employment insurance benefits because it determined he did not have just cause to voluntarily leave his employment. The Claimant requested a reconsideration and stated that he also quit because working night shifts during cold temperatures and high wind was causing him health problems and exacerbating his varicose vein. The Commission maintained its decision and the Claimant appealed to the General Division of the Tribunal.

[3] The General Division held a videoconference hearing. The Claimant attended the hearing. It concluded that the Claimant had other reasonable alternatives to leaving his employment when he did, and therefore, did not have just cause to leave his employment.

[4] The Claimant was granted leave to appeal to the Appeal Division. However, on July 31, 2019, the Appeal Division dismissed his appeal. It concluded that although the General Division had not considered all the relevant circumstances, or reasons why the Claimant had left his job, it agreed with the General Division's conclusion that the Claimant did not have just cause to leave his employment.

[5] On August 6, 2019, within the legal delay of one year, the Claimant filed an application to rescind or amend the appeal decision of the Appeal Division pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[6] 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

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

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

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

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

[10] 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):
>
> … "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.

[11] In support of his application to rescind or amend the appeal decision of the Appeal Division, the Claimant puts forward that the camps do not provide dinner in the morning for night shifts. He submits that the feeling of extra cold of night shifts is well known to everybody involved in the oil business. The Claimant puts forward that any conversation wit the employer would not have changed theses circumstances. He submits that he never agreed to spend time in a company vehicle on top of working the longest shift allowed by law. The industry trend towards shorter work cycles in an effort to reduce fatigue and accidents. He did not know that this employer would not follow that trend by asking that he work 100 hours per week.

[12] The Tribunal notes that the Claimant attended the videoconference hearing before the General Division and that he had every opportunity to present all the facts of his case. Furthermore, the General Division's duty did not extend so far as to require the General Division to become surrogate counsel for the Claimant.

[13] Before the General Division, the Claimant submitted that that he left his employment because the employer did not negotiate his wage fairly, as well as due to the poor working conditions, which exacerbated his existing medical condition.

[14] The General Division found that the Claimant had accepted the position at a wage of $25 per hour. It considered that the Claimant made consistent statements to the Commission and the General Division that he would have continued working regardless of the difficult working conditions were it not for the disrespect he felt from the employer due to his low wage.

[15] The General Division concluded that the Claimant had left his employment voluntarily and that he had reasonable alternatives to quitting, namely, discussing his medical situation with his employer or remaining employed until the end of the season, as it was only a short time away.

[16] The Appeal Division found that the General Division had not considered all the relevant circumstances, or reasons why the Claimant had left his job. However, it agreed with the General Division's conclusion that the Claimant did not have just cause to leave his employment since he did not take other reasonable steps to try to have his concerns addressed, namely, discussing with the employer or requesting medical leave.

[17] The facts submitted by the Claimant in support of his application to rescind or amend the Appeal Division decision have no impact on its determinations that he had accepted the salary offered by the employer and that he could have taken the time to talk to his employer or to consult a physician before leaving the job that he had. He could also have continued looking for work and waited until he found a job that better corresponded to his needs before leaving the one that he had, considering that the season was almost over and that he repeatedly stated that he would have stayed if the employer would have granted him a pay increase.

[18] The Tribunal 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.

[19] Furthermore, the Claimant has not demonstrated in his application to rescind or amend that the Appeal Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact

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

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

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

CONCLUSION

[23] The application to rescind or amend the Appeal Division's decision rendered on July 31, 2019, is refused.

Pierre Lafontaine

Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	D. G., Applicant