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

Citation: *M. U. v Canada Employment Insurance Commission*, 2019 SST 829

Tribunal File Number: AD-19-517

BETWEEN:

M. U.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 6, 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 January 18, 2019, is refused.

OVERVIEW

[2] The Applicant, M. U. (Claimant), applied for Employment Insurance benefits and established a benefit period. She worked for X from June 1 to June 23, 2017, when she voluntarily left her employment. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had earnings that needed to be allocated, and this has resulted in an overpayment of $490.

[3] The Commission also determined that the Claimant had voluntarily left her employment without just cause because she left for personal reasons, so it disqualified her from receiving benefits and sent her a notice of debt citing an overpayment of $5,930. The Commission imposed a penalty on the Claimant for making one misrepresentation and imposed a very serious violation; however, the Commission later withdrew the penalty and violation on reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division held a teleconference hearing. The Claimant attended the hearing. It concluded that the earnings the employer reported were correct and that the earnings had to be allocated to the weeks in which the Claimant received them. The General Division also concluded that the Claimant left her employment voluntarily and that she had reasonable alternatives to quitting, namely, looking for another job before leaving, consulting her doctor, and discussing the situation with her employer.

[5] In due course, the Claimant filed an application requesting leave to appeal to the Appeal Division. On January 18, 2019, leave to appeal was refused. The Appeal Division found that the appeal did not have a reasonable chance of success. It found that the

Claimant was essentially attempting to represent her case and that she had not identified any reviewable errors by the General Division.

[6] On July 22, 2019, within the legal delay of one year, the Claimant filed an application to rescind or amend the appeal decision of the Tribunal's Appeal Division pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[7] The Tribunal must decide whether the information that the Claimant has supplied in support of her 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

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

[9] 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;

[10] 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.

[11] 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.

[12] In support of her application to rescind or amend the leave to appeal decision of the Appeal Division, the Claimant submits that she could not reveal certain facts at the General Division hearing because she was seeking employment at the time and did not want to jeopardize her future employment opportunities. She essentially reiterates in more details that she left her employment because she did not received any job training and her superior was treating her disrespectfully.

[13] The Tribunal notes that the Claimant attended the hearing before the General Division. She had every opportunity to present all the facts of her case, in the absence of her employer, who did not attend the hearing.

[14] Before the General Division, the Claimant submitted that the main reason she voluntarily left was because she had no communication with her superior. She was his

Medical Office Assistant in a new job for which she had received no training. She felt he was disrespectful and his behaviour was affecting her emotionally and causing her stress, and she was struggling every day.

[15] The General Division found that the Claimant left her employment voluntarily and that she had reasonable alternatives to quitting, namely, looking for another job before leaving, consulting her doctor, and discussing the situation with her employer.

[16] 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 was essentially attempting to represent her case and that she had not identified any reviewable errors made by the General Division.

[17] The Tribunal finds that the Claimant, in her 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 her acting diligently.

[18] Furthermore, the Claimant has not demonstrated in her 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

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

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

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

CONCLUSION

[22] The application to rescind or amend the leave to appeal decision of the Tribunal's Appeal Division rendered on January 18, 2019, is refused.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	M. U., Applicant