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

[TRANSLATION]

Citation: *R. L. v Canada Employment Insurance Commission*, 2019 SST 1424

Tribunal File Number: GE-19-3384

BETWEEN:

R. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: N/A

DATE OF DECISION: November 13, 2019

Canada

DECISION

[1] The application to rescind or amend the May 1, 2019, decision is refused.

OVERVIEW

[2] R. L., the Applicant, asked the Respondent to antedate her claim for Employment Insurance benefits, but the Respondent refused the request. The Applicant appealed that decision to the General Division of the Social Security Tribunal, and, on May 1, 2019, the Tribunal's General Division also refused the antedate request. The Applicant is now asking the Tribunal's General Division to rescind the General Division decision.

[3] On October 1, 2019, the Tribunal notified the parties that it had to receive additional documents or submissions no later than November 1, 2019, and that a decision could be made on the record after that deadline. The Respondent provided submissions, but the Applicant did not file any additional documents or submissions. Therefore, the application to rescind or amend is being decided based on the documents and submissions in the file for the following reasons: a) a further hearing was not required; b) there are no gaps in the information in the file or need for clarification; and c) this method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

ISSUE

[4] I must decide whether to rescind or amend the General Division decision.

ANALYSIS

[5] The Tribunal's General Division may rescind or amend a decision relating to Employment Insurance if one of the following conditions is met: the information submitted in support of the application to rescind or amend constitutes new facts; the decision was made

without knowledge of some material fact; or the decision was based on a mistake as to some material fact.[1]

[6] In support of her application to rescind or amend the decision, the Applicant submitted a letter signed by a doctor on June 2, 2019, stating [translation] "Since 2016, R. L. has been experiencing a difficult situation at work with the Phoenix pay system, in particular in relation to her ability to access Employment Insurance benefits. This causes her great psychological distress and a lot of anxiety. Miscommunication with the people at Phoenix meant that R. L. was unable to provide her reports on time for the period mentioned above. Please note that it was difficult for R. L. to see a doctor to identify a psychological reason for her delay because of the fact that I was on maternity leave until June 2018."[2]

[7] Is this about new facts? No, for the following reasons:

[8] To be considered new facts, the new facts must have happened after the decision was made or before the decision was made if they could not have been discovered with the exercise of reasonable diligence; the new facts must also be determinative of the issue.[3] Furthermore, a different version of facts already known, mere afterthoughts or the sudden realization of the consequences of acts done in the past are not new facts.[4] In this case, I find that the Applicant provided a letter from her doctor in support of facts that were known, which does not constitute new facts.

[9] The doctor's letter explains that the Applicant had issues with her employer's pay system and that [translation] "[m]iscommunication with the people at Phoenix meant that R. L. was unable to provide her reports on time for the period mentioned above." That is not a new fact because the Applicant had clearly explained to me during the hearing that her employer's pay system errors had generated errors in the processing of her benefit period established in 2016.

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[1] According to section 66 of the *Department of Employment and Social Development Act*.
[2] RADG2.
[3] *Canada (Attorney General) v Chan*, [1994] FCJ No 1916.
[4] *Canada (Attorney General) v Chan*, [1994] FCJ No 1916.

Therefore, that fact is not new because it was known and was part of the evidence on file before the May 1, 2019, decision was made.

[10] Furthermore, the problems related to the employer's pay system were not relevant to the issue to be decided, that is the issue of whether the Applicant had shown good cause for her delay in completing her Employment Insurance reports. During the hearing, the Applicant told me that she did not apply for benefits for the February 26 to March 4, 2018, period because she wanted to resolve the benefits overpayment issue first and she knew that she would receive only half her benefits, if she had applied for benefits before that issue was resolved.

[11] Finally, the medical note indicates that the Applicant did not identify a psychological reason before because her doctor was on maternity leave. The Applicant's psychological distress is not a new fact. That fact was actually known when I made my decision, and my decision was not made based on a mistake as to that fact. The Applicant had clearly explained in her notice of appeal that the situation had left her with [translation] "psychological scars" and that she suffered from [translation] "mental exhaustion;"[5] she had also referred to her psychological state during the hearing. Nevertheless, having assessed all of the evidence, I have decided that the Applicant has not shown good cause for her delay in completing her reports.

[12] I note that, before the May 1, 2019, decision was made, the Applicant attended the April 15, 2019, hearing and that she had the opportunity to present all the facts of her case and to file all the documents she wanted in support of her case. Based on the evidence, I have found that the claim for benefits cannot be antedated to February 26, 2018, because the Applicant has not shown good cause for her delay in completing her reports during the entire period of delay. I understand that my review of the Applicant's file has not led to the finding she wished to have. I find that, with her application to rescind or amend and its accompanying documents, the Applicant submitted a letter from her doctor in support of facts that were already known and she is merely rearguing her case based on facts that I have already reviewed. An application to rescind or amend is clearly not intended to enable the Applicant to reargue her appeal when a decision has already been made.

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[5] According to GD3-3.

[13] Therefore, having reviewed the evidence mentioned above, I find that the Applicant has not presented new facts and that she has not satisfied me that the May 1, 2019, decision was made without knowledge of, or was based on a mistake as to, some material fact. As a result, I have no other choice but to refuse the application to rescind or amend.

CONCLUSION

[14] The application to rescind or amend the decision made on May 1, 2019, is refused.

Bernadette Syverin
Member, General Division – Employment Insurance Section

METHOD OF PROCEEDING:	On the record