



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v Canada Employment Insurance Commission*, 2019 SST 1625

Tribunal File Number: GE-19-3429 and GE-19-3430

BETWEEN:

L. M.

Applicant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

DATE OF DECISION: November 6, 2019

DECISION

[1] The application to rescind or amend is dismissed. The Applicant's additional information does not represent new facts to support amending or rescinding the decision of the Tribunal dated April 10, 2019.

OVERVIEW

[2] The Applicant exercised her right under the collective agreement to elect to be laid off based on her seniority with the employer, and because of this, the Commission denied her application for employment insurance benefits. The General Division of the Social Security Tribunal dismissed the Applicant's appeal, finding that she voluntarily took leave from her employment in 2017 and 2018, without just cause. The Applicant made an application to rescind or amend the decision of the General Division of the Social Security Tribunal.

ISSUE

[3] Did the Applicant meet the conditions to have me consider her application to rescind or amend the General Division decision?

[4] Did the Applicant present new facts, material to the General Division decision, based on which I can rescind or amend the decision or am I satisfied that the General Division decision was made without knowledge of or was based on a mistake as to some material fact?

[5] If there are new facts, should I rescind or amend the General Division's decision?

ANALYSIS

[6] I may rescind or amend a decision if new facts are presented to it, or if I am satisfied that the decision was made without knowledge of, or was based on a mistake as to some material fact (paragraph 66(1)(a), *Department of Employment and Social Development Act*).

[7] 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 (*Canada (AG) v. Chan*, A-185-94).

Issue 1: Did the Applicant meet the conditions to have me consider her application to rescind or amend the General Division's decision?

[8] I find that the Applicant has met the conditions required to have her application to rescind or amend the General Division's decision considered.

[9] 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 Applicant (subsection 66(2), *Department of Employment and Social Development Act*). Each person who is the subject of a decision can only make one application to rescind or amend that decision (subsection 66(3), *Department of Employment and Social Development Act*). A decision is rescinded or amended by the same Division that made it (subsection 66(4), *Department of Employment and Social Development Act*).

[10] The General Division of the Social Security Tribunal dismissed the Applicant's appeal on April 10, 2019. The Applicant indicated that she received the decision on April 11, 2019. I find, therefore, that because she filed her application to rescind or amend on September 30, 2019, she made it within one year after the day on which the General Division decision as communicated to her.

[11] In the absence of evidence that the Applicant has made another application to rescind or amend, I find that this is the first application the Applicant has made. Finally, it is the same Division to whom the application to rescind or amend has been directed. 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 Applicant present new facts, material to the General Division decision, based on which I can rescind or amend the General Division decision or am I satisfied that the decision was made without knowledge of or was based on a mistake as to some material fact?

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

[13] In support of her application that the General Division's decision be rescinded or amended, the Claimant reiterated arguments she made to the Commission and at her appeal. She argued that the way the Commission treated her by singling her out for investigation amounted to cruel and unusual treatment or punishment, and that she had simply followed what her collective agreement allowed by choosing to take an early lay-off.

[14] The Applicant stated that the General Division decision does not refer to the Commission subjecting her to cruel and unusual treatment or punishment by unfairly investigating her. However, the General Division decision notes the Applicant's suggestion that the Commission targeted her, stating that someone must have reported her, and also refers to her husband's submission that the Commission appeared to be targeting the Applicant's union by going after its members. Because of this, I do not find that the General Division decision was made without knowledge of the Applicant's argument or based on a mistake as to some material fact.

[15] The Applicant had sent the Commission a medical note dated September 4, 2018, which states that the Applicant was absent from work from August 20, 2018 to September 3, 2018. In her application to rescind or amend the General Division's decision, the Applicant submitted a medical note dated March 6, 2019, which states, "[the Applicant] reports to me she was unable to work in the summer of 2017 and 2018 due to medical issues".

[16] While the Claimant did not previously present the medical note of March 6, 2019 to the Commission or the General Division, the Applicant testified at the hearing that she had been sick in the summers of 2017 and 2018, when she was off work, but she had not gone to see her doctor. She stated that she had a doctor's note, but said that she did not want to use it because she wanted to fight her appeal. The Applicant did not make a request to submit the note, as stated in her application to rescind or amend the decision of the General Division. However, I considered her evidence as contained in the medical note in the context of when her periods of leave commenced, namely April 17, 2017 and April 27, 2018.

[17] I have already considered the Applicant's evidence concerning being sick in the summers of 2017 and 2018. I have also found that the Applicant voluntarily took periods of leave starting on April 17, 2017 and April 27, 2018, and that she chose to do so to allow junior employees to

continue to work. Because of this, I do not find that the March 9, 2019 medical note constitutes a material new fact based on which I can rescind or amend my decision.

[18] In the absence of new, material facts from the Applicant, I find that there are no new facts based on which I can rescind or amend the General Division's decision. I also do not find that the General Division's decision was made without knowledge of or was based on a mistake as to some material fact.

Issue 3: If there are new facts, should rescind or amend the General Division's decision?

[19] Because I have found that there are no new facts based on which I can rescind or amend the General Division's decision, I do not need to consider whether I should rescind or amend the decision.

CONCLUSION

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

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	
METHOD OF PROCEEDING:	On the Record
APPEARANCES:	