



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. B. v Canada Employment Insurance Commission*, 2019 SST 1592

Tribunal File Number: GE-19-3707

BETWEEN:

B. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

DATE OF DECISION: November 26, 2019

DECISION

[1] The application to rescind or amend the decision of the Tribunal is refused.

OVERVIEW

[2] On September 18, 2019, the Tribunal dismissed the Appellant's appeal. The Tribunal found for the Respondent who determined that he is disqualified from receiving employment insurance benefits because he voluntarily left his employment without just cause.

[3] The Appellant claims that his employer authorized medical leave. The Respondent says that he has not shown that his employer permitted medical leave and medical leave is not supported by medical information.

[4] The Appellant submitted an application to rescind or amend the Tribunal's decision.

ISSUES

[5] Issue 1: Should the Tribunal rescind or amend its decision based on new facts presented to the Tribunal?

[6] Issue 2: Should the Tribunal rescind or amend its decision because the Tribunal's decision was made without knowledge of, or based on a mistake as to, some material fact?

ANALYSIS

[7] The Tribunal may rescind or amend its decision based on the presentation of new facts, or if it is satisfied that the decision was made without knowledge of a material fact or based on a mistake as to some material fact (subparagraph 66(1)(a), *Department of Employment and Social Development Act (DESD Act)*).

[8] The Appellant must establish that the "new facts" were not discoverable with the exercise of reasonable diligence, prior to the hearing and they are material to the outcome of the decision. A new fact will be material if it can be shown that it could reasonably be expected to have affected the outcome of the decision.

Issue 1: Should the Tribunal rescind or amend its decision based on new facts presented to the Tribunal?

[9] The Tribunal finds that no new facts are presented to warrant that its decision be rescinded or amended.

[10] The Appellant has not submitted new facts.

[11] He submits, with his application to rescind or amend, documents that are dated before the date of the hearing and were discoverable by the Appellant with reasonable diligence before the hearing. The documents are not material to the outcome of the decision; they would not have affected the outcome of the decision.

[12] The Appellant filed 3 letters on his former employer's letterhead, all dated in 2018. He says that the letters support that he left his job on medical leave in June 2018 and he was committed to returning to his job when he was medically fit.

[13] The letters do not confirm that he left his job with authorization of his employer. In one of the letters (RAGD2B-30) he wrote to his employer in June 2018, he says that he is confirming his medical leave.

[14] However, in the letter he also says that he hopes to be able to return to his job in 2019. "*if my position is still available*". This does not prove that he had an employer-authorized medical leave. To the contrary, he states a willingness to return to the job at some uncertain date in the future, hoping that his job would still be available.

[15] The application to rescind or amend provides for exceptional recourse where material new facts emerge that was not reasonably discoverable at the time of the hearing, which has not occurred here.

Issue 2: Should the Tribunal rescind or amend its decision because the Tribunal's decision

was made without knowledge of, or based on a mistake as to, some material fact?

[16] The Tribunal finds that since the Appellant has not adduced new facts to consider, he has not established that the decision was made without knowledge of a material fact or was based on a mistake as to some material fact.

[17] The Tribunal considered all of the evidence on file in arriving at its decision to dismiss an appeal of the Respondent's determination that he is disqualified from receiving employment insurance benefits because he voluntarily left his employment without just cause.

[18] It may be that the Applicant is operating under a misapprehension that bringing an application to rescind or amend will yield a generalized review of the evidence.

[19] The Appellant claims that the Tribunal and the Respondent failed to take into account his commitment to return to his job; however, his present application to rescind or amend the Tribunal's decision does not show that his employer authorized his request for medical leave in June 2018.

[20] In a written submission of November 20, 2019, the Appellant says that he discussed medical leave of absence with his employer's vice president and office manager. However, he does not say that they told him leave was approved. He does not say when he had these discussions and he has not provided any proof of the details of the discussion. He does confirm again that there was no agreement on the duration of any leave.

[21] In summary, an application to rescind or amend the Tribunal's decision will not yield a generalized review of the evidence. The Tribunal finds that the Appellant has not presented new facts for the Tribunal to consider.

[22] In the original Decision, the Tribunal found that he is disqualified from receiving employment insurance benefits because he voluntarily left his employment without just cause. The Appellant has not shown that the Decision was made without knowledge of a material fact or based on a mistake as to some material fact.

CONCLUSION

[23] The application to rescind or amend the Tribunal's decision is dismissed.

Glen Johnson

Member, General Division - Employment Insurance Section

HEARD ON:	November 26, 2019
METHOD OF PROCEEDING:	On the Record