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

Citation: *R. F. v Canada Employment Insurance Commission*, 2020 SST 301

Tribunal File Number: GE-19-3302

BETWEEN:

R. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Yoan Marier

DATE OF DECISION: January 22, 2020

Canada

DECISION

[1] The original decision cannot be rescinded or amended. The application is dismissed.

OVERVIEW

[2] The Applicant filed an application to rescind or amend a decision rendered by the General Division of the Tribunal on July 25, 2019. In that decision, the Tribunal dismissed the Applicant's appeal after finding that she had lost her job because of her misconduct.

[3] In support of her application, the Applicant submits that an out-of-court settlement was reached between herself and her former employer. Following that settlement, the reason for the termination of her employment appearing on the Record of Employment (ROE) was changed to "Other". As part of the settlement, the employer also agreed to provide the Applicant with positive references for future employment.

[4] The Applicant submits that the original decision should be rescinded or amended to reflect the existence of that settlement.

ISSUE

[5] Should the decision rendered on July 25, 2019, be rescinded or amended?

ANALYSIS

[6] After reviewing the evidence and the parties' submissions, I find that the application does not meet the criteria that could lead me to set aside or amend the original decision.

[7] The Tribunal can only rescind or amend a decision related to the Employment Insurance Act if new facts are brought to its attention, or if the Tribunal is satisfied that the decision was made before an essential fact was known or was based on a mistake relating to such a fact[1].

[1] Section 66 of the *Department of Employment and Social Development Act.*

[8] The Federal Court of Appeal[2] confirmed that the facts submitted in the context of such an application must meet two criteria in order to be considered as "new facts":

a) they must have occurred after the decision was made, or must have occurred before the decision was made but could not have been discovered by a claimant acting diligently; and
b) be decisive of the issue in dispute.

[9] On July 25, 2019, the General Division determined that the Applicant had lost her job because of her misconduct and dismissed her appeal.

[10] The Applicant submits that she entered into an out-of-court settlement with her ex-employer regarding the termination of her employment. As part of this settlement, the employer modified the ROE so that the reason for separation appears as "Other". The employer also agreed to provide the Applicant with positive references for future employment.

[11] This is not a new fact. The fact that a settlement was reached between the parties was clearly mentioned in the original appeal file.[3] A modified ROE showing "Other" as the cause for dismissal was also part of the file[4]. Furthermore, the General Division member originally assigned to the appeal mentioned the existence of that settlement in his July 25, 2019, decision[5].

[12] As such, the existence of that settlement is not a new fact. It occurred before the decision was rendered and has already been dealt with.

[13] Furthermore, for this settlement to be acceptable for the purpose of an application to rescind or amend a decision, the document must also meet the second criteria: it must be decisive of the issue in dispute. I find that this is not the case.

[14] When it comes to a settlement reached after a dismissal, the Tribunal is not bound by the manner in which the grounds for dismissal are characterized by the employer, the Applicant or the union. In other words, the mere fact that there is a written agreement between the Applicant

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[2] *Canada (AG) v. Chan*, A-185-94
[3] GD3-33
[4] GD3-19 and 21
[5] Paragraph 12 of the decision

and her employer does not necessarily resolve the question of whether the Applicant was dismissed because of her own misconduct[6].

[15] As part of the application to rescind or amend, the Applicant's representative provided a copy of the email exchanges that led to the settlement. These documents do not provide any additional information as to the cause of dismissal. They do not bring anything new to the table that isn't already known.[7]

[16] The fact that the ROE was modified to show "Other" as the reason for dismissal does not mean that there was no misconduct behind the loss of employment.

[17] There is nothing else in the documentation submitted by the Applicant that could neutralize the position taken by the employer during the initial investigation carried out by the Commission, or that could suggest that the employer has withdrawn with regards to the acts alleged against the Applicant when terminating her employment[8].

[18] The same goes for the positive references that the employer agreed to provide: the mere existence of these references, drawn up as part of an out-of-court settlement between the parties, does not demonstrate that misconduct is not the cause of the loss of employment.

[19] In short, the Applicant did not provide any new facts, or facts that were not already known at the time the original decision was taken. Furthermore, the Applicant has not provided any evidence or submissions that could lead me to think that the General Division member made a mistake relating to such facts.

[20] Consequently, the original decision cannot be rescinded or amended.

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[6] *Attorney general of Canada v. Boulton,* A-45-96 and *Attorney general of Canada v. Morrow,* A-170-98
[7] RAGD2-8 to 10
[8] See Boulton and Morrow above

CONCLUSION

[21] The application is dismissed.

Yoan Marier

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	Andrew Spence, Applicant’s representative