



Citation: *AR v Canada Employment Insurance Commission*, 2021 SST 382

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. R.

Respondent: Canada Employment Insurance Commission

Decision requested to be rescinded or amended: Appeal Division decision dated April 21, 2020 AD-20-88

Tribunal member: Stephen Bergen

Type of hearing: On the Record

Decision date: **July 26, 2021**

File number: AD-21-204

Decision

[1] I am dismissing the appeal. The Claimant is out of time to make an application to rescind or amend the Appeal Division decision of April 21, 2020.

Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission) disqualified the Appellant, A. R. (Claimant) from receiving Employment Insurance benefits. This was because the Commission found that the Claimant's employer dismissed him for misconduct.

[3] The Claimant requested a reconsideration but the Commission would not change its decision. Next, the Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal. The General Division dismissed his appeal.

[4] The Claimant requested leave to appeal from the Appeal Division but the Appeal Division refused leave. He is now asking the Appeal Division to rescind or amend that leave to appeal refusal.

[5] The Claimant's application to have the Appeal Division decision rescinded or amended is denied. The Claimant waited more than a year from the date of the leave to appeal decision, and is out of time to bring an application to rescind or amend.

Issue

[6] Is the Claimant out of time to file a rescind or amend application?

[7] Has the Claimant established that the rescind or amend application should be granted by

- a) presenting new facts;
- b) showing that the Appeal Division refused leave to appeal without knowledge of some material fact, or;
- c) showing that the Appeal Division refusal was based on a mistake as to a material fact?

Analysis

Issue 1: Is the Claimant out of time?

[8] The Appeal Division's leave to appeal decision was issued on April 21, 2020.

[9] In the Claimant's application for leave to appeal, he authorized the Appeal Division to communicate with him by email and provided an email address. The Appeal Division sent the refusal of leave to appeal decision to this email address on April 21, 2020.

[10] According to section 19(1)(c) of the *Social Security Tribunal Regulations*, a decision that is sent by email is deemed to have been received by the Claimant on the day following the day that it was sent. This means the Appeal Division communicated the decision to the Claimant on **April 22, 2020**.

[11] The Claimant called the Appeal Division on April 19, 2021, to ask about the deadline to file an application to rescind or amend. A registry officer told him that the Tribunal must receive the application within a year of when the Applicant received the decision (that he wishes to rescind or amend). If the Claimant had emailed his application to rescind or amend before April 22, 2021, he would have filed the application in time.

[12] The Claimant did not email his application until **June 10, 2021**. The Appeal Division received it the same day.

[13] Section 66(2) of the *Department of Employment and Social Development Act* states that the application to rescind or amend a decision must be made within one year after the day that the decision was communicated to the Appellant.

[14] The Appeal Division did not receive the claimant's application within one year of the day that it was communicated to the Claimant. The application was late by approximately 7 weeks.

[15] I understand that the Claimant meant to apply to rescind or amend the leave to appeal decision. He has said that he intended to make that application before the deadline, but that he was delayed by unplanned circumstances.¹

[16] Unfortunately, section 66(2) does not give me the discretion to consider an application if it was filed more than a year after the date it was communicated. I cannot take the Claimant's intention or diligence into consideration, or consider any other exceptional circumstance.

Issue 2: Has the Claimant shown that the rescind or amend application should be granted on its merits?

[17] I have found that the Claimant was out of time to file his application to rescind or amend. As I noted, I have no discretion to allow the application out of time.

[18] Therefore, it is not necessary that I consider whether he could have been successful if he had brought his application in time.

Conclusion

[19] I am refusing the application to rescind or amend because it was made out of time.

Stephen Bergen
Member, Appeal Division

¹ The Claimant talks about this in RA4-2.