



Citation: *ER v Canada Employment Insurance Commission*, 2021 SST 481

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** E. R.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Susan Prud'Homme

---

**Decision under appeal:** Appeal Division decision dated June 30, 2020  
(AD-19-541)

---

**Tribunal member:** Pierre Lafontaine

**Type of hearing:** On the Record

**Decision date:** September 14, 2021

**File number:** AD-21-224

## Decision

[1] The Application to rescind or amend the Appeal Division decision rendered on June 30, 2020, is dismissed.

## Overview

[2] The Claimant applied for employment insurance benefits (EI) after losing her employment for allegedly falsifying a document. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant lost her employment due to her own misconduct. After an unsuccessful request for reconsideration, the Claimant appealed the Commission's reconsideration decision to the General Division.

[3] On July 23, 2019, the General Division found that the Claimant falsified a document. Falsifying a document suggested that she had inspected food products when she had not. The General Division found that the Claimant had received several warnings from her employer. It concluded that the Claimant's actions amounted to misconduct under the law.<sup>1</sup>

[4] On December 2, 2019, the Appeal Division granted the Claimant leave to appeal of the General Division's decision on the basis that the General Division may have based its decision on important factual errors. The Appeal Division indicated that the decision granting leave to appeal did not prejudge the result of the appeal on the merits of the case in any way.<sup>2</sup>

[5] As per the Claimant's request, the Appeal Division rendered a decision on the record based on the written submissions filed by the parties.

[6] On June 30, 2020, the Appeal Division dismissed the Claimant's appeal.

---

<sup>1</sup> Sections 29 and 30 of the *Employment Insurance Act*.

<sup>2</sup> Leave to appeal decision, par. 29.

[7] On June 29, 2021, within the legal delay of one year, the Claimant filed an application to rescind or amend the Appeal Division decision dismissing her appeal.<sup>3</sup>

[8] I am dismissing the Claimant's application to rescind or amend the Appeal Division decision rendered on June 30, 2020.

## Issue

[9] I must decide whether the information that the Claimant has supplied in support of her application to rescind or amend constitutes new facts or whether the decision that the Appeal Division rendered was made without knowledge of, or whether it was based on a mistake as to, some material fact.

## Analysis

[10] I may rescind or amend a decision in respect of any particular application if new facts are presented to the Tribunal or if I am satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact.<sup>4</sup>

[11] "New facts" are facts that either happened after the decision was rendered or had happened prior to the decision but could not have been discovered by a claimant acting diligently and in both cases the facts alleged must have been decisive of the issue put to the Tribunal.<sup>5</sup>

[12] In support of her application, the Claimant submits that she lodged a complaint against her employer, under the *Employment Standard Code*, and that the employer decided to settle the claim rather than submitting to an investigation. She puts forward that she only received one letter of expectation from her employer dated November 29, 2019, and not several letters. She

---

<sup>3</sup> See RA1-1 to RA1-11.

<sup>4</sup> Section 66(1) (a) of the *Department of Employment and Social Development Act*.

<sup>5</sup> *Canada v Hines*, 2011 FCA 252, *Canada v Chan*, (1994) F.C.J. No 1916 (C.A.).

submits that all the written warnings were adjusted, wrong dated, without any signature from any parties and dated after the alleged events. She submits that she never misses any check marks or write inspections that she did not do. She puts forward that her manager was putting pressure on her following a gap in production to sign documents and later put the blame on her.

[13] The Appeal Division found that it was open to the General Division to prefer the employer's evidence that she had received several warnings because the Claimant's testimony contained several inconsistencies.

[14] The Appeal Division found that taken together, a verbal warning and two written warnings could represent "several warnings." It found that the General Division did not make a factual error when it found that the Claimant's employer had issued several warnings to the Claimant.

[15] The Appeal Division found that with these warnings, and the backdrop of the deviation records and the Correction of information form, the Claimant knew or ought to have known that ongoing falsification of food inspection reports or records would have an effect on the performance of her employment duties and could lead to dismissal. It concluded that the Claimant had lost her employment because of her misconduct.

[16] I note that the Claimant requested that the Appeal Division render a decision on the record and that she had every opportunity to present all the facts of her case before the General Division.

[17] I find that the Claimant, in her application to rescind or amend, is not raising any facts that either happened after the decision had been rendered or that had happened prior to the decision but that could not have been discovered by her acting diligently, which would be decisive on the issue of misconduct.

[18] Furthermore, the Claimant has not demonstrated in her application to rescind or amend that the Appeal Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact. The mere fact that

the employer has agreed to settle the Claimant's claim is not in itself determinative of the issue of whether she lost her employment because of her misconduct.

[19] I find that the Claimant's application to rescind or amend the appeal decision appears to be an attempt to re-argue her appeal before the Appeal Division.

[20] An application to rescind or amend a decision is not intended to enable a claimant to re-argue their appeal before the Appeal Division when it has already rendered a final decision.

[21] Therefore, for the above-mentioned reasons, I have no other choice but to dismiss the Claimant's application to rescind or amend.

## **Conclusion**

[22] The application to rescind or amend the Appeal Division decision rendered on June 30, 2020, is dismissed.

Pierre Lafontaine  
Member, Appeal Division