



Citation: *AK v Canada Employment Insurance Commission*, 2022 SST 78

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: A. K.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (410270) dated December 14,
2020 (issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: On the Record
Hearing date: January 14, 2022
Decision date: January 14, 2022
File number: GE-22-19

Decision

[1] The January 8, 2021, decision for appeal GE-20-2396 is not rescinded or amended.

[2] The Appellant hasn't shown that there are new facts **or** that the January 8, 2021, decision was made without knowledge of or was based on a mistake about a material fact.

Overview

[3] The Commission determined that the Appellant's election to receive 61 weeks of extended parental benefits was irrevocable. This is because the Commission had started issuing payment for parental benefits on November 6, 2020.

[4] The Appellant appealed the Commission's decision to the Social Security Tribunal (Tribunal). The Tribunal assigned her appeal the file number GE-20-2396.

[5] I heard the appeal via teleconference on January 7, 2021. I issued the decision, dismissing appeal GE-20-2396, on January 8, 2021.

[6] On January 5, 2022, the Appellant submitted an Application to Rescind or Amend the January 8, 2021, decision for GE-20-2396.¹ In this application, she states that she has ADHD, which causes her to act impulsively and not notice/respond/react to emails from the Commission about her parental benefits.

[7] I have determined this matter On the Record. This is because I decided that another hearing with the Appellant is not required.²

¹ See the RAGD02 documents.

² See section 48 of the *Social Security Tribunal Regulations*.

Issue

[8] Should the January 8, 2021, decision for GE-20-2396 be rescinded or amended?

Analysis

[9] An application to rescind or amend is not an opportunity to argue or reargue the merits of the issue under appeal. The decision rendered on January 8, 2021, is final and binding. In order to open this decision to rescind or amend it, the Appellant must present evidence that:

- Meets the test of **New** facts or
- The Tribunal Member must be satisfied that the decision was made without knowledge of or mistake as to some **material fact** relating to the original issue under appeal³; which in this case was whether the Appellant could change her election of extended parental benefits once the Commission had issued payment.

New facts

[10] The test for **new** facts requires that, for the facts to be **new**, they must have happened after the decision was rendered or prior to the decision being rendered and could not have been discovered by an appellant acting diligently. These **new** facts must also be decisive of the issue to be decided.⁴

[11] The Appellant states on her application to rescind or amend that she now has documentation of a diagnosis of ADHD. She says that she didn't tell the Member about seeking an ADHD diagnosis during the hearing because she didn't think it was relevant. She also says that it has been a "VERY long" journey to get diagnosed.

³ *Green v. Canada (Attorney General)*, 2012 FCA 313

⁴ *Canada (Attorney General) v. Chan*, [1994] F.C.J. No. 1916

[12] In support of her application to rescind or amend, the Appellant submitted copies of an August 5, 2021, report from Pacific Coast Recovery Care. Their medical director and educational director signed the report.⁵

[13] I agree with the Commission when it says that the Appellant's medical diagnosis and report are not **new** facts. This is because the Appellant was aware of her efforts to obtain an ADHD diagnosis at the time of the hearing. She made a choice not to tell the Member because she didn't think it was relevant. She could have informed the Member during the hearing and asked for more time to submit the diagnosis before the Member issued the decision.

[14] The Commission also says that even if the medical diagnosis is new facts, the Commission can't change the Appellant's election to standard parental benefits because she made this request after the first payment for extended parental benefits was issued.

[15] The Appellant could have presented these facts prior to the issuance of the decision if she had acted diligently. So I agree that these facts do not constitute new facts. Instead, they are additional facts.

[16] The Member recognizes that August 5, 2021, report may be facts regarding the Appellant's ADHD diagnosis. However, there is evidence that suggests that her condition did not initially present itself after the Member issued the January 8, 2021, decision. Instead, the evidence supports that she had been dealing with issues relating to ADHD and other related diagnosis for what she says was a very long time.

[17] The Appellant readily admits that she knew (or ought to have known) about these facts prior to the issuance of the January 8, 2021, decision. This means she could have discovered and presented facts about her condition and pending diagnosis with her appeal or orally at the hearing, had she acted diligently.

⁵ See pages RAGD02-10 to RAGD02-12.

[18] I find that the August 5, 2021, medical report on its own does not meet the test of **new** facts. This is because it is not decisive of the issue to be decided, which in this case is whether the Appellant can change her election for extended parental benefits after the Commission has issued payment.

Was the decision made without knowledge of or based on a mistake as to some material fact relating to the issue under appeal?

[19] No. I find the Appellant provided insufficient evidence to prove that the January 8, 2021, decision was made without knowledge of or based on a **mistake** of a **material fact** relating to the issue under appeal.

[20] The Appellant admits that she didn't provide information about her ADHD or efforts to obtain a diagnosis at the hearing, despite her knowing about it. This is because she didn't think it was relevant.

[21] The August 5, 2021, medical report without medical declarations are not sufficient to prove that the decision was made without knowledge of a material fact relating to the issue under appeal. Also, the new documents alone don't prove that the decision was made based on a mistake as to some material fact relating to the issue under appeal.⁶ This is because the Appellant doesn't dispute the facts. Namely, that she elected 61 weeks of extended parental benefits and she did not request to change her election until after the Commission started issuing payments for extended parental benefits. As stated above, the election is irrevocable once the Commission starts paying parental benefits.

[22] After consideration of the evidence, as set out above, I find the Appellant has failed to present **new** facts. She hasn't satisfied me that the January 8, 2021, decision was made without knowledge of, or was based on a **mistake or without knowledge of some material fact** relating to the issue under appeal.

⁶ *Badra v. Canada (Attorney General)*, 2012 FCA 140.

Conclusion

[23] The application to rescind or amend is refused. The January 8, 2021, decision, remains unchanged, and in full force and effect.

Linda Bell

Member, General Division – Employment Insurance Section