Citation: *JF v Canada Employment Insurance Commission*, 2021 SST 895

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. F.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision () dated (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	On the Record
Decision date:	November 11, 2021
File number:	GE-21-2042

Decision

[1] The decision in appeal file GE-21-1505 is not rescinded or amended. The Appellant has not shown that there are new facts ***or*** that the decision was made without knowledge of or based on a mistake about a material fact.

Overview

[2] The Commission imposed a disqualification on the Appellant's claim for employment insurance (EI) benefits because he voluntarily left his employment at X without just cause on January 31, 2020. The Appellant appealed to the Social Security Tribunal of Canada (Tribunal). His appeal was assigned file number GE-21-1505, and was heard via teleconference on September 15, 2021.

[3] A decision dismissing the appeal in GE-21-1505 was issued on September 22, 2021.

[4] On October 20, 2021, the Appellant filed an application with the Tribunal asking that the decision in GE-21-1505 be rescinded or amended (RAGD02). Specifically, he asked that the decision be rescinded because the Tribunal should obtain documents from the employer before making a decision on his appeal, and because he has now provided evidence of the dates he was outside of Canada.

[5] I have held a hearing On the Record because I have decided that a further hearing with the Appellant is not required[1].

Issue

[6] Should the decision in appeal file GE-21-1505 be rescinded or amended?

Analysis

[7] The Tribunal may rescind or amend a decision given by it in respect of any particular application if "new facts" are presented to the Tribunal ***or*** the Tribunal is

[1] Section 48 of the *Social Security Tribunal Regulations*.

satisfied that the decision was made without knowledge of, or was based on a mistake about some material fact[2].

Issue 1: Were new facts presented to the Tribunal?

[8] No. The information submitted by the Appellant with his application is not considered "new facts".

[9] According to the Federal Court of Appeal, for facts to be considered "new facts" they must (a) have happened **after** the decision was rendered or (b) happened prior to the decision being rendered but could not have been discovered by a claimant acting diligently. The new facts must also be decisive of the issue.[3]

[10] The Appellant says there is evidence in the employer's possession that would support the testimony he gave at the hearing about the two alleged assaults he experienced on the job. He asks the Tribunal to obtain specific documents from X (they are listed in his application at RGD2-10), and to "get testimonies" from the employer's customers who witnessed the alleged attacks (see RGD2-3).

[11] The evidence the Appellant refers to in his application relates to facts that happened **before** – *not after* – the decision was rendered.

[12] And there is no reason to think these facts could not have been discovered by the Appellant acting diligently. Indeed, he told both the Commission and the Tribunal that he experienced incidents of abuse in the workplace before the decision was rendered. He has not provided any new details or information about the incidents that was not before the Tribunal when it made its decision. It is not for the Tribunal to solicit additional evidence from the employer. The onus was on the Appellant to prove he had just cause for leaving his employment. This means it was up to him to provide the evidence required to show he had no reasonable alternative but to leave his job when he did.

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[2] Paragraph 66(1)(a) of the *Department of Employment and Social Development Act*.
[3] *Chan* A-185-94

[13] The Tribunal was aware that the employer did not provide the Appellant with certain documents he asked for to support his appeal (see GD12 and paragraph 30 of the decision in GE-21-1505). But this was because the employer consistently maintained a different version of events from that of the Appellant. It is not unusual for the Tribunal to be faced with conflicting versions of events and one party or other[4] unable to obtain documents from a former employer. In such cases, the testimony given at the hearing takes on heightened importance. For the extensive reasons provided in the decision, the Appellant's testimony was not considered credible.

[14] Additionally, the documents he says the Tribunal should obtain from the employer would not have been decisive of the issue as to whether the Appellant had just cause for voluntarily leaving his employment. This is especially the case given the Tribunal's findings that the Appellant had reasonable alternatives to quitting when he did, and that the difficulties he experienced at work were not so intolerable that he had no other choice but to leave when he did.

[15] The same analysis applies to the travel documents submitted with the Appellant's application.

[16] His travel is a fact that happened **before** – *not after* – the decision was rendered. And there is no reason to think this fact could not have been discovered by the Appellant acting diligently. Indeed, before the decision was rendered, he told both the Commission and the Tribunal that he travelled outside of Canada after his last day of work on January 31, 2020 and that he returned to Canada in March 2020. He submits the same facts now, albeit with additional particulars as to his itinerary[5], and says he did not "take a vacation". These additional particulars, including the exact dates of his departure (February 10, 2020) and return (March 4, 2020), are not decisive of the issue as to whether he voluntarily left his job after his last day of work on January 31, 2020 or whether he had just cause for doing so.

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[4] This happens to both appellants and the Commission.
[5] Emails from Expedia and American Airlines confirming his flight from Calgary to Atlanta on February 10, 2020, and his return flight from Atlanta to Calgary on March 4, 2020 – at RAGD2-13 and RAGD2-18 respectively.

[17] For all of these reasons, I find the Appellant has not provided “new facts”.

Issue 2: Was the decision made without knowledge of, or a mistake as to some material fact?

[18] A claimant will be disqualified from receiving EI benefits if they voluntarily left their employment without just cause[6].

[19] But a claimant will have just cause for leaving if, considering all the circumstances, they had no reasonable alternative to quitting when they did[7].

[20] In his application, the Appellant merely reiterates his original submissions that he didn’t quit his job, but if he is found to have done so – he had just cause based on the fact that he experienced 2 abusive incidents on the job. He also states that the workplace abuse he experienced at the University of Lethbridge was “the lesser offense” and the disqualification for quitting that job without just was rescinded. He wonders how the disqualification for the more serious incidents (at X) can stand.

[21] The analysis set out in the decision in GE-21-1505 includes a detailed consideration of all of these submissions.

[22] It is not sufficient to simply repeat the evidence and submissions from the original hearing.

[23] There is also no evidence in the application that proves the Tribunal’s decision in GE-21-1505 was made without knowledge of a material fact or was based on a mistake about a material fact.

[24] Specifically, there is no evidence to show that the decision in GE-21-1505 was made without knowledge of the Appellant’s testimony and submissions that he didn’t quit, but if he did, he had just cause for doing so.

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[6] Section 30 of the *Employment Insurance Act*.
[7] See *Canada (Attorney General) v. White*, 2011 FCA 190 at para 3; and section 29(c) of the *Employment Insurance Act.*

[25] And there is no evidence to show that the decision was based on a mistake about any material fact related to his obligation to prove just cause for leaving.

[26] For the reasons set out under Issue 1and 2 above, I find that the Appellant has not met the test set out in paragraph 66(1)(a) of the *Department of Employment and Social Development Act* for the decision in GE-21-1505 to be rescinded or amended.

Conclusion

[27] The Appellant has not shown there are “new facts” to be considered, or that the decision in GE-21-1505 was made without knowledge of or was based on a mistake about a material fact. Therefore, the decision cannot be rescinded or amended pursuant to paragraph 66(1)(a) of the *Department of Employment and Social Development Act.*

[28] The Appellant’s application is dismissed.

[29] The decision in appeal file GE-21-1505 is not rescinded or amended.

Teresa M. Day

Member, General Division – Employment Insurance Section