



Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 543

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

**Decision**

**Appellant:** A. T.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (425993) dated July 5, 2021 (issued by Service Canada)

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**Tribunal member:** Solange Losier  
**Type of hearing:** Videoconference  
**Hearing date:** March 30, 2022  
**Hearing participant:** Applicant (Claimant)  
**Decision date:** April 13, 2022  
**File number:** GE-22-20

## Decision

[1] The appeal is dismissed.

## Overview

[2] A party can apply to the Tribunal to ask for a decision to be reopened and changed.<sup>1</sup> The party who applies is “the Applicant.” In this case, the Applicant is the Claimant.

[3] The Tribunal originally decided that the Claimant had received earnings of \$54,153.85 which needed to be allocated.<sup>2</sup>

[4] The Applicant has filed new information with this application.<sup>3</sup> He thinks that this decision should be changed, because he has submitted a legal invoice to support that he had legal expenses.<sup>4</sup> The Applicant wants the decision to be changed to reduce the amount of the allocation by the amount of his legal expenses he incurred.

## Matters I have to consider first

### The legal invoice submitted by the Claimant

[5] The Claimant submitted a legal invoice to support that he had to incur legal expenses.<sup>5</sup> I wrote to the Commission to ask them for submissions on the issue.<sup>6</sup> The deadline to reply was January 18, 2021.

[6] The Commission did not reply by the deadline or as of the date of this decision. I followed up with a letter confirming that no reply was received.<sup>7</sup>

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<sup>1</sup> Section 66 of the *Department of Employment and Social Development Act* allows for decisions to be rescinded or amended.

<sup>2</sup> See General Division decision dated November 4, 2021, file number GE-21-1341,.

<sup>3</sup> See application to rescind or amend at RAGD02-1 to RAGD02-13.

<sup>4</sup> See legal invoice at RAGD02-7.

<sup>5</sup> See legal invoice at RAGD02-7.

<sup>6</sup> See letter dated January 7, 2022 at RAGD4-1 to RAGD4-2.

<sup>7</sup> See letter dated February 8, 2022 at RAGD5-1 to RAGD5-2.

## **There were no additional documents submitted after the hearing**

[7] At the hearing, I noted that the legal invoice reflected a different employer (Employer #2).<sup>8</sup> The Claimant said that was a clerical error. He said that the lawyer had worked on a settlement with his former employer (Employer #1), but it was not properly reflected on the legal invoice. He acknowledged that part of the invoice included some work for Employer #2, but could not say exactly how much of the invoice was for that work.

[8] The Claimant said that he would try to obtain an updated legal invoice or letter from the lawyer and submit it after the hearing. The deadline to submit was April 4, 2022.<sup>9</sup>

[9] As of the date of this decision, the Claimant has not submitted any additional documents to support his position. I wrote him a letter to let him that no post-hearing documents were received, so I would proceed with a decision.<sup>10</sup>

## **Issue**

[10] Has the Applicant proven that there is a reason for reopening the original decision? If so, I must then decide how the original decision changes.

## **Analysis**

[11] The Tribunal cannot simply reopen a decision when an applicant asks it to do so. Rather, the Tribunal can reopen and change a decision for only the following two reasons:

1. New facts are presented to the Tribunal or

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<sup>8</sup> The Claimant testified that he started working for Employer #2 in April 2021.

<sup>9</sup> See letter dated March 30, 2022 at RAGD07-1 to RAGD07-2.

<sup>10</sup> See letter dated April 12, 2022 at RAGD08-1 to RAGD08-2.

2. The decision was made without knowing about, or it was based on a mistake about, some material fact<sup>11</sup>

[12] Both of these reasons involve me looking at whether the new information affects<sup>12</sup> the issue in the original decision. For new facts, the court has said that I have to look at whether the new information is “decisive.”<sup>13</sup> For the second reason I have to look at whether the information is about a “material fact.”<sup>14</sup>

[13] It makes sense that, for both reasons, the Applicant has to show that the new information affects the decision. This is because the Applicant is asking me to change the decision in light of this new information. If the information would not affect—or change—the decision, then there is no point in reopening it.

### **Issue 1: Is the information important enough to affect the issue in the decision?**

[14] The issue in the decision is whether the Claimant received earnings and if so, how should they be allocated.

[15] The Applicant says that the information is important enough to affect the decision, because he received a debt for around \$5,000.00. He submits that the legal fees he incurred to reach an agreement with his employer are relevant.

[16] The Commission was invited to make submissions, but did not respond as of the deadline, or today’s date.<sup>15</sup> I sent them a follow-up letter after the deadline confirming that no response was received<sup>16</sup>.

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<sup>11</sup> Section 66 of the *Department of Employment and Social Development Act*.

<sup>12</sup> *Canada (Attorney General) v Chan*, A-185-94, refers to new facts that are “decisive” while section 66 of the *Department of Employment and Social Development Act* refers to some “material fact.”

<sup>13</sup> *Canada (Attorney General) v Chan*, A-185-94, sets out the legal test for new facts.

<sup>14</sup> Section 66 of the *Department of Employment and Social Development Act*.

<sup>15</sup> See letter dated January 7, 2022 at RAGD4-1 to RAGD4-2. The deadline to reply was January 14, 2022.

<sup>16</sup> See letter dated February 8, 2022 at RAGD5-1 to RAGD5-2.

[17] I accept that the information is important enough to affect the issues in the decision because the new information, specifically the legal invoice may be relevant. This information could support a finding of fact that the Applicant incurred legal fees, which could reduce the amount of the allocation.

[18] There is no dispute that the Claimant filed his application within a year.

[19] I noted that the legal invoice was generated after the hearing had already taken place, on November 11, 2021. I asked the Claimant about the date of the invoice and he explained that it took some time to obtain the invoice from the lawyer even though the settlement occurred in early 2021.

[20] I reviewed the legal invoice with the Claimant and it does not reflect Employer #1 for which it was determined he had earnings that were allocated.

[21] I was not persuaded by the Claimant's testimony that he incurred legal fees for Employer #1 because it simply was not reflected on the invoice. The invoice says he incurred \$12,500.00 for professional services rendered for Employer #2. This was the employment he obtained after his employment ended with Employer #1.

[22] The Claimant was invited to submit an updated legal invoice or letter from his lawyer by April 4, 2022, but did not do so. Given that, I cannot rescind or amend my decision.

## **Conclusion**

[23] The appeal is dismissed.

Solange Losier

Member, General Division – Employment Insurance Section