Citation: *AB v Canada Employment Insurance Commission*, 2022 SST 1092

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	A. B.
Representative:	P. H.
Respondent:	Canada Employment Insurance Commission
Representative:	Anick Dumoulin

Decision under appeal:	Appeal Division decision dated August 26, 2022 (AD-22-197)

Tribunal member:	Pierre Lafontaine
Type of hearing:	On the Record
Decision date:	October 25, 2022
File number:	AD-22-659

Decision

[1] I refuse the Claimant's application to rescind or amend the Appeal Division decision rendered on August 26, 2022.

Overview

[2] As a temporary measure associated with the pandemic, claimants could get a one-time credit of 300 insurable hours (hours) to start a claim for Employment Insurance (EI) regular benefits or 480 hours for special benefits.[1]

[3] The Applicant (Claimant) collected regular benefits from October 11, 2020. She then asked the Respondent (Commission) for 15 weeks of maternity benefits and 35 weeks of parental benefits. The Commission renewed her existing benefit period but it ended 10 weeks later. The Claimant then asked the Commission to, instead, end her existing benefit period on July 17, 2021, and start a new benefit period on July 18, 2021.

[4] The Commission decided the Claimant did not have enough hours to start a new benefit period. The Commission said, even though the Claimant did not need the credit, the law required it to apply the credit of 300 hours to start the October 11, 2020, benefit period, and the credit could only be applied once. Therefore, she could not have the credit to use to start another benefit period. The Claimant appealed the Commission's decision to the General Division.

[5] The General Division interpreted section 153.17 (1) of the *Employment Insurance Act* (EI Act) to mean that the Commission had to apply the credit of hours to the first benefit period after September 27, 2020, and the Commission had no discretion in the application of the hours. It dismissed the Claimant's

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[1] See section 153.17 (1) of the *Employment Insurance Act (EI Act)* which is the section that describes the credit of hours. See sections 21 to 23.3 of the EI Act, which describes that special benefits include sickness, maternity, parental, compassionate care, and family caregiver benefits.

appeal. The Claimant appealed the General Division decision to the Appeal Division.

[6] On August 26, 2022, the Appeal Division determined that the General Division's interpretation was consistent with the text, context and purpose of section 153.17 (1) of the EI Act and the EI Act as a whole. The Appeal Division concluded that the General Division did not err in law with its interpretation and dismissed the Claimant's appeal.

[7] On September 9, 2022, within the legal delay of one year, the Claimant filed an application to rescind or amend the Appeal Division decision dismissing her appeal.[2]

[8] For the reasons set out below, I am dismissing the Claimant's application to rescind or amend the Appeal Division decision rendered on August 26, 2022.

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 I am satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact.[3]

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[2] See RA1-1 to RA1-11.
[3] See Section 66(1) (a) of the *Department of Employment and Social Development Act*.

[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.[4]

[12] In support of her application, the Claimant submits that the Appeal Division did not consider the Tribunal's own case law that decided that section 153.17 (1) of the EI Act does not explicitly state that the one-time credit hours must be applied to the 1st claim in the one year qualifying period. The Claimant says that the Appeal Division did not consider the most important case she submitted, *SS v Canada Employment Insurance Commission,* 2021 SST 885, which contains circumstances identical to her case.

[13] I note that the Appeal Division did consider in its decision the case submitted by the Claimant, *SS v Canada Employment Insurance Commission*, 2021 SST 885, where the General Division decided section 153.17 (1) of the EI Act should be interpreted to mean the credit was to be applied only if a claimant needs the hours.[5]

[14] The Commission pointed out that the General Division decision the Claimant relied on was overturned by the Appeal Division. It decided that the General Division's interpretation was not correct because the General Division had not interpreted section 153.17 (1) in the context of section 153.17 (2) of the EI Act.[6]

[15] The Commission submitted that all prior decisions of the Appeal Division had interpreted section 153.17 (1) of the EI Act the same way the General Division did, with similar fact situations to the Claimant's situation.

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[4] *Canada v Hines*, 2011 FCA 252, *Canada v Chan*, (1994) F.C.J. No 1916 (C.A.).
[5] See Appeal Division decision, par. 39.
[6] See *Canada Employment Insurance Commission v SS* 2022 SST 283.

[16] The Appeal Division member recognized that the Appeal Division had consistently interpreted section 153.17 (1) of the EI Act to mean the credit must be applied when the first claim is made on or after September 27, 2020. The member noted that, although not bound by those decisions, she did have to keep them in mind and could not depart from those decisions without a good reason.

[17] The Appeal Division member found that the General Division's interpretation was consistent with the text, context and purpose of section 153.17 (1) of the EI Act and the EI Act as a whole. The Appeal Division member concluded that the General Division did not err in law with its interpretation and dismissed the Claimant's appeal.

[18] 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.

[19] Furthermore, the Claimant has not demonstrated that the Appeal Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact.

[20] 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.

[21] 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.

[22] The Claimant clearly disagrees with the Appeal Division's interpretation of the law. In such a case, the appropriate recourse is an application for judicial review before the Federal court of appeal.

[23] I have no other choice but to refuse the Claimant's application to rescind or amend.

Conclusion

[24] The application to rescind or amend the Appeal Division decision rendered on August 26, 2022, is refused.

Pierre Lafontaine
Member, Appeal Division