



Citation: *LW v Canada Employment Insurance Commission*, 2022 SST 1416

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

Decision

Appellant: L. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (423923) dated June 29, 2021
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: On the Record

Decision date: October 6, 2022

File number: GE-22-2652

Decision

[1] The application to rescind or amend is dismissed. The Claimant's additional information doesn't represent new facts to support amending or rescinding the decision of the Tribunal dated March 21, 2022.

Overview

[2] The Claimant's employer dismissed her from her job. They did so because she didn't report for a scheduled shift. The Claimant had been off work because she was sick. She had given her employer doctor's notes to support her absence. She sent her employer a doctor's note after her scheduled start-time on the day her employer expected her to return to work.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant lost her job due to her misconduct. The General Division of the Social Security Tribunal (Tribunal) dismissed the Claimant's appeal. The Claimant made an application to rescind or amend the decision of the General Division of the Tribunal.

Issues

[4] Did the Claimant meet the conditions to have me consider her application to rescind or amend the General Division decision?

[5] Did the Claimant present new facts, or was the General Division decision made without knowledge of or based on a mistake as to some material fact?

[6] If there are new facts, should I rescind or amend the decision?

Analysis

[7] I can rescind or amend a decision if the Claimant presents new facts. I can also do so if I am satisfied that I made the decision without knowledge of a material fact, or based on a mistake about the material fact.¹

¹ See section 66(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

[8] For facts to be new, they have to have happened after I made the decision. If the new facts happened before the decision, they must not have been able to be discovered by a claimant acting diligently. The new facts must be decisive of the issue to be decided.²

Did the Claimant meet the conditions to have me consider her application to rescind or amend the General Division's decision?

[9] Yes, the Claimant has met the conditions to have me consider her application.

[10] The law lists three conditions to rescind or amend a Tribunal decision. A claimant must make an application to rescind or amend a decision within one year after the Tribunal communicates the decision to them.³ They can make only one application to rescind or amend a decision.⁴ The same Division that made the decision makes the decision to rescind or amend it.⁵

[11] As a member of the General Division of the Tribunal, I dismissed the Claimant's appeal on March 21, 2022. The Claimant says she got the decision on the same day. I find that because she filed her application to rescind or amend on August 5, 2022, she made the application within the one-year time limit.

[12] I also find that this is the Claimant's first application. I see no evidence that she has made another application. The Claimant sent her application to the same Division that made the decision.

[13] I find that the Claimant has met all the conditions set out in the law to have me consider her application to rescind or amend my decision.

² See *Canada (Attorney General) v Chan*, A-185-94.

³ See section 66(2) of the DESD Act.

⁴ See section 66(3) of the DESD Act.

⁵ See section 66(4) of the DESD Act.

Did the Claimant present new facts, or was the General division decision made without knowledge of or based on a mistake as to some material fact?

[14] The Claimant has presented new facts, but they aren't decisive of the issue to be decided. The decision wasn't made without knowledge of or based on a mistake as to some material fact.

[15] The Claimant says neither the record of employment (ROE) her employer issued nor the termination letter use the word misconduct. She sent a copy of a letter from the Employment Standards Branch. It refers to a complaint the Claimant filed that has been resolved. She also sent a copy of a letter and paystub for severance pay from her employer. She suggests this means she didn't lose her job because of misconduct.

[16] In submissions, the Claimant reiterated much of what she said previously. She attached a new doctor's note dated after the General Division decision. The letter confirms the Claimant's previous statements that she could not see her doctor on the Friday, February 26, 2021. The Claimant had to update the previous note that said she was unable to work up to February 28, 2021. Her employer expected her to return to work on Monday, March 1, 2021.

[17] The Commission says the employer issued the ROE the Claimant referred to before she lost her job. It adds that the severance pay doesn't change the facts of the case or the circumstances that gave rise to the job loss.

[18] Both the letter from the Employment Standards Branch and the letter and paystub from the Claimant's employer post-date the General Division decision. But, I don't find they are decisive of the issue. Neither letter refers to the circumstances that led the employer to dismiss the Claimant. So, I agree with the Commission's submission.

[19] The doctor's note the Claimant submitted also post-dates the General Division decision. It refers to what happened on February 26, 2021 when the Claimant tried to see the doctor but was unable to do so. Although the date on the letter is after the

General Division decision, the information in the letter is not new. It confirms statements the Claimant made before. In addition, this evidence was considered in the General Division decision.

[20] I understand that the Claimant disagrees with the decision. But, I don't find that there are new facts based on which I can rescind or amend my decision. I'm also not satisfied that the decision was made without knowledge of or based on a mistake as to some material fact.

[21] In view of the above, I don't need to consider if I should rescind or amend the decision.

Conclusion

[22] The application to rescind or amend is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section