



Citation: *EF v Canada Employment Insurance Commission*, 2022 SST 1517

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: E. F.

Respondent: Canada Employment Insurance Commission
Representative: Josée Lachance

Decision requested to be rescind or amended: Appeal Division decision dated October 15, 2021 (AD-21-327)

Tribunal member: Neil Nawaz

Type of hearing: In writing
Decision date: December 23, 2022
File number: AD-22-838

Decision

[1] The application to rescind or amend the Appeal Division decision is refused.

Overview

[2] The Applicant was receiving regular Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) decided that the Applicant was disentitled from receiving benefits because she wasn't available for work. The Commission came to that decision because, in its view, the Applicant had not made sustained efforts to find a suitable job.

[3] The Applicant appealed that decision to the Social Security Tribunal. The Tribunal's General Division agreed with the Commission that the Applicant was disentitled from receiving benefits. Later, the Appeal Division refused leave to appeal because it didn't think the Applicant had an arguable case.¹

[4] On November 12, 2022, the Applicant filed an application to rescind or amend the Appeal Division's decision, claiming that new facts had come to light.² She enclosed a 55-page package containing the following documents:

- The Applicant's prescription slips for azithromycin dated November 4, 2022;
- The Applicant's medical laboratory assistant examination results dated October 22, 2021;
- The Applicant's Service Canada EI job search form signed on November 10, 2022;
- The Applicant's medical office assistant certificate, issued by X College on January 28, 2022; and

¹ See Appeal Division's leave to appeal decision dated October 15, 2021.

² See Applicant's application to amend or rescind a decision of the Appeal Division dated November 12, 2022, RA1A.

- Various medical records (emergency room reports, doctors' notes, imaging results, prescription slips) from May 2021 to November 2021 documenting the Applicant's mother's admission to the ICU and subsequent treatment.

[5] The Applicant followed up her application with more material documenting her studies, her mother's illness, and her efforts to look for a job.³

[6] The *Social Security Tribunal Regulations* allow the Tribunal to proceed as informally and quickly as circumstances, fairness, and natural justice permit. With that in mind, I have decided that the record is sufficiently complete to enable me to make an informed decision without an oral hearing. I will proceed by way of documentary review.

Issues

[7] After reviewing the Applicant's request for permission to appeal, I had to decide the following related questions:

- Was the Applicant's application to rescind or amend filed on time? If not, should I grant the Applicant an extension of time?
- If I grant an extension, should I rescind or amend the Appeal Division's decision on the basis of new facts?

[8] I have decided that the Applicant's application can't proceed. That is because it was made more than a year after the Appeal Division decision it seeks to amend or rescind.

Analysis

I can't consider the Application because it was late

[9] The Applicant is barred from pursuing her application because it was submitted past the statutory one-year filing deadline.

³ See Applicant's submissions dated November 17, 2022 (RA1B) and December 12, 2022 (RA1C).

[10] Under section 66(2) of the *Department of Employment and Social Development Act* (DESDA), an application to rescind or amend a decision “must” be made within one year after the day that the decision was communicated to the applicant.

[11] In this case, the Appeal Division’s decision was issued and mailed to the Applicant on October 15, 2021. The Applicant admits that she received the decision on October 21, 2021.⁴

[12] The Appeal Division did not receive her application for leave to appeal until November 12, 2022 — more than a year after the General Division’s decision was communicated to her and three weeks past the application deadline.

[13] Unfortunately for the Applicant, the wording of 66(2) of the DESDA is strict. It does not give me any discretion to consider an application if more than a year has passed. In this case, I have no choice but to follow the letter of the law, whatever extenuating circumstances might have been responsible for the delay.

I don’t have to consider whether the Applicant presented new facts

[14] Having found that the Applicant missed the one-year filing deadline, there is no need for me to consider whether she would have succeeded if she had applied on time.

Conclusion

[15] I am refusing the application to rescind or amend because it was made out of time.



Member, Appeal Division

⁴ See Applicant’s application to amend or rescind dated November 12, 2022, RA1A-9.