Citation: *NL v Canada Employment Insurance Commission*, 2023 SST 41

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	N. L.
Respondent:	Canada Employment Insurance Commission
Representative:	Anick Dumoulin

Decision under appeal:	Appeal Division decision dated November 1, 2022 (AD-22-156)

Tribunal member:	Melanie Petrunia
Type of hearing:	On the Record
Decision date:	January 17, 2023
File number:	AD-22-849

Decision

[1] I am refusing the Appellant's application to rescind or amend the Appeal Division decision dated November 1, 2022.

Overview

[2] The Appellant, N. L. (Claimant), was placed on a leave of absence by his employer and applied for employment insurance (EI) regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily took a leave of absence from his employment without just cause and was disentitled from receiving benefits.

[3] The Claimant appealed this decision to the Tribunal's General Division and his appeal was dismissed. The Claimant then appealed the General Division decision to the Appeal Division.

[4] The Appeal Division allowed the appeal in part. It found that the General Division made an error when it decided that the Claimant left his job. The Appeal Division found that the Claimant was suspended because he did not comply with his employer's vaccination policy. It found that this was misconduct and the Claimant is disentitled from receiving EI benefits.

[5] The Claimant has now filed an application to rescind or amend the Appeal Division's decision. He argues that the Appeal Division made a mistake about the facts.

[6] For the reasons set out below, I am dismissing the Claimant's application to rescind or amend the Appeal Division decision.

Issue

[7] The issue is: does the information in the Claimant's application to rescind or amend constitute new facts or evidence of a mistake as to some material fact by the Appeal Division?

Analysis

[8] The Appeal Division can rescind or amend one of its earlier decisions if a claimant:

- presents new facts to the Tribunal; or
- establishes that a decision was made without knowledge of, or was based on a mistake as to, some material fact.[1]

[9] 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. The new facts alleged must also be material to the issue, meaning that they would affect the outcome.[2]

– **There is no reason to rescind or amend the November 1, 2022 decision**

[10] The Claimant is not putting forward any new facts in his application. He argues that the Appeal Division made a mistake about a material fact and based its decision on that mistaken fact.

[11] Specifically, the Claimant says that the Appeal Division mistakenly found that he breached his employment contract. The Claimant argues that his employment contract states that he will abide by company policies, rules, and procedures, but does not mention future policies.[3]

[12] The Claimant also argues that the Appeal Division refused to apply the guidance in the Digest of Benefit Entitlement, however this does to appear to relate to any alleged factual mistake.

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[1] See Section 66(1) (a) of the *Department of Employment and Social Development Act*.
[2] These principles were reconfirmed by the Federal Court of Appeal in *Canada (Attorney General) v Hines,* 2011 FCA 252.
[3] RA1-2

[13] In its decision, the Appeal Division considered the Claimant's arguments that he did not breach the employer-employee relationship. It noted his position that the employment contract did not include anything about getting vaccinated.[4]

[14] The Appeal Division acknowledged that the employment contract did not refer to vaccination but found that it did state that the claimant had to abide by all policies, rules, and procedures. The Appeal Division found that this requirement to abide by all company policies extended to the employer's vaccination policy.[5]

[15] The Claimant points to the fact that the employment contract also states "[y]our position, level of responsibility and/or salary may be changed from time to time; however, the remaining terms of your employment will continue to govern." He argues that this means that only his position, level of responsibility and/or salary was subject to changes, and not the policies he was expected to abide by.[6]

[16] I find that the Claimant has not demonstrated that the Appeal Division decision was based on a mistake as to some material fact. The Claimant's employment contract was before the Appeal Division and was taken into consideration in its decision. The Appeal Division interpreted the contract as requiring the Claimant to comply by company policies, including future policies such as the vaccination policy at issue.

[17] This interpretation is supported by the wording of the employment contract. I do not agree with the Claimant's argument that the contract only required him to comply with policies in place at the time that he was hired. The wording in the contract that "the remaining terms of your employment continue to govern" does to suggest, as the Claimant argues, that no changes could be made to policies, rules and procedures.

[18] The Claimant relies on the fact that the contract does not explicitly state that the employee must comply with <u>future</u> policies. The contract also does not state only the policies in place at the time the contract is signed must be adhered to.

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[4] See Appeal Division decision at para 22.
[5] Appeal Division decision at para 52.
[6] RA1-2

[19] The Claimant is taking issue with the Appeal Division's interpretation of the employment contract. The Appeal Division did not make a mistake about the facts when it found that the Claimant's obligation under the employment contract extended to the employer's vaccination policy.

[20] I find that the Claimant's application to rescind or amend the appeal decision appears to be an attempt to re-argue his appeal before the Appeal Division. 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.

[21] If the Claimant disagrees with the Appeal Division's decision, the appropriate recourse is an application for judicial review before the Federal Court of Appeal.

Conclusion

[22] The application to rescind or amend the Appeal Division decision rendered November 1, 2022, is refused.

Melanie Petrunia
Member, Appeal Division