



Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 509

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

Decision

Appellant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision () dated (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: On the Record

Decision date: January 30, 2023

File number: GE-22-3619

Decision

[1] M. M. is the Claimant. The Social Security Tribunal (Tribunal) made a decision about his appeal. Now, he is asking the Tribunal to reopen and change its original decision. I was the original decision-maker, so this means I have to make a decision on this application.

[2] I am dismissing the Claimant's application. He hasn't proven that there is a reason to reopen and change my original decision. This is because he hasn't given me any new facts. Also, he hasn't shown that I made the original decision without knowing about a material fact. And he hasn't shown that I based the original decision on a mistake about a material fact.

[3] This means my original decision remains in place.

Overview

[4] When the Tribunal makes a decision that affects you, you are a party to that decision. And if you are a party to a decision, you can ask the Tribunal to reopen and change that decision.¹ The law uses the phrase "rescind or amend" when it talks about reopening and changing a decision. The Claimant is the party who has asked the Tribunal to change its decision.

[5] I was the original decision-maker. I originally decided that the Claimant wasn't entitled to Employment Insurance (EI) benefits. This is because I found that his employer suspended him because of misconduct.

[6] Now the Claimant has made an application to reopen and change the original decision. He thinks I should change my original decision because he says there are new facts. He also says that I have made mistakes about material facts. He thinks I should change my decision and find that he didn't lose his job because of misconduct. He thinks he is entitled to Employment Insurance (EI) benefits.

¹ Section 66 of the *Department of Employment and Social Development Act* gives the Tribunal the power to rescind or amend its decisions. This means the Tribunal can cancel or change its decisions.

Issues

[7] I have to decide if the Claimant has proven that there is a reason to reopen my original decision.

[8] If I decide that he has shown that there is a reason to reopen the decision, then I have to decide how to change the original decision.

Analysis

Reasons to reopen an original decision

[9] I can't simply reopen a decision because someone asks me to do so. The law only gives two reasons that would allow me to reopen and change a decision. I can only reopen and change a decision if one of the two following situations exist:

- There are new facts
- I made the original decision without knowing about some material fact (important evidence), or I based my decision on a mistake about some material fact.

[10] So, I have to decide if the Claimant's new information is enough to show that one of these two situations exist. I have to decide if his new information is a new fact or a material fact. If it is, then I can reopen my original decision.

[11] For something to be a new fact, case law says that I have to decide if the new information is decisive.² This means that I have to consider whether the new information would change my decision in some way.

[12] Alternatively, I have to consider whether the new information is a material fact. A material fact is evidence that is important because it affects the outcome of the decision. I have to consider whether I didn't know about the new information when I made my decision, or if I based my decision on a mistake about a material fact.

² *Canada (Attorney General) v Chan*, A-185-94 describes the legal test for new facts.

What was the original decision?

[13] In the original decision, I decided that the Claimant stopped working because of a suspension. This is because I found that he didn't stop working because his employer laid him off. I also found that he didn't voluntarily take leave from work.

[14] I also found that the reason for the Claimant's suspension was misconduct under the meaning of the law. I made this decision because I accepted the following facts as true:

- The Claimant knew that his employer introduced a mandatory vaccination policy. He knew that the policy meant that he had to show proof of vaccination or have his employer approve an exemption request.
- The Claimant knew the deadline for complying with the employer's vaccination policy.
- The Claimant's employer didn't grant his request for an exemption from the vaccination policy. The Claimant knew that his employer didn't grant his request for an exemption.
- The Claimant knew there were consequences for failing to follow the vaccination policy. He knew that he couldn't keep working as long as he didn't follow the vaccination policy.
- Even though the Claimant knew about the vaccination policy and the consequences, he deliberately chose not to follow the vaccination policy. He wasn't vaccinated against COVID-19 by the employer's deadline.³

[15] Neither the Claimant nor the Canada Employment Insurance Commission (Commission) disagreed about the above facts. This is why I accepted the facts as true.

³ This is from paragraph 32 of my original decision.

[16] But by accepting the above facts, I had to find that the Claimant lost his job because of misconduct. This is because the above facts showed me that the Claimant's actions were deliberate and wilful. He knew that he was likely to lose his job because of his actions. His actions directly caused his loss of employment.⁴

[17] Now, the Claimant says I should reopen and change this decision.

What information did the Claimant include with his application?

[18] The Claimant says he has new facts. He also says that I made mistakes about material facts.

[19] On his application, he says that he is disputing his employer's refusal of his religious accommodation request. He argues that he should get EI benefits as his dispute on the accommodation request works through his employer's dispute process.

[20] The Claimant also makes arguments about a General Division decision.⁵ He says he wants to use his application to make more detailed arguments about this decision. He says the conclusion the Tribunal Member makes in this decision are applicable to his situation.

[21] Finally, the Claimant makes arguments about why the *Paradis* decision doesn't apply to his situation.⁶ He explains why he thinks his employer's actions and the reasonableness of his employer's vaccination policy is something that I should have considered when I made my original decision.

[22] For me to reopen and change my original decision, the Claimant has to show that these are new facts. If they aren't new facts, then he has to show that I made my original decision without knowing about a material fact, or that I made a mistake about a material fact.

⁴ This definition of misconduct comes from case law. See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36, paragraphs 10 to 14.

⁵ *RG v Canada Employment Insurance Commission*, 2018 SST 1356.

⁶ *Paradis v Canada (Attorney General)*, 2016 FCA 1282.

Has the Claimant given me new facts?

[23] The Claimant says his information includes new facts. But the Commission disagrees. The Commission says the Claimant's application doesn't have any new facts.

[24] I agree with the Commission. I don't think the Claimant's application includes any new facts.

[25] Case law defines what it means by "new facts." New facts are either:

- A fact that happened after I made my original decision, or
- Something that happened before I made my original decision, but the Claimant couldn't have known about it even if he was acting diligently.⁷

[26] In his application, the Claimant doesn't talk about anything that happened after I made my original decision. I understand that he says he is disputing his employer's refusal of his accommodation request, but this didn't happen after I made my original decision. The Claimant gave the Commission evidence showing that he was disputing his employer's refusal of his accommodation request. He also talked about the dispute during the hearing. So, this isn't a new fact.

[27] And the Claimant's arguments about case law aren't new facts. This is because new or more detailed arguments aren't new facts.

[28] So, I find that the Claimant hasn't proven that there are any new facts.

Has the Claimant shown that I made the original decision without knowing about a material fact? Or did I make a mistake about a material fact?

[29] Even though I find that there aren't any new facts, the Claimant can still ask me to reopen and change the decision if he can show that the second condition exists. The

⁷ See *Canada (Attorney General) v Chan*, A-185-94.

Claimant has to show that I made the original decision without knowing about a material fact. Or, he has to show that I made a mistake about a material fact.

[30] The Claimant argues that I made mistakes about material facts. He explains why he thinks the case law I used to make my decision isn't relevant to his situation. He makes more detailed arguments about a Tribunal decision that he says is similar to his situation. He explains why he thinks he should get benefits while his dispute with his employer about his accommodation request works through the grievance process.

[31] I disagree with the Claimant. I don't think any of the information in his application is about material facts.

[32] The Claimant hasn't given me any new information about the basic facts I relied on when I made my original decision. He hasn't explained how I made a mistake about any of those facts. He hasn't shown that I made my decision without knowing about a material fact that could change the way I looked at those basic facts.

[33] New arguments about case law aren't material facts. They aren't facts at all – they are arguments. In short, the Claimant uses his application to reopen and change the decision to explain why he thinks I made a mistake when I applied the law to the facts of his case.

[34] But if the Claimant has an argument about how he thinks I made a mistake when I applied the law, this is better addressed by appealing my decision to the Appeal Division of the Tribunal. This is because one of the Appeal Division's roles is to examine my original decision for these kinds of errors.

[35] So, I don't think the Claimant has shown that I made my original decision without knowing about a material fact. He hasn't shown that I based my original decision on a mistake about a material fact.

Can I reopen and change my original decision?

[36] I can't reopen and change my original decision. This is because the Claimant hasn't proven that either of the two essential conditions for doing this exist in his case. I

find that he hasn't proven that there are any new facts. He hasn't shown that I based my original decision on a mistake about a material fact. And he hasn't proven that I made my original decision without knowing about a material fact.

Conclusion

[37] I am refusing the Claimant's application to reopen and change the original decision. This means my original decision will remain in place.

Amanda Pezzutto
Member, General Division – Employment Insurance Section