



[TRANSLATION]

Citation: *AB v Canada Employment Insurance Commission*, 2023 SST 2

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

Decision

Applicant: A. B.
Respondent: Canada Employment Insurance Commission

Decisions requested to be rescinded or amended: Social Security Tribunal of Canada's General Division decisions dated June 29, 2021, in GE-21-650 and GE-21-654 (issued by the Social Security Tribunal of Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: November 29, 2022
Hearing participant: Appellant
Decision date: January 6, 2023
File numbers: GE-22-2163 and GE-22-2165

Decision

[1] The application to rescind or amend the Tribunal's General Division decision dated June 29, 2021, is dismissed. I find that the request to rescind or amend the decision that the General Division gave against the Applicant, A. B., is not justified.¹

Overview

[2] On June 29, 2021, the General Division made a decision (files GE-21-650 and GE-654 [sic]) concerning EI benefit periods established effective August 27, 2017, in one case (file GE-21-650), and effective July 22, 2018, in the other case (file GE-21-654).

[3] For the benefit period established effective August 27, 2017 (file GE-21-650), the General Division allowed the appeal on the following issues: reconsideration of the claim for benefits,² disentitlement to benefits for not showing that he was unemployed,³ and cancellation of a claim for benefits for not showing that there was an interruption of earnings for seven consecutive days.⁴

[4] For the benefit period established effective July 22, 2018 (file GE-21-654), the General Division dismissed the appeal on the following issues: reconsideration of the claim for benefits⁵ and cancellation of a claim for benefits for not showing that there was an interruption of earnings for seven consecutive days.⁶

[5] The Applicant explains that he is a joint shareholder in the company X and holds 33 $\frac{1}{3}$ % of its shares. He says that two other joint shareholders each hold 33 $\frac{1}{3}$ % of the shares in the company.⁷

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

² See section 52 of the *Employment Insurance Act* (Act).

³ See sections 9 and 11 of the Act and section 30 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 7 of the Act and section 14 of the Regulations.

⁵ See section 52 of the Act.

⁶ See section 7 of the Act and section 14 of the Regulations.

⁷ See RAGD2-28 and RAGD2-54 in GE-22-2163 and GD2-22-2165 [sic].

[6] The Applicant indicates that the General Division made a decision in favour of one of the two other shareholders, on December 23, 2021, on issues similar to those on which a decision was made in his case on June 29, 2021—namely the following issues: reconsideration of the claim for benefits,⁸ disentitlement to benefits for not showing that he was unemployed,⁹ and cancellation of a claim for benefits for not showing that there was an interruption of earnings for seven consecutive days.¹⁰

[7] He says that, in his case, the appeal was dismissed concerning his benefit period established effective July 22, 2018 (file GE-21-654) and that, as a result, the Commission is asking him to repay an overpayment of benefits. The Applicant argues that the joint shareholder's situation is the same as his, but that, given that his appeal was allowed, the joint shareholder is not being asked to repay any money.¹¹

[8] The Applicant argues that the General Division's December 23, 2021, decision concerning his joint shareholder is a new material fact in his case that justifies his request to rescind or amend the June 29, 2021, decision.¹²

[9] He argues that, if the December 23, 2021, decision concerning the joint shareholder had been available to the General Division, the outcome of his case would have been different. The overpayment amount he owed would have been cancelled.¹³

[10] On June 27, 2022, the Applicant filed an application to rescind or amend the General Division's June 29, 2021, decision (files GE-21-650 and GE-21-654).¹⁴

⁸ See section 52 of the Act.

⁹ See sections 9 and 11 of the Act and section 30 of the Regulations.

¹⁰ See section 7 of the Act and section 14 of the Regulations. See also RAGD2-29, RAGD2-32 to RAGD2-53, and RAGD2-55 in GE-22-2163 and GD2-22-2165 [*sic*].

¹¹ See RAGD2-30 and RAGD2-56 in GE-22-2163 and GD2-22-2165 [*sic*].

¹² See RAGD2-30 and RAGD2-56 in GE-22-2163 and GD2-22-2165 [*sic*].

¹³ See RAGD2-30 and RAGD2-56 in GE-22-2163 and GD2-22-2165 [*sic*].

¹⁴ See RAGD2-1 to RAGD2-57 in GE-22-2163 and GD2-22-2165 [*sic*].

Preliminary Matters

[11] I note that the appeals under the file numbers GE-22-2163 and GE-22-2165 were joined¹⁵ because they raise a common question of law or fact.

[12] In this case, both files concern the same Applicant. The issue in both files is about an application to rescind or amend a decision that the General Division made under section 66 of the *Department of Employment and Social Development Act* (DESD Act).

[13] At the beginning of the hearing, the Applicant indicated that he was withdrawing his application for the file GE-22-2163 because that file concerned his claim for benefits established effective August 27, 2017, and because, in that case, the General Division had allowed the appeal on the three issues raised before it (file GE-21-650). He said that his application to rescind or amend the General Division decision concerns only file GE-22-2165 because that file refers to his claim for benefits established effective July 22, 2018, and because, in that case, the appeal was dismissed on both issues (file GE-21-654).

[14] Therefore, I note that the decision I am giving relates only to file GE-22-2165.

Issue

[15] The Tribunal must determine whether the request to rescind or amend the decision that it gave against the Applicant is justified.¹⁶ To do this, I must answer the following question:

- Do the December 23, 2021, General Division decision regarding one of the Applicant's joint shareholders and the information that the Applicant provided after filing an application to rescind or amend the June 29, 2021, decision constitute new facts?

¹⁵ See the provisions set out in section 13 of the *Social Security Tribunal Regulations*.

¹⁶ See section 66 of the DESD Act.

Analysis

[16] To rescind or amend a Tribunal decision, an applicant must present new facts, present a material fact that became known after the decision was made, or show that the decision was made based on a mistake as to a material fact.¹⁷

[17] In one of its decisions, the Federal Court of Appeal (Court) established that new facts are facts that:

- happened after the decision was rendered; or
- happened before but could not have been discovered by a claimant who was diligent; and
- are decisive of the issue to be decided.¹⁸

Do the December 23, 2021, General Division decision concerning one of the Applicant's joint shareholders and the information that the Applicant provided after filing an application to rescind or amend the June 29, 2021, decision constitute new facts?

[18] I find that the General Division's December 23, 2021, decision concerning one of the Applicant's joint shareholders and the information that the Applicant provided after filing his application to rescind or amend the June 29, 2021, decision do not constitute new facts.

[19] I also find that the June 29, 2021, decision was not made without knowledge of, or based on a mistake as to, some material fact.

[20] The Applicant argues as follows:

- a) The General Division's June 29, 2021, and December 23, 2021, decisions have similar facts. The Applicant's appeal was dismissed (June 29, 2021,

¹⁷ See section 66(1)(a) of the DESD Act.

¹⁸ See the Court's decision in *Canada (Attorney General) v Chan*, [1994] F.C.J. No. 1916, A-185-94.

- decision), but his joint shareholder's appeal was allowed (December 23, 2021, decision).¹⁹
- b) When the Commission examined the Applicant's file, before the June 29, 2021, decision was made, the Commission representatives he spoke with were not the same as the Commission representatives in his joint shareholder's case where a decision was made on December 23, 2021.²⁰
 - c) The Applicant and his joint shareholder did not have the same representatives before the Commission and before the General Division. Therefore, the Applicant's file and that of his joint shareholder were not prepared in the same way.
 - d) The General Division's June 29, 2021, decision in the Applicant's case and in which the appeal was dismissed was not appealed to the Appeal Division. The Applicant's representative did not suggest to him that he appeal it. The Applicant wanted to appeal the decision, but his representative advised him to wait for the decision in his joint shareholder's case.
 - e) The representative for the Applicant's joint shareholder waited to see the June 29, 2021, decision before representing the joint shareholder before the General Division. The representative was able to prepare the joint shareholder's file based on the June 29, 2021, decision.
 - f) The representative for the Applicant's joint shareholder used the joint shareholder's income tax returns (tax reports) and other documents (for example, cell phone bills) to argue his case before the General Division. The Applicant's representative did not do this. The representative for the Applicant's joint shareholder was able to show that, even though the joint shareholder had a company cell phone, he had not benefited from what could be considered earnings and that ensured that his employment relationship

¹⁹ See RAGD2-29 and RAGD2-55 in GE-22-2163 and GD2-22-2165 [*sic*].

²⁰ See GD3-1 to GD3-79 in GE-21-654 and RAGD2-7 to RAGD2-25 and RAGD2-32 to RAGD2-53 in GE-22-2163 and GE-22-2165.

with the company continued. This allowed the joint shareholder's representative to show that there had been an interruption of earnings and that, as a result, cancelling his claim for EI benefits was not justified. The joint shareholder's appeal was allowed.

- g) Since the Applicant's joint shareholder was successful at the General Division, the Applicant argues that he should be successful too.
- h) The Applicant is asking the General Division to have [translation] "legal consistency" and to decide the case in his favour, since it did so for his joint shareholder, given that these two cases are similar and that they were both in the same situation. The conclusion should be the same in both cases.

[21] The Commission, in turn, argues that:

- a) The conditions set out in section 66 of the DESD Act that allow the Tribunal to rescind or amend the decision against the Applicant have not been met. The Applicant has not presented new facts or proven that the decision was made without knowledge of, or was based on a mistake as to, some material fact.²¹
- b) The decision in the file of the Applicant's joint shareholder is not a new fact or a fact material to the decisions in the Applicant's file.²²
- c) In the file of the Applicant's joint shareholder, the Tribunal found that the Commission had not judicially exercised its discretion to reconsider.²³ The Tribunal did not address the issues of the week of unemployment (self-employment) and the benefit period cancellation (interruption of earnings) because it found that the Commission should not reconsider those issues.²⁴

²¹ See RAGD3-3 in GE-22-2165.

²² See RAGD3-2 in GE-22-2165.

²³ See RAGD2-33 in GE-22-2163 and GE-22-2165.

²⁴ See RAGD3-2 in GE-22-2165.

- d) In the joint shareholder's file, the Tribunal considered only the issue of reconsidering a claim for benefits. The Tribunal assessed whether the Commission exercised its discretion judicially when it reconsidered the file. So, the Tribunal assessed the Commission's actions and explanations to justify its reconsideration. Those facts are specific to the file of the Applicant's joint shareholder. This means that the resulting finding cannot be applied to another file. The decision in the file of the Applicant's joint shareholder is not relevant to the reconsideration decision in the Applicant's file. It is therefore neither a new fact nor a material fact.²⁵
- e) In both files, Tribunal members looked at the reconsideration issue in different ways according to the facts specific to each case. They came to different conclusions. A different interpretation of the Commission's reconsideration policy does not constitute a new fact or a material fact.²⁶
- f) The Applicant points out that, in his joint shareholder's file, the Tribunal's view was that the Commission could not reconsider the claim, despite the fact that benefits were paid contrary to how the Act was set out, when, in his own case, the Tribunal considered that a reconsideration was appropriate.²⁷ If the Applicant believes that the Tribunal's decision in his file is wrong, other avenues exist for the Applicant to make this argument.²⁸

[22] I find that the General Division's December 23, 2021, decision concerning one of the Applicant's joint shareholders does not represent a new fact relative to its June 29, 2021, decision against the Applicant.

[23] I find that, even though the December 23, 2021, decision was made after the June 29, 2021, decision was made, the document is not determinative, given the issue to be decided.

²⁵ See RAGD3-2 in GE-22-2165.

²⁶ See RAGD3-2 in GE-22-2165.

²⁷ See RAGD2-30 in GE-22-2163 and GE-22-2165.

²⁸ See RAGD3-2 in GE-22-2165.

[24] I find that, in the December 23, 2021, decision concerning one of the Applicant's joint shareholders, the General Division did not address the issue of cancelling the joint shareholder's benefit period (interruption of earnings), since it found that the Commission had not exercised its discretion in that case and that, as a result, it was not appropriate for it to reconsider his claim for benefits.²⁹

[25] In that decision, the General Division assessed only the Commission's actions and the explanations it gave to justify reconsidering the joint shareholder's claim for benefits. These are facts that are unique to that case.

[26] I find that the General Division's finding in that case cannot apply to the Applicant's case.

[27] In the case of the Applicant's joint shareholder, the General Division looked at the question of reconsidering the claim for benefits but did so in a way that was different from how it did in the Applicant's case. The General Division came to different conclusions.

[28] I find that, even though the decision made in the case of one of the Applicant's joint shareholders interprets the Commission's reconsideration policy differently than how it is interpreted in the decision in the Applicant's file, it does not represent a new fact or a material fact.

[29] I also find that the Applicant's explanations to show that his file was not presented before the General Division in the same way as his joint shareholder's file do not represent new facts that could justify his request to rescind or amend the decision made against him.

[30] I find that the Applicant's explanations saying that he did not present the same evidence that the representative of his joint shareholder did before the General Division (for example, tax returns) do not show that this evidence constitutes new facts.

²⁹ See RAGD2-33 in GE-22-2163 and GE-22-2165.

[31] I find that the Applicant has not shown that the evidence he is referring to was not known before the June 29, 2021, decision was made, even though this evidence was used to support his joint shareholder's case before the General Division several months later.

[32] I find that the General Division's June 29, 2021, decision against the Applicant was therefore not made without knowledge of, or was based on a mistake as to, some material fact.

[33] I am of the view that, in applying to rescind or amend the General Division's June 29, 2021, decision, the Applicant is instead trying to re-argue his initial position or make his case because he disagrees with that decision.

[34] On this point, I would emphasize that an application to amend or rescind a decision is not an opportunity for an applicant to have the findings of that decision reconsidered.

[35] Although the Applicant's approach is entirely legitimate, his application cannot be used as a means of re-arguing his position or of making his case a second time.

[36] Since I have found that there are no new facts based on the criteria the Court has set out,³⁰ the General Division's June 29, 2021, decision cannot be amended or rescinded.³¹

Conclusion

[37] I find that the request to rescind or amend the General Division's decision against the Applicant is not justified.

[38] This means that the application is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

³⁰ See the Court's decision in *Canada (Attorney General) v Chan*, [1994] F.C.J. No. 1916, A-185-94.

³¹ See section 66 of the DESD Act.