



Citation: *NS v Canada Employment Insurance Commission*, 2023 SST 1041

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

Decision

Applicant: N. S.

Respondent: Canada Employment Insurance Commission

Decision under application: General Division decision dated October 7, 2022 (GE-22-2018)

Tribunal member: Kristen Thompson

Type of hearing: On the Record

Decision date: January 26, 2023

File number: GE-22-3892

Decision

[1] I refuse the Applicant's application to rescind or amend my decision made on October 7, 2022.

Overview

[2] The Tribunal dismissed the Applicant's appeal for Employment Insurance (EI) benefits in its decision made on October 7, 2022. A teleconference hearing was held on September 29, 2022.

[3] The Tribunal held that Canada Employment Insurance Commission (Commission) had proven that the Applicant lost his job because of misconduct. The Applicant was disqualified from receiving Employment Insurance (EI) benefits.

[4] At the hearing, the Applicant testified that the Ontario Labour Relations Board decided that his union failed to represent him in accordance with its duty of fair representation.

[5] In this application to rescind or amend, the Applicant provided new evidence. He says that his union filed a grievance against the employer. He says that the parties settled the matter. He says that he returned to work as of October 24, 2022. He provided a grievance record that says that he was unjustly terminated contrary to his collective agreement and other legislation. It says that he was reinstated with full compensation for losses sustained and didn't lose his seniority.¹

[6] The Applicant says this new evidence should be considered by the Tribunal. He says that the decision of the Tribunal should be rescinded or amended. He says he shouldn't be disqualified from EI benefits.

[7] The Commission says the evidence isn't new – it was known to the Tribunal at the time of its decision. It says that, despite the evidence, the Applicant still lost his job

¹ See RAGD2-5.

due to his own misconduct. It says that the evidence isn't relevant to the Tribunal's decision, based on the Tribunal's jurisdiction.

Issue

[8] Should the Tribunal rescind or amend its decision based on the Applicant's new evidence?

Analysis

- *Requirements to rescind or amend a decision*

[9] An application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to the appellant.² The Applicant meets this requirement. The decision is dated October 7, 2022. The application was provided to the Tribunal on November 17, 2022.

[10] A party may make only one application to rescind or amend the decision.³ The Applicant meets this requirement. This is the first application he had made to rescind or amend the decision.

[11] The application was sent to the parties on December 15, 2022. The parties were given 30 days to respond.⁴

[12] The Commission doesn't dispute the new evidence put forth by the Applicant – it doesn't disagree that the Applicant's grievance was settled. Since the contents of the new evidence isn't in dispute and the parties have had an opportunity to respond to the application, I have decided to proceed on the record.⁵

² See section 66 (2) of the *Department of Employment and Social Development Act*.

³ See section 66 (3) of the *Department of Employment and Social Development Act*.

⁴ See section 47 of the *Social Security Tribunal Regulations*, SOR/2013-60.

⁵ See section 48 of the Regulation.

- ***The test to rescind or amend a decision***

[13] I find that the Tribunal shouldn't rescind or amend the decision.

[14] The Tribunal may rescind or amend a decision if new facts are presented to it or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact.⁶

[15] New facts are those that happened after the decision was made or had happened before the decision but couldn't have been discovered by an applicant acting diligently. The new facts must also have been decisive of the issue put to the Tribunal.⁷

[16] At his original hearing, the Applicant argued that the employer changed the terms of his employment contract and contravened several provincial, federal and international laws. In my decision I stated:

"I note that there are other forums for the Claimant to bring up these arguments. The conduct of the employer isn't a relevant consideration under section 30 of the EI Act. Rather, my analysis is focused on the Claimant's act or omission and whether that amounts to misconduct within the meaning of section 30 of the EI Act. I am not making decisions about whether the Claimant has any course of action under other laws. I can only look at whether the Claimant's actions were misconduct under the EI Act."⁸

[17] Despite the new evidence, the Tribunal's jurisdiction remains the same. I have to focus on the Act only. I can't make any decisions about whether the Applicant has other options under other laws.⁹ The issue about whether the Applicant was unjustly terminated contrary to his collective agreement isn't for me to decide and doesn't change my decision. I can consider only one thing: whether what the Applicant did or failed to do was misconduct under the Act.

⁶ See Section 66(1) (a) of the *Department of Employment and Social Development Act*.

⁷ *Canada v Hines*, 2011 FCA 252; *Canada (Attorney General) v. Chan*, A-185-94.

⁸ See paragraph 31(c) of GE-22-2018.

⁹ See *Canada (Attorney General) v McNamara*, 2007 FCA 107.

[18] The Applicant took other legal avenues available to him – he filed a grievance. However, the settlement decision to this grievance doesn't have an impact on whether he should be disqualified from EI benefits. This means that, although the Applicant has new facts, they are not decisive of the issue put to the Tribunal. As well, the Tribunal's decision wasn't made without knowledge of, or was based on a mistake as to, some material fact.

Conclusion

[19] The application to rescind or amend is refused.

Kristen Thompson
Member, General Division – Employment Insurance Section