

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150217

Docket: A-234-14

Citation: 2015 FCA 48

**CORAM: NOËL C.J.
GAUTHIER J.A.
BOIVIN J.A.**

BETWEEN:

NATHALIE CHEMOUNY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on February 17, 2015.

Judgment delivered from the Bench at Montréal, Quebec, on February 17, 2015.

**REASONS FOR JUDGMENT OF THE
COURT BY:**

GAUTHIER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, February 17, 2015.)

GAUTHIER J.A.

[1] Ms. Chemouny contests the validity of the decision of the Appeal Division of the Social Security Tribunal (the Tribunal) dismissing her appeal with regard to the Board of Referee's conclusion that she had voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act*, (S.C. 1996, c. 23) [the Act] and therefore had to pay back an overpayment of \$19,269.

[2] In her application for judicial review, Ms. Chemouny also challenges the allocation of the earnings that she had failed to report during the weeks of December 7, 14 and 21, 2008, resulting in an overpayment of \$789.

[3] Ms. Chemouny had filed her appeal from the decision of the Board of Referees with the Office of the Umpire, as prescribed by the Act at that time. As the appeal had not yet been heard on April 1, 2013, it was transferred to the Tribunal in accordance with the new regime applicable to such matters. Out of fairness, the Tribunal decided the appeal in the light of the applicable provisions of the Act in force immediately before April 1, 2013. More specifically, it considered the grounds of appeal set out in subsection 115(2) of the Act.

[4] Ms. Chemouny submitted that the Board of Referees had based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. The Tribunal concluded that the Board of Referees had made no such error in ruling as it did, since Ms. Chemouny had not proven that she had no reasonable alternative to leaving her employment because she had no way of getting to work for the night shift, her car having been seized in error by the city of Montréal.

[5] There can be no doubt that the Tribunal and the Board of Referees applied the correct test to determine whether Ms. Chemouny qualified for benefits under the Act. They had to determine whether she had no reasonable alternative to leaving her employment when she did, having regard to the circumstances and the evidence before the Board of Referees.

[6] Such questions of fact or of mixed fact and law are subject to the reasonableness standard of review. Essentially, Ms. Chemouny is relying on new evidence, namely, explanations that were not before the Board of Referees or the Tribunal.

[7] As a general rule, this Court reviews the validity of a decision under judicial review in the light of the evidence that was before the administrative decision-maker. Ms. Chemouny did not explain why this evidence, which was clearly available, was not presented to the Board of Referees. This evidence is therefore not admissible.

[8] Moreover, the Tribunal's conclusion falls within the range of possible outcomes, having regard to the evidence that was before it.

[9] Before both the Board of Referees and the Tribunal, the applicant did not deny having received the earnings report by the employer for the weeks in question (overpayment of \$789). Ms. Chemouny did not submit any arguments or evidence supporting her position that the decision of the Board of Referees and the Tribunal on this point was inconsistent with sections 35 and 36 of the *Employment Insurance Regulations*, SOR/96-332.

[10] The application for judicial review will therefore be dismissed.

“Johanne Gauthier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-234-14

STYLE OF CAUSE: NATHALIE CHEMOUNY V. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 17, 2015

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
GAUTHIER J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

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(representing herself)

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