Federal Court of Appeal | Cour d'appel fédérale

Date: 20160511

Docket: A-471-15

Citation: 2016 FCA 147

CORAM: **PELLETIER J.A.**
WEBB J.A.
DE MONTIGNY J.A.

BETWEEN:

DARREN RAY HURTUBISE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Edmonton, Alberta, on May 9, 2016

Judgment delivered at Edmonton, Alberta, on May 11, 2016.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: PELLETIER J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] This is an application for judicial review of the Social Security Tribunal, Appeal Division's decision upholding the General Division's decision, which concluded that Mr. Hurtubise left his employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act*, SC 1996, c 23 [the *Act*].

[2] Having read the record and heard the oral representations made by the Applicant and counsel for the Respondent, I find that the application ought to be dismissed.

[3] Section 30 of the *Act* provides that claimants who voluntarily leave their employment without just cause will be disqualified from receiving any benefits, subject to the exceptions set out in that section. Pursuant to paragraph 29(c) of the *Act*, "just cause" for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving, having regard to all the circumstances.

[4] When contacted by the Canada Employment Insurance Commission, the Applicant stated that he quit his job because he was claustrophobic and was required to work in confined spaces, and also because he was looked down upon by his colleagues who would talk over him and not acknowledge him. Upon reviewing the evidence, the General Division of the Social Security Tribunal found that that the Applicant voluntarily left his employment without just cause, noting that when contacted by the Commission he stated that he was not advised by his doctor to quit his job. The General Division also found that the Applicant did not give the job a reasonable try before he left as he had only worked a few days. As for the evidence from his doctor according to which "[h]e had been medically advised to terminate his employment in September as it was viewed that his employment and related issues were contributing factors to his unwellness", the General Division gave it no weight because it was sought only after his reconsideration request to the Commission was refused, and referred to a job in September when his new job only started in October. That decision was confirmed by the Appeal Division.

[5] When reviewing decisions of the Appeal Division, this Court must show deference and apply the standard of reasonableness to questions of mixed fact and law: *Thibodeau v Canada (Attorney General)*, 2015 FCA 167, 477 N.R. 104, at paras 39-41. As stated by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para 47, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process, as well as whether the decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law.

[6] In the case at bar, I am unable to find that the Appeal Division decision was unreasonable. Pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34, the Appeal Division can intervene in the General Division's decision only if there has been a breach of natural justice, an error of law or an erroneous finding of fact made in a perverse or capricious manner or without regard for the material that was submitted. The Appeal Division found no such errors.

[7] In his memorandum of fact and law and in his oral submissions before this Court, the Applicant put forward essentially the same arguments that he had submitted to the Appeal Division. Unfortunately, the role of this Court is not to reassess these arguments, but rather to determine whether the decision of the Appeal Division was reasonably open to it. After reviewing the evidence, the Appeal Division found that the Applicant's working conditions were not so intolerable as to leave him no reasonable option but to resign two days after he started. It also came to the conclusion that the December 2, 2013 medical note should be given little weight considering that it was sought after the fact and did not particularize the employment and the medical conditions it was referring to. The Applicant has not convinced me that these conclusions are unreasonable.

[8] For these reasons, I would dismiss this application, without costs.

"Yves de Montigny"

J.A.

"I agree.

J.D. Denis Pelletier J.A."

"I agree.

Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-471-15
STYLE OF CAUSE:	DARREN RAY HURTUBISE v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	MAY 9, 2016
REASONS FOR JUDGMENT BY:	DE MONTIGNY J.A.
CONCURRED IN BY:	PELLETIER J.A. WEBB J.A.
DATED:	MAY 11, 2016

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