Federal Court of Appeal | Cour d'appel fédérale

Date: 20170307

Docket: A-281-16

Citation: 2017 FCA 46

CORAM: **STRATAS J.A.**
WEBB J.A.
GLEASON J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

ANH HONG

Respondent

Heard at Toronto, Ontario, on March 7, 2017.
Judgment delivered from the Bench at Toronto, Ontario, on March 7, 2017.

REASONS FOR JUDGMENT OF THE COURT BY: GLEASON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 7, 2017).

GLEASON J.A.

[1] In this application for judicial review, the applicant seeks to have the Court set aside the June 7, 2016 decision of the Social Security Tribunal Appeal Division (the SST-AD) in *Hong v. Canada Employment Insurance Commission*, Tribunal File Number AD-15-1209. In this decision, the SST-AD granted the respondent's appeal and found that the Social Security Tribunal General Division (the SST-GD) had erred in law or made an erroneous finding of fact

without regard to the material before it when it denied the respondent's request for employment insurance benefits.

[2] More specifically, the SST-AD found that the SST-GD had erred in holding that the respondent 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 *EI Act*). The evidence before the SST demonstrated that the respondent's employer had given her a little over two year's notice of its intent to discontinue all retiree health and dental insurance benefits and had advised the respondent that she must retire on or before December 31, 2014 to retain her coverage. The respondent claimed that she had no choice but to retire to retain this coverage for herself and her husband and submitted evidence from her physician regarding her medical condition and several required medications. She also provided information about the medications her husband needed and the cost of the dental work required by them. She further indicated that she would not have retired when she did but for the need to retain her retiree benefits.

[3] The SST-AD found that the need to maintain the required coverages provided the respondent just cause for retiring and that the SST-GD had committed a reviewable error in holding otherwise as the respondent had no choice but to retire in the circumstances. It also noted that in the respondent's circumstances, where she relied heavily on the benefit coverage and would likely need to continue to do so during retirement, the roll back of the coverage was akin to a significant modification in wages or salary. Under paragraph 29(*c*) of the *EI Act*, such modifications are included in the non-exhaustive list of circumstances that may provide an employee just cause for leaving his or her employment.

[4] The standard to be applied by this Court to review the SST-AD's decision is the deferential reasonableness standard, which prevents the Court from intervening unless the SST-AD's decision is unreasonable: *Hurtubise v. Canada (Attorney General)*, 2016 FCA 147 at paragraph 5. Thus, the issue is not whether we would have reached the same conclusion as the SST-AD, but rather, whether its decision is not transparent, justified and intelligible or cannot be justified based on the facts before the SST-AD and the applicable law: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at paragraph 47.

[5] We cannot conclude that the SST-AD's decision was unreasonable as it fully explained the basis for its determination and the decision therefore cannot be said to lack transparency or to be unintelligible. Nor is the result reached unjustified or indefensible as there was a reasonable basis for the SST-AD to have concluded that the SST-GD made a reviewable error in failing to properly apply the applicable test under sections 29 and 30 of the *EI Act* to the respondent's situation.

[6] Given the multiple medications required by the respondent and her husband as well as their significant dental needs, we cannot say that this conclusion was unreasonable. Contrary to what the applicant claims, it was not necessary for the SST-AD to have referred to the cases the applicant cites in its memorandum as the determination of just cause for leaving a position, within the meaning of sections 29 and 30 of the *EI Act*, is largely a fact-specific inquiry and the SST-AD applied the correct law in its analysis. On the facts of the respondent's case, we do not believe that the result reached by the SST-AD was unreasonable.

[7] This application is therefore dismissed, with costs fixed in the all-inclusive amount of $1,350.

"Mary J.L. Gleason"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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