

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170524

Docket: A-289-16

Citation: 2017 FCA 110

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

WILLIAM PEPPARD

Respondent

Heard at Fredericton, New Brunswick, on May 24, 2017.
Judgment delivered from the Bench at Fredericton, New Brunswick, on May 24, 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 Fredericton, New Brunswick, on May 24, 2017).

GLEASON J.A.

[1] The Attorney General seeks to set aside the decision of the Appeal Division of the Social Security Tribunal of Canada (the SST-AD), dated July 18, 2016 (file number AD-14-281). In that decision, the SST-AD upheld the earlier June 2, 2014 decision of the General Division of the Social Security Tribunal of Canada (the SST-GD) finding that the Respondent, William Peppard,

was entitled to employment insurance benefits following his resignation from his position as full-time reservist with the Canadian Armed Forces (file number GE-14-1038).

[2] In 2010, Mr. Peppard retired from active service with the Forces after 20 years of service and, under sections 4 and 6 of the *Canadian Forces Superannuation Act*, R.S.C. 1985, c. C-17 (CFSA), chose to access a pension annuity immediately upon retirement. At the time he retired, Mr. Peppard was entitled to draw this annuity and to be employed as a full-time reservist given the Forces' policy to allow full-time pensioner reservists to take a 35-day unpaid break in service during each year of service. The result of such a break in service was to ensure that individuals like Mr. Peppard fell outside subsection 41(3) of the CFSA, which requires full-time employees who work continuously for one year to contribute to the relevant pension plan.

[3] In 2012, the Forces gave employees a year's notice of its intent to alter this policy as the Forces' need for full-time reservists had decreased. Employees like Mr. Peppard were given a choice: they could leave their positions and continue to collect their pensions (or annuities) or they could maintain their employment and switch from being pension recipients to pension contributors. In August 2013, Mr. Peppard elected to retire and sought re-training to start a new career as a massage therapist. Had Mr. Peppard remained employed, his income would have fallen by approximately \$28,000.00 per year as he would have ceased receiving his pension annuity. In addition, he would have been required to resume making pension contributions out of his employment income in an amount equal to approximately \$6,000.00 per year. Together, this represents approximately a 45 per cent reduction of the take-home income he had been earning and drawing as an annuity.

[4] The Employment Insurance Commission denied his claim for employment insurance benefits, finding that he had voluntarily left his employment without just cause. The SST-GD overturned this decision and determined that Mr. Peppard had just cause for leaving under subsection 30(1) of *the Employment Insurance Act*, S.C. 1996, c. 23 (EI Act) by virtue of paragraph 29(c)(vii), which identifies a “significant modification of terms and conditions respecting wages or salary” as an indicator of just cause. According to the SST-GD, when faced with the Forces’ unilateral decision to fundamentally change the terms of his employment, Mr. Peppard had no ability to negotiate terms that would result in a comparable work situation and therefore the employer’s change in policy constituted just cause (SST-GD decision at paras. 28-29).

[5] This determination was upheld by the SST-AD due to the deference it owes to the SST-GD in light of subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. The SST-AD concluded that the decision was primarily a factual one and that the SST-GD’s determination that Mr. Peppard had just cause for leaving his employment was reasonable.

[6] The sole issue before us is whether the SST-AD’s decision was reasonable, it being well-settled that the deferential reasonableness standard applies to review of decisions of the SST-AD involving the interpretation and application of subsections 29(c) and 30(1) of the *EI Act*: *Hurtubise v. Canada (Attorney General)*, 2016 FCA 147 at para. 5 (available on CanLII) [*Hurtubise*]; *Canada (Attorney General) v. Hong*, 2017 FCA 46 at para. 4 (available on CanLII) [*Hong*]; *Thibodeau c. Canada (Attorney General)*, 2015 FCA 167 at paras. 40-41, 477 N.R. 104.

[7] We find the decision under review to be reasonable. While we agree with the Attorney General that paragraph 29(c)(vii) of the EI Act does not apply as a pension annuity is not “wages or salary”, that is not the end of the inquiry as the case law recognizes that the situations listed in subsection 29(c) of the EI Act are not a complete catalogue of the circumstances in which an employee might have just cause for leaving his or her employment and thus be entitled to receive employment insurance benefits. Rather, just cause will exist whenever an employee has no reasonable alternative but to leave his or her job: *Hong* at para. 3; *Hurtubise* at para. 3; *Canada (Procureur général) c. Paquet*, 2013 CAF 48 at para. 4, 450 N.R. 190; *Canada (Procureur général) c. Marier*, 2013 CAF 39 at para. 20, 450 N.R. 122; *Canada (Procureur général) c. Lessard*, 2002 CAF 469 at para. 10, 300 N.R. 354.

[8] Here, we cannot say that the determination that Mr. Peppard had no reasonable alternative but to leave his employment was unreasonable given the impact the change in the Forces’ policy had on him. This case is similar to this Court’s recent decision in *Hong*, where the Court upheld a determination that an employee had just cause to leave her position to preserve her retiree health and dental benefits.

[9] We accordingly dismiss this application for judicial review. We make no order as to costs as Mr. Peppard was self-represented and filed no memorandum.

“Mary J.L. Gleason”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-289-16

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. WILLIAM PEPPARD

PLACE OF HEARING: Fredericton, New Brunswick

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DELIVERED FROM THE BENCH BY: GLEASON J.A.

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