

Date: 20080331

Docket: A-356-07

Citation: 2008 FCA 112

**CORAM: SEXTON J.A.
SHARLOW J.A.
PELLETIER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

AIHUA WANG

Respondent

Heard at Toronto, Ontario, on March 31, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on March 31, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SEXTON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 31, 2008)

SEXTON J.A.

[1] This application is for judicial review of a decision of an Umpire under the *Employment Insurance Act* (the Act). The Umpire had dismissed the appeal of the applicant to set aside the decision of the Board of Referees which had concluded that the respondent was available for work and was entitled to benefits under the Act.

[2] In March of 2005, the respondent applied for admission to a university course which was to commence in September 2005. Her contract of employment expired in July 2005. The respondent

initially filed a claim for Employment Insurance on July 30, 2005. The Commission required the respondent fill out a questionnaire that would indicate whether she was ready, willing and able to work each day and to make efforts to find work.

[3] The respondent filled out the questionnaire and indicated that she would be willing to change her course schedule to accept work or quit her courses if necessary.

[4] Before the Board, the respondent stated that she had looked for employment and gave a list of employers she had contacted. She had been given interviews for some positions but had not been hired.

[5] The respondent also wrote to the Board indicating that she would accept both part time and full time offers as long as they were available for her and that she would quit her schooling immediately if such an offer was received. She also stated that going to school was the result of failure to find a job.

[6] The Board of Referees accepted the respondent's evidence and submissions that her first priority was to find and accept full-time work and that she had made serious efforts to find such employment but without success. The Umpire dismissed the Commission's appeal from the decision of the Board of Referees.

[7] Three criteria were outlined by this Court in *Faucher v. Canada Employment and Immigration Commission* (1997), 215 N.R. 314, for entitlement to benefits in circumstances such as in this case.

1. a wish to return to the labour market as soon as suitable employment is offered;
2. an indication of this wish by efforts to find such suitable employment; and
3. absence of personal conditions that unduly limit chances of returning to the labour market.

[8] The evidence was that the respondent repeatedly stated that her first intention was to find and accept suitable full-time employment. She had presented evidence of numerous efforts to find employment. She also indicated that she was willing to relocate to accept such employment. The case rests on the credibility of the respondent and the Board of Referees obviously found the respondent to be credible. Thus the presumption of non-availability for work was successfully rebutted by the respondent.

[9] We are unable to find any error of the Umpire on the evidence or in his interpretation of the applicable jurisprudence.

[10] The application should be dismissed.

“J. Edgar Sexton”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-356-07

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. AIHUA WANG

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REASONS FOR JUDGMENT OF THE COURT BY: SEXTON, SHARLOW &
PELLETIER J.J.A.

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