

Date: 20090113

Docket: A-340-08

Citation: 2009 FCA 1

**CORAM: DÉCARY J.A.
NOËL J.A.
BLAIS J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

ROBERT McBRIDE

Respondent

Heard at Montréal, Quebec, on January 13, 2009.

Judgment delivered from the Bench at Montréal, Quebec, on January 13, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

DÉCARY J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on January 13, 2009)

DÉCARY J.A.

[1] This application for judicial review must succeed.

[2] The respondent asked the Employment Insurance Commission to antedate his initial claim for benefits (subsection 10(4) of the *Employment Insurance Act*). The Commission refused. The Board of Referees dismissed the appeal.

[3] The Umpire decided that there were grounds to intervene.

[4] This decision is wrong.

[5] First, an Umpire should not interfere unless a Board of Referees' decision is unreasonable; this is a question of fact (see *Canada (Attorney General) v. Hallée*, 2008 FCA 159, paragraph 13). The Umpire did not explain how the impugned decision was unreasonable.

[6] Second, and in any case, the Umpire erred in considering “especially [the respondent’s] very short delay in filing his claim”. This Court has already established that it is not the length of the delay that should be considered, but the reasons for it (see *Canada (Attorney General) v. Rouleau*, [1995] F.C.J. No. 1203 (F.C.A.) (QL)). The exceptional nature of the benefit afforded by antedating a claim supports this finding (see *Canada (Attorney General) v. Scott*, 2008 FCA 145, paragraph 9; *Canada (Attorney General) v. Brace*, 2008 FCA 118).

[7] The application for judicial review will be allowed, and the Umpire's decision set aside. The matter will be referred back to the Chief Umpire or his designate for redetermination on the basis that the respondent has failed to demonstrate that he had grounds for the delay in filing his initial claim for benefits.

[8] There will be no award as to costs.

“Robert Décary”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-340-08

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF UMPIRE GUY
COULARD DATED APRIL 28, 2008, FILE NO. CUB 70432)**

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. ROBERT McBRIDE

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 13, 2009

REASONS FOR JUDGMENT OF THE COURT BY: DÉCARY J.A.
NOËL J.A.
BLAIS J.A.

DELIVERED FROM THE BENCH BY: DÉCARY J.A.

APPEARANCES:

Paul Deschênes

FOR THE APPLICANT

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FOR THE APPLICANT