

Federal Court of Appeal



CANADA

Cour d'appel fédérale

**Date: 20100414**

**Docket: A-291-09**

**Citation: 2010 FCA 101**

**CORAM: NOËL J.A.  
EVANS J.A.  
DAWSON J.A.**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**MIKHAIL PERSHANTSEV**

**Respondent**

Heard at Toronto, Ontario, on April 14, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on April 14, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on April 14, 2010.)**

**NOËL J.A.**

[1] This is a judicial review application directed against a decision of Umpire Stevenson who held that Mikhail Persiiantsev (the claimant) had good cause for the delay in making his application for benefits, and that accordingly his claim could be antedated. In so holding, the Umpire confirmed an earlier decision of the Board of Referees (the Board).

[2] Subsection 10(5) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act) sets out the circumstances in which a claim may be antedated:

**10.** (5) A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

**10.** (5) Lorsque le prestataire présente une demande de prestations, autre qu'une demande initiale, après le délai prévu par règlement pour la présenter, la demande doit être considérée comme ayant été présentée à une date antérieure si celui-ci démontre qu'il avait, durant toute la période écoulée entre cette date antérieure et la date à laquelle il présente sa demande, un motif valable justifiant son retard.

[3] The essence of the reasoning of the Board for allowing the antedate is as follows (reasons of the Board, application record, p. 53):

The claimant indicated through his translator that he did not receive the benefit payments for which he was eligible because of his lack of English language skills, the shortage of information from Service Canada and because he thought he had exhausted all of his benefits with the initial claim, which was not the case.

...

In this case, did the claimant's reason for returning a late report constitute *good cause*? The claimant indicated that he had problems when trying to give his third report through Teledec. The access code that had worked for him before did not work the third time. The Umpire in *Caverly v. Canada* (CUB 50753) has ruled that complications using the Teledec system might have some impact on the failure of a claimant to make his bi-weekly reports.

In this case, because of the difficulty that the claimant had in accessing Teledec and because of his limited knowledge of Employment Insurance benefits due to his language barrier and lack of assistance from Service Canada, the Board finds the Commission's decision was incorrect. The Board finds that the claimant acted as any reasonable person would have acted in the same situation and showed that he had *good cause* for the delay.

[4] After quoting this passage from the decision of the Board, the Umpire noted that the question whether the claimant had good cause is one of fact. He went to dismiss the appeal from the Board's decision on the basis that it had not been shown to be unreasonable.

[5] The applicant contends that the Umpire committed a reviewable error in failing to intervene. In particular, it submits that the Board ignored evidence that the claimant had received his access code along with instructions and had successfully filed two previous Teledec reports and received two benefit cheques. In the same vein, the applicant alleges that the Board ignored the evidence of the claimant who indicated that the reason why he did not pursue his claim is that he believed that he had received all available benefits.

[6] As such, the applicant submits that the conclusion reached by the Board that the failure to pursue the claim in time was due to language difficulties is unreasonable, and the Umpire was bound to intervene.

[7] We respectfully disagree. With respect to the two prior successful attempts to use the Teledec system, the Board accepted the claimant's evidence that the access code that had worked for him in the past did not work for him on the third occasion. This is a finding that was open to the Board, and which cannot be labeled as unreasonable.

[8] With respect to the claimant's statement that he believed his entitlement to benefits was exhausted, he explained before the Board that this is why he did not pursue the matter when his access code failed on the third occasion. The Board ultimately attributed the claimant's erroneous

understanding of his rights to linguistic difficulties and the lack of assistance from Service Canada. Again, this was a conclusion that was open to the Board and cannot be labeled as unreasonable.

[9] Alternatively, the applicant contends that although the Board identified the proper test for establishing good cause, it did not apply it properly. The test in question was set out by this Court in *Canada (Attorney General) v. Waldemar Albrecht*, [1985] 1 F.C. 170:

... when a claimant has failed to file his claim in a timely way and his ignorance of the law is ultimately the reason for his failure, he ought to be able to satisfy the requirement of having "good cause", when he is able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act.  
...

[10] The applicant submits that the applicant's belief that he had received all the benefits from his claim is not sufficient to establish good cause for the delay, and that the Board erred in accepting this explanation without more.

[11] However, the Board was well aware that ignorance of the law is not good cause for delaying an application, since it says so much in the course of its reasons (reasons of the Board, applicant's record, p. 53). A fair reading of the decision of the Board shows that the members understood that the claimant had to demonstrate good cause for the delay throughout the period; that the standard applicable is that of a reasonable person in the same circumstances; and that not knowing the law, without more, is insufficient. These factors are consistent with and adequately reflect the legal test for good cause.

[12] In our view, it has not been shown that the Board erred in applying the legal test for good cause.

[13] The judicial review application will be dismissed.

"Marc Noël"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-291-09

**(AN APPLICATION FOR JUDICIAL REVIEW REGARDING A DECISION OF MR. JUSTICE STEVENSON, AS UMPIRE, CUB 72513)**

**STYLE OF CAUSE:** THE ATTORNEY GENERAL OF CANADA v. MIKHAIL PERSIIANTSEV

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 14, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL, EVANS & DAWSON JJ.A.

**DELIVERED FROM THE BENCH BY:** NOËL J.A.

**APPEARANCES:**

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