

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100928

Docket: A-16-10

Citation: 2010 FCA 250

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

BETWEEN:

LONA McKINNON (FOSKER)

Applicant

and

CANADA EMPLOYMENT INSURANCE COMMISSION

Respondent

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 28, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on September 28, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SEXTON J.A

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 28, 2010)

SEXTON J.A.

[1] This is an application for judicial review of the decision of Umpire R.J. Marin, dated November 30, 2009. The Umpire allowed the appeal of the Canada Employment Insurance

Commission (the “Commission”), quashed the decision of the Board of Referees (the “Board”) and restored the Commission’s initial rulings.

[2] The applicant claimed sick benefits for the period between May 7 and July 1, 2006, during which she was allegedly absent from work recovering from surgery. She reported to the Commission that she received no earnings during this period. During its investigation, the Commission received pay statements from her employer indicating that the applicant returned to work on May 30, 2006. The applicant initially responded that the payments might have been for overtime banked before her surgery. The Commission concluded that the applicant had been overpaid benefits in the amount of \$2010, and that she knowingly made false or misleading representations. It assessed her with a penalty of \$1005.

[3] Before the Board, the applicant testified that she did not receive any payment during the time in question, including for banked hours. The Board allowed her appeal and explained its finding on this central point as follows:

We find the claimant and her husband’s testimony credible, because it was consistent. We find that the employer’s pay slips are inconsistent and shoddy. We find that the claimant has stated consistently that she never received the money the employer allegedly paid her during the benefit period.

[4] On further appeal, the Umpire reversed the Board’s decision and restored the decision of the Commission. First, the Umpire held that the Board did not give sufficient weight to a declaration by the employer to Human Resources and Development Canada. Second, the Umpire wrote that the Board ignored important evidence, including information related to the employer’s pay records and

the applicant's own initial explanation that she had been paid for banked overtime hours. He said that if the Board wished to reject this evidence, it was required to explain why it chose to do so. The Umpire quashed the Board's decision and restored the initial rulings of the Commission.

[5] There are two issues on this application: whether the Umpire erred in finding that the Board's reasons were inadequate, and if he made no such error, whether the Umpire erred by restoring the Commission's rulings.

[6] The applicant submits that the Umpire erred in law by requiring that the Board's reasons explicitly address every piece of contradictory evidence, and by substituting the Board's analysis of the evidence with his own. It is well-settled that the standard of review for an Umpire's decision on a question of law is correctness: *MacNeil v. Canada (Employment Insurance Commission)*, 2009 FCA 306, 396 N.R.157.

[7] As this Court held in *Bellefleur v. Canada (Attorney General)*, 2008 FCA 13 at paragraph 3, the Board is not entitled to ignore important evidence, or reject it without explanation. On the other hand, it is important to remember that the Board is not composed of lawyers, and that its process is designed to be informal and efficient for litigants. Its decisions therefore should not be read microscopically: *Roberts v. Canada (Employment & Immigration Commission)* (1985) 60 N.R. 349 at paragraph 10 (C.A.). It is not necessary that the Board's reasons analyze each piece of evidence. Instead, the central requirement is that the Board's reasons explain how it reached its decision: *Clifford v. Ontario (Attorney General)*, 2009 ONCA 670, 98 O.R. (3d) 210 at paragraph 20.

[8] In this case, the Board explained its decision by writing that it found the testimony of the applicant and her husband credible because it found their testimony consistent. Because credibility decisions are based on a multitude of tangible and intangible factors, it is difficult for a tribunal to express why it finds a witness credible in much detail. The Board's reasons are adequate in this respect.

[9] The Board also adequately acknowledged the evidence against the applicant. It specifically referred to the employer's pay slips – the primary evidence against the applicant – and held that they were “inconsistent and shoddy.” The Board noted that the employer's declaration to Human Resources and Development Canada was inconsistent with the evidence in the actual pay stubs.

[10] The Board considered the evidence against the applicant, and its reasons explain why it chose to reject it: the Board found the applicant's evidence to be more consistent. The Board was better placed than either the Umpire or this Court to weigh the evidence and assess credibility, and its conclusion was reasonable. It was under no obligation to give the employer's declaration to Human Resources and Development Canada more weight than the applicant's testimony.

[11] The application is allowed. The decision of the Umpire will be set aside and the matter is remitted to the Umpire with the direction that the Commission's appeal from the decision of the Board of Referees be dismissed.

"J. Edgar Sexton"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-16-10

**(APPEAL FROM A DECISION OF THE UMPIRE, THE HONOURABLE R. J. MARIN
DATED November 30, 2009, IN DOCKET NO. CUB73661)**

STYLE OF CAUSE: LONA McKINNON (FOSKER)
v. CANADA EMPLOYMENT
INSURANCE COMMISSION AND
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 28, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, SEXTON & SHARLOW
JJ.A)

DELIVERED FROM THE BENCH BY: SEXTON J.A.

APPEARANCES:

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