

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20101213**

**Docket: A-108-10**

**Citation: 2010 FCA 341**

**CORAM: DAWSON J.A.  
LAYDEN-STEVENSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**DIANNE M. INNES**

**Respondent**

Heard at Toronto, Ontario, on December 13, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on December 13, 2010.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**LAYDEN-STEVENSON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on December 13, 2010)

[1] We are of the view that this application for judicial review of the Umpire's decision must be allowed.

[2] On February 6, 2009, the claimant requested that her claim for employment insurance benefits be antedated to May 28, 2008. Subsection 10(4) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the *Act*) allows for the antedating of claims in circumstances where a claimant can

establish good cause for the delay in applying for benefits. The jurisprudence of this Court holds, in order to establish good cause, a claimant must “be able to show that [she] did what a reasonable person in [her] situation would have done to satisfy [herself] as to [her] rights and obligations under the Act”: *Canada (A.G.) v. Albrecht*, [1985] 1 F.C. 710 (C.A.) (*Albrecht*).

[3] The claimant explained that she thought she was not eligible for benefits because she was working part-time. It was only in December 2008, when she happened upon a newspaper article concerning benefit eligibility that she realized otherwise. The Commission rejected the request for an antedate, finding that the claimant did not have good cause throughout the period of the delay.

[4] The Board of Referees (the board) allowed the claimant’s appeal. The board acknowledged the legal test articulated in *Albrecht*. It opined that the claimant did not realize that she was eligible and that her “move to Brantford proved to be more challenging than she had thought.” It noted that, once she became aware of the opportunity to obtain the benefits through the newspaper article, she made every effort to expedite her process. On this basis, the board found “that she acted in a reasonable manner to satisfy herself as to her rights and obligations under the *Act*.”

[5] The Crown’s appeal to the Umpire was dismissed. Umpire Durocher cited the legal test from *Albrecht* and concluded, although ignorance of the law does not by itself constitute good cause, “when other circumstances and reasons are also shown, it is for the Board of Referees to decide, all (*sic*) being considered, that a claimant acted as a reasonable and prudent person.” He

found that the board “appreciated the circumstances, evaluated the facts and correctly applied them to the test and the law.”

[6] The application of the facts to the law is a question of mixed fact and law and is reviewable on a standard of review of reasonableness: *Martens v. Canada (A.G.)*, 2008 FCA 240 at para. 31; *Canada (A.G.) v. Greey*, 2009 FCA 296; 313 D.L.R. (4th) 93 at para. 19. The Umpire provided no explanation regarding the “other circumstances” that he felt demonstrated that the claimant acted as a reasonable and prudent person. The board’s reasons are of no assistance in this respect because there is no explanation in the record as to what prompted the board to state that the move to Brantford proved to be “rather traumatic.”

[7] The claimant’s affidavit on this application merely states that the “process of downsizing and moving to Brantford...turned out to be a very emotional and stressful move” (claimant’s affidavit at para. 2). There is no further justification for the failure to apply for benefits until seven months after the end of the claimant’s employment. Rather, the claimant has consistently explained that her failure to make an earlier application was the result of her mistaken assumption that part-time employment was insufficient to ground a claim for employment insurance benefits.

[8] This is problematic because the jurisprudence of this Court holds that a claimant has an obligation to take “reasonably prompt steps” to determine his or her entitlement to employment insurance benefits and to ensure his or her rights and obligations under the *Act*: *Canada (A.G.) v. Carry*, 2005 FCA 367, 344 N.R. 142 at para. 5 (*Carry*); *Canada (A.G.) v. Larouche* (1994), 176

N.R. 69 at para. 6 (F.C.A.); *Canada (A.G.) v. Brace*, 2008 FCA 118; 377 N.R. 228 at para. 12. This obligation imports a duty of care that is both demanding and strict: *Albrecht* at para. 13. Ignorance of the law and good faith are insufficient to amount to good cause: *Carry* at para. 5; *Attorney General of Canada v. Trinh*, 2010 FCA 335 at paras. 7, 8.

[9] The record discloses no effort on the claimant's part to determine her entitlement or to verify her obligations under the Act. Her review of the newspaper article concerning benefit eligibility was happenstance. She assumed (incorrectly) that she did not have enough hours to be eligible to make a claim, but took no steps to validate that assumption. Although the claimant makes passing reference in her affidavit to previous difficulties with the employment insurance system in 2000, there is no detail provided and the record is silent in this respect.

[10] In our view, in spite of the deference owing to the Umpire, we conclude that his decision was unreasonable because there is no basis in the record to justify the claimant's delay or to demonstrate that she took reasonable steps to discharge her obligations, as required by the jurisprudence of this Court.

[11] Consequently, for these reasons, the application for judicial review will be allowed, the decision of the Umpire will be set aside and the matter will be returned to the Chief Umpire or one of his delegates for redetermination on the basis that the claimant has not demonstrated good cause for the delay in applying for benefits. No costs were sought and none will be awarded.

"Carolyn Layden-Stevenson"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-109-10

**(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF JUSTICE  
DUROCHER, AS UMPIRE, DECISION DATED FEBRUARY 25, 2010, IN FILE NO. CUB  
74059)**

**STYLE OF CAUSE:** ATTORNEY GENERAL OF CANADA  
Applicant  
and  
DIANNE M. INNES  
Respondent

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 13, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON, LAYDEN-  
STEVENSON, STRATAS JJ.A.

**DELIVERED FROM THE BENCH BY:** LAYDEN-STEVENSON J.A.

**APPEARANCES:**

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Dianne M. Innes FOR THE RESPONDENT

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Dianne M. Innes, ON HER OWN BEHALF FOR THE RESPONDENT