

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110125**

**Docket: A-271-10**

**Citation: 2011 FCA 26**

**CORAM: BLAIS C.J.  
EVANS J.A.  
STRATAS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**KUM CHAI YEO**

**Respondent**

Heard at Toronto, Ontario, on January 25, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on January 25, 2011.

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

**EVANS J.A.**

Federal Court  
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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on January 25, 2011)

**EVANS J.A.**

[1] This is an application for judicial review by the Attorney General of Canada to set aside a decision of an Umpire (CUB 74709) dismissing an appeal from a decision of a board of referees, dated June 30, 2009. In that decision, the board allowed an appeal by Kum Chai Yeo from the Employment Insurance Commission's rejection of his claim for unemployment insurance benefits.

[2] The board of referees held that Mr Yeo had just cause for voluntarily leaving his employment because the travel time involved in getting to and from work prevented him from

dropping off his children at school in the morning and picking them up in the evening to take them to after-school activities.

[3] Mr Yeo, an accountant, testified that under the court-sanctioned terms of his divorce, he has shared custody of his two children, who spend one weekday a week with him, and most weekends. He stated that he had tried working flexible hours, but that did not enable him to meet his child-care commitment; his employer had no branch closer to Mr Yeo's home. He also said that he had no relatives whom he could ask to help out with the children.

[4] As for seeking more conveniently located employment while still working, Mr Yeo said that his job search was limited by the fact that it was difficult for him to attend job interviews during working hours. Finally, Mr Yeo stated that he quit his employment expecting, on the basis of his previous experience, to quickly find a job closer to home. However, because of the downturn in the economy, his job search took longer than he anticipated.

[5] A person who voluntarily leaves their employment is not entitled to unemployment insurance benefits unless they left for "just cause": *Employment Insurance Act*, S.C. 1996, c. 23: subsection 30(1). In its reasons, the board set out the provision of the Act, paragraph 29(c)(v), that is directly relevant to the present proceeding.

29(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking

c) le prestataire est fondé à quitter volontairement son emploi ou à prendre congé si, compte tenu de toutes les circonstances, notamment de celles qui sont énumérées ci-

leave, having regard to all the circumstances, including any of the following:	après, son départ ou son congé constitue la seule solution raisonnable dans son cas :
(v) obligation to care for a child or a member of the immediate family,	(v) nécessité de prendre soin d'un enfant ou d'un proche parent,

[6] After accepting Mr Yeo's testimony, the board concluded that "he made the decision to quit only after trying his best to find another solution."

[7] On appeal, the Umpire held that, although not making a finding that Mr Yeo had "no reasonable alternative to leaving or taking leave", the board's statement that he had tried his best amounted to the same thing. It therefore committed no error of law. He concluded that the board had considered all the evidence and that its decision could not be said to have been unreasonable.

[8] We are not satisfied that, having correctly set out the legal test for determining what constitutes "just cause" for leaving employment, the board promptly forgot it three paragraphs later and erroneously applied another test. Like the Umpire, we are prepared to give the board the benefit of the doubt on this question. On reading the board's reasons as a whole, we are not satisfied that the board's statement at the end of its reasons that Mr Yeo had done his best to find another solution, demonstrated that, having earlier set out the correct test, it had in fact applied another, erroneous legal test.

[9] However, unlike the Umpire, we are of the view that the board's application of the legal test of "just cause" was unreasonable and that the decision must be set aside.

[10] Claimants for unemployment insurance benefits have the burden of proving their entitlement. Mr Yeo therefore had to adduce evidence to prove on a balance of probabilities that, in all the circumstances, he had no reasonable alternative other than to leave his employment, in order to discharge his parental responsibilities. In our view, and giving due deference to the board, Mr Yeo cannot reasonably be said to have done this.

[11] He did not show that he was unable to hire someone for the hours necessary to meet the children and take them to their after-school activities. Nor had he explored with his employer the possibility of a temporary leave of absence to look for another job, or sought some accommodation from his employer that would have enabled him to attend job interviews while still employed.

Compare *Canada (Attorney General) v. Patel*, 2010 FCA 95.

[12] For these reasons, the application for judicial review will be granted, the Umpire's decision set aside, and the matter remitted to the Chief Umpire or his delegate, on the basis that Mr. Yeo did not have just cause to leave his employment.

“John M. Evans”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-271-10

**(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF MR. JUSTICE GERALD T. G. SENIUK, AS UMPIRE (E.I. ACT), DATED JUNE 18, 2010, AS CUB 74709.)**

**STYLE OF CAUSE:** *ATTORNEY GENERAL OF CANADA  
v. KUM CHAI YEO*

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 25, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** BLAIS C.J.  
EVANS J.A.  
STRATAS J.A.

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

**APPEARANCES:**

RINA M. LI FOR THE APPLICANT

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ON HIS OWN BEHALF

**SOLICITORS OF RECORD:**

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ON HIS OWN BEHALF