

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120111

Docket: A-281-11

Citation: 2012 FCA 8

**CORAM: EVANS J.A.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

GARY DICKSON

Respondent

Heard at Toronto, Ontario, on January 11, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on January 11, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 11, 2012)

STRATAS J.A.

[1] The Crown applies for judicial review of a decision dated June 2, 2011 of Umpire Landry (CUB 77178). The Umpire upheld a decision of the Board of Referees. Both the Umpire and the Board of Referees held that the respondent, Gary Dickson, had shown good cause for his delay in seeking benefits under the *Employment Insurance Act*, S.C. 1996, c. 23.

[2] Subsection 10(4) of the Act allows forgiveness for a delay in making a claim if the claimant shows “good cause.” The test for “good cause” is whether, through the entire period of the delay, the claimant did what a reasonable person would have done to satisfy himself as to his rights and obligations under the Act: see, e.g., *Canada (A.G.) v. Albrecht*, [1985] 1 F.C. 710. It is undisputed that this test was met for the period from July 2009 to February 2, 2010.

[3] As a result of a workplace injury, Mr. Dickson was employed in a “light duty” function. After his return from vacation on July 26, 2009, his employer told him orally that he was being laid off and advised him to try to reopen an earlier workers’ compensation claim. On February 2, 2010, the workers’ compensation authorities advised Mr. Dickson that his claim could not be reopened. In February 2010, Mr. Dickson sought advice from his union about the workers’ compensation claim, not benefits under the Act. The applicant delayed his claim for benefits under the Act until July 27, 2010. There is no evidence that Mr. Dickson did anything between February 2, 2010 and July 27, 2010 to satisfy himself as to his rights and obligations under the Act.

[4] In finding “good cause” for Mr. Dickson’s delay after February 2, 2010, neither the Umpire nor the Board of Referees applied the legal test that they were obligated to apply. Had they done so, they would have rejected his contention that there was “good cause”: the record contains no evidence capable of explaining that period of delay.

[5] Accordingly, we shall allow the application and remit the matter to the Chief Umpire or to an Umpire designated by him for redetermination on the basis that “good cause” has not been established under subsection 10(4) of the Act for the period after February 2, 2010.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-281-11

(AN APPLICATION FOR JUDICIAL REVIEW FROM THE DECISION OF THE HONOURABLE MR. JUSTICE L.P. LANDRY, DATED JUNE 2, 2011, NO. CUB 77178)

STYLE OF CAUSE: THE ATTORNEY GENERAL OF CANADA V. GARY DICKSON

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 11, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (EVANS, SHARLOW AND STRATAS JJ.A.)

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Ayesha Laldin FOR THE APPLICANT

No Appearance FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Self-Represented FOR THE RESPONDENT