Federal Court of Appeal  Cour d'appel fédérale

Date: 20200131

Docket: A-418-18

Citation: 2020 FCA 33

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
RENNIE J.A.
LOCKE J.A.

BETWEEN:

WAYNE SZABO

Applicant

And

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montreal, Quebec, on January 23, 2020.

Judgment delivered at Ottawa, Ontario, on January 31, 2020.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: RENNIE J.A.
LOCKE J.A.

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] In this application for judicial review, Wayne Szabo is asking that the Court set aside the decision of the Appeal Division of the Social Security Tribunal, which affirmed that Mr. Szabo did not have "good cause" for the delay in filing his claim for benefits within the meaning of subsection 10(5) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act).

[2] Subsection 10(5) of the Act stipulates that a 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.

[3] On March 30, 2017, Mr. Szabo renewed an initial claim for employment insurance benefits filed on April 17, 2016. He later made a request to antedate his claim on November 20, 2016. The Canada Employment Insurance Commission refused to antedate the claim for benefits because Mr. Szabo had not shown that there was good cause for the delay. The Commission upheld this position when Mr. Szabo requested a review.

[4] Mr. Szabo then filed an appeal with the General Division of the Social Security Tribunal. The General Division noted that persons who make a request to antedate their claim for benefits must show that they did what a reasonable person in the same situation would have done to satisfy themselves as to their rights and obligations under the Act. It also pointed out that there is no easily applicable objective test and that a partially subjective appreciation of the facts of each case is required (*Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 710, [1985] F.C.J. No. 82 (F.C.A.) (*Albrecht*)). The General Division found that a reasonable and prudent person, in the same situation as Mr. Szabo, would have contacted the Commission to ascertain his or her rights. It noted that Mr. Szabo should have asked the Commission to confirm the information from his employer indicating that he was not eligible for employment insurance because of his misconduct. According to the General Division, there were also no exceptional circumstances explaining why the claim for benefits was filed late.

[5] The Appeal Division first described its role with respect to decisions rendered by the General Division. Although the Appeal Division briefly summarized Mr. Szabo's key arguments in the overview, it is evident that the Appeal Division also took into account more specific facts that were raised, such as the union representative's silence and Mr. Szabo's difficult situation. The Appeal Division then indicated that the main issue was whether the General Division had disregarded the case law of the Federal Court of Appeal, thus erring in its interpretation of subsection 10(5) of the Act. In this regard, it described the applicable test and claimants' obligation under subsection 10(5).

[6] After reviewing the evidence submitted to the General Division, the Appeal Division held that the General Division did not err in its interpretation or in the application of the test in this case. The Appeal Division also noted that, in its view, the General Division had considered all of the circumstances that would justify the late filing. It found that the General Division did not err in deciding that there were no exceptional circumstances.

[7] Relying on the Supreme Court of Canada's judgment in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*), the applicant claims that the Appeal Division's reasons are too sparse to meet the standard of reasonableness *inter alia* because the Appeal Division did not deal with all of the issues that he had raised before it. Specifically, he refers to his argument that the General Division had laid down as a general principle that a claimant cannot rely on the opinion of a third party, particularly an employer's opinion, and that the claimant must contact the Commission in this regard (reasons of the General Division at paras 48-51).

[8] He also argues that the decision before us lacks internal logic, that the decision-maker misinterpreted and incorrectly applied this Court's case law (*inter alia*, *Albrecht*; *Hamilton v. Canada (Attorney General)* (F.C.A.), [1988] F.C.J. No. 269) and that the decision-maker's interpretation of subsection 10(5) of the Act was not thorough enough. In this regard, he notes that the Appeal Division should have referred to the purpose of the Act and taken into account that in order to fulfil that purpose, that provision had to be given a broad and liberal interpretation.

[9] The applicant also argues that the conclusions in paragraphs 18 and 23 of the Appeal Division decision are unreasonable, and that neither the General Division nor the Appeal Division gave sufficient weight to the fact that when the employer expressed its opinion, a union representative was in the room and did not say anything to correct it. According to the applicant, it was therefore unreasonable for the Appeal Division to stress that the applicant could not reasonably have relied on the employer's opinion because that opinion was based on his misconduct and, according to the union and the applicant, his dismissal was unjustified; there was no misconduct.

[10] Despite the high quality of the memorandum and the representations made at the hearing, I cannot agree with the applicant's position on these issues.

[11] In *Vavilov*, the Supreme Court pointed out that a reviewing court must not go on a "line-by-line treasure hunt for error" (*Vavilov* at para 102). In my view, that is what the applicant

is asking us to do. Also, the reviewing court must refrain from reweighing and reassessing the evidence (*Vavilov* at para 125).

[12] The administrative decision-maker's reasons must be read in consideration of the context, including the record, practices and the case law. The administrative decision-maker's reasons must not be assessed against a standard of perfection. The administrative-decision maker cannot be expected to refer to all of the arguments and details that a reviewing judge would have preferred. "Administrative justice" will not always look like "judicial justice" (*Vavilov* at paragraphs 91 to 98). Nor are administrative decision-makers required to engage in a formalistic statutory interpretation exercise in every case (*Vavilov* at paragraph 119). Such an analysis is not necessary when, as in this case, the statutory provision has already been interpreted in the case law before it and the administrative decision-maker adopts a well-established test.

[13] My reading of paragraphs 48 to 51 of the General Division decision in context and in light of the case law to which the General Division refers does not support the inference that the General Division or the Appeal Division committed an error in law in laying down as strict principles or general rules that a reasonable person must contact the Commission or prove that it was impossible for him or her to do so. At paragraph 49 of its reasons, the General Division dealt with a specific argument raised before it, that is, that the employer was a person in authority. I agree that these paragraphs could have been better written. However, I am not prepared to infer that the Appeal Division made a reviewable error in this regard, especially when we consider that it examined the case law and accurately described the applicable test in its decision (see paragraphs 14 and 15). The expression "duty of care that is both demanding and strict" was used

by this Court in *Canada (Attorney General) v. Kaler*, 2011 FCA 266 at paragraph 4, which specifically refers to similar language used by this Court in *Albrecht* at paragraph 13 (or at page 718).

[14] After a "careful" reading of the reasons in context and in light of the pronouncements of the Supreme Court in *Vavilov*, I find that the reasoning of the Appeal Division is intelligible and rational and is sufficient to justify its findings. I may not have come to the same conclusion as the General Division or the Appeal Division, but that fact does not warrant intervention by this Court.

[15] Consequently, I would dismiss the application for judicial review.

"Johanne Gauthier"
J.A.

"I agree.
Donald J. Rennie J.A."

"I agree.
George R. Locke J.A."

Certified true translation
Janine Anderson, Translator

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

APPEAL FROM A DECISION BY PIERRE LAFONTAINE, APPEAL DIVISION OF THE SOCIAL SECURITY TRIBUNAL, DATED NOVEMBER 29, 2018, FILE NO. AD-18-491

DOCKET:	A-418-18
STYLE OF CAUSE:	WAYNE SZABO v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	JANUARY 23, 2020
REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	RENNIE J.A. LOCKE J.A.
DATED:	JANUARY 31, 2020

APPEARANCES:

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