Federal Court of Appeal Cour d'appel fédérale

Date: 20200605

Docket: A-299-19

Citation: 2020 FCA 102

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

BETWEEN:

DEREK GREEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the Registry on June 1, 2020.

Judgment delivered at Ottawa, Ontario on June 5, 2020.

REASONS FOR JUDGMENT BY: DAWSON J.A.
CONCURRED IN BY: RENNIE J.A.
LOCKE J.A.

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] Subject to certain exceptions not relevant to this case, subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 disqualifies a claimant from receiving employment insurance benefits if the claimant voluntarily left their employment without just cause.

[2] The applicant left his job and applied for benefits. The Canada Employment Insurance Commission denied his application for benefits on the ground that the applicant had voluntarily

left his employment without just cause. The applicant unsuccessfully appealed this decision to the General Division of the Social Security Tribunal of Canada and to the Appeal Division of the Tribunal.

[3] The Appeal Division dismissed the applicant's appeal (2019 SST 694). This is an application for judicial review of the decision of the Appeal Division.

[4] The Appeal Division began its analysis by noting that the applicant left his job voluntarily. It followed that the applicant was required to establish that he had just cause to leave that employment. This required the applicant to establish that he had no reasonable alternative but to leave his job (*Canada (Attorney General) v. Peppard*, 2017 FCA 110, [2017] F.C.J. No. 536, at paragraph 7).

[5] The Appeal Division then reviewed the circumstances the applicant said caused him to leave his employment. It found that those circumstances, whether considered individually or cumulatively, did not amount to just cause because the applicant failed to take reasonable steps to try to have his concerns addressed. It followed that the applicant had reasonable alternatives to leaving his job.

[6] On this application the applicant's principal submission is that the Appeal Division erred in fact by concluding that the applicant "could have taken other reasonable steps to try to have his concerns addressed."

[7] I see no reviewable error on the part of the Appeal Division. On the hearing of this application the applicant confirmed that the Appeal Division correctly articulated, at paragraph 26 of its reasons, the factors that led him to quit his job. I am of the view that the Appeal Division committed no reviewable error when it found that these factors, whether considered individually or cumulatively, did not amount to just cause because the applicant had reasonable alternatives to leaving his job which included:

i. discussing his concerns with his employer more thoroughly and exploring different types of accommodation (as opposed to asking on arrival at the worksite to not work on the night shift);

ii. requesting medical leave, seeking consultation with a doctor or obtaining a doctor's note regarding his medical issues; and

iii. continuing to work until he found other employment.

[8] Further, as submitted by the Attorney General, it is telling that the applicant advised the Canada Employment Insurance Commission that he could have handled the conditions and continued working if his employer had not refused to pay him the additional three dollars per hour which he sought and which he felt was fair.

[9] The question of whether the applicant had established just cause for voluntarily leaving his employment is a factually-suffused question well within the expertise of the Appeal Division. This Court is obliged to review the Appeal Division's decision on the deferential standard of reasonableness.

[10] The Appeal Division's decision was based on an internally coherent and rational chain of analysis that was justified in relation to the facts and law that constrained it. In this circumstance, review on the reasonableness standard requires that the Court defer to the decision of the Appeal Division (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] S.C.J. No. 65, at paragraph 85).

[11] It follows that despite Mr. Green's able submissions I would dismiss the application for judicial review. As costs were not sought I would not award costs.

"Eleanor R. Dawson"
J.A.

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

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

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-299-19
STYLE OF CAUSE:	DEREK GREEN v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HEARD BY ONLINE VIDEO CONFERENCE
DATE OF HEARING:	JUNE 1, 2020
REASONS FOR JUDGMENT BY:	DAWSON J.A.
CONCURRED IN BY:	RENNIE J.A. LOCKE J.A.
DATED:	JUNE 5, 2020

APPEARANCES:

Derek Green	FOR THE APPLICANT ON HIS OWN BEHALF
Keelan Sinnott	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin Edmonton, Alberta	FOR THE RESPONDENT