Federal Court  Cour fédérale

Date: 20200127

Docket: T-1092-19

Citation: 2020 FC 140

Vancouver, British Columbia, January 27, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

SANDRA MORA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Sandra Mora seeks to overturn the decision of the Social Security Tribunal – Appeal Division, which found that her complaint about the denial of her employment insurance benefits could not proceed because she filed it too late.

[2] The Appeal Division found that she had not demonstrated a good reason for her delay in applying for benefits, and so it decided not to extend the time limit for filing the application. In addition, it concluded that she had not shown that her appeal had a reasonable chance of success

because her claims were inconsistent with the evidence on the record, and so it denied her request for leave to appeal the decision of the Social Security Division – General Division.

[3] The Applicant claims that the Appeal Division failed to take into account her explanation for the delay in seeking Employment Insurance (EI) sickness benefits, and the overall context of the different benefit regimes available under different legislation. She says that the decision rests on a technical interpretation rather than an understanding of why she acted as she did. This makes the decision unreasonable.

[4] For the reasons set out below, I am dismissing this application. Although I am sympathetic to the situation of the Applicant, I am not persuaded that the Appeal Division's decision is unreasonable.

I. Context

[5] The basic facts are not seriously disputed between the parties. The Applicant was injured at work, and she received Workers Compensation Benefits from Work Safe British Columbia from September 12, 2016 to January 17, 2017. She began a gradual return to work in March 2017 and resumed full-time employment in May 2018. She learned that Work Safe BC would not compensate her for the period from January until March 2017, and she launched an appeal of that decision. Her appeal was denied on June 29, 2018.

[6] In August 2018, the Applicant applied for EI sickness benefits. The Canada Employment Insurance Commission determined that she did not have any hours of insurable employment

between August 27, 2017, and August 25, 2018, and therefore it denied her claim. She applied for reconsideration, but her claim was again denied. The Applicant appealed to the Social Security Division – General Division but it dismissed her appeal, because despite finding she had insurable employment, it found that she did not have good cause for the delay in applying for benefits.

[7] The Applicant then filed an appeal to the Social Security Tribunal – Appeal Division. Her appeal was dismissed. The Appeal Division identified three issues: (i) was the Applicant's application for leave to appeal from the decision of the General Division filed outside of the time limit? (ii) if so, should the time for filing the application be extended? (iii) if the time limit is extended, should leave to appeal be granted, and in particular, does the appeal have a reasonable chance of success?

[8] On the facts of the case, the Appeal Division concluded that the application for leave to appeal was filed late. It then concluded that the time limit should not be extended, and leave should not be granted, because the Applicant did not have an arguable case, or a reasonable chance of success. The Appeal Division's reasons lie at the heart of this application, and so they are discussed in more detail below.

II. Issues and Standard of Review

[9] The only issue that arises in this case is whether the decision of the Appeal Division is reasonable. The Applicant does not claim a breach of procedural fairness, or an error of law.

[10] The standard of review that applies is reasonableness. This was determined in previous cases (*Andrews v Canada (Attorney General)*, 2018 FC 606 at para 17), and is consistent with the decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], in particular in light of section 68 of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*Act*]. This confirms that there is no appeal from a decision of the Appeal Division, and so the only remedy available is an application for judicial review.

[11] There are many dimensions to review under the reasonableness standard as articulated in *Vavilov* and applied *in Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67. The most important guideposts for this case are that the review must begin with the reasons for decision, and assess whether the decision-maker (here the Appeal Division) applied the right law to the important facts of the case, and whether its chain of reasoning is internally coherent and rational. Put another way, the relevant law and the key facts of the case establish the space within which the decision must be made (*Vavilov*, at paras 85, 99; *Canada Post*, at para 31). If a review indicates that the decision-maker went outside of that box, by applying the wrong law, or not taking into account the most important relevant facts, then the decision may be found to be unreasonable.

[12] In addition, the process of analysis must show that the decision is justified. This includes whether a reviewing court can follow the internal logic of the decision and understand how the decision-maker came to its conclusion (*Vavilov*, at paras 81, 85). One way of describing this was set out by Justice Rennie in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraph 11, when he stated that a reasonable decision is one where a reviewing court can

"connect the dots on the page [so that] the lines, and the direction they are headed, may be readily drawn." If there are no dots, or their direction is not clear, then the decision may well be found to be unreasonable.

[13] With this background, I will turn to a consideration of the Applicant's arguments against the Appeal Division's decision.

III. Analysis

[14] The Applicant's main argument is that the Appeal Division's decision did not take into account her explanation for the delay in submitting her claim for EI, because it was too focused on the specific details and chronology of her case. She says that she thought that she should pursue compensation for her workplace injury from Work Safe BC, and she did that before she began to pursue EI benefits. She did this because she thought it was the right thing to do, and she did not want to be "double dipping" by claiming both benefits at once. This was a reasonable, ethical approach, and the Appeal Division should have accepted it.

[15] In addition, at the hearing the Applicant submitted that she did not receive the General Division's decision when it was first sent to her. She called to inquire about it, and was provided with a copy of the decision. She then filed her appeal documents in the next few days. The Applicant was not able to point to any specific evidence that had been before the Appeal Division about this, and the Appeal Division cannot be criticized for not taking into account information that it did not have at the time. In the absence of evidence about this, I will not address it further.

[16] Turning back to the main argument, the Applicant claims that the Appeal Division's decision did not reflect her main explanation for the delay. There are two periods of delay that are relevant here: (i) the period between when the General Division's decision was initially sent to the Applicant (January 21, 2019) and when she filed her application for leave to appeal to the Appeal Division (May 23, 2019); and (ii) the time from when the Applicant stopped working due to her workplace accident (September 2016) until she submitted her claim for EI (August 2018). The Appeal Division dealt with these in turn.

[17] On the delay in filing the appeal documents, the Appeal Division considered whether to exercise its discretion to extend the time limits, and applied the factors set out in *Canada (Attorney General) v Larkman*, 2012 FCA 204. The main consideration for the Appeal Division was whether the Applicant had shown that she had an arguable case or whether there was some potential merit to the application. As the Appeal Division noted, this consideration is akin to the test for whether to grant leave to appeal set out in subsection 58(2) of the *Act*, which provides that leave is to be denied, "if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[18] The ground of appeal that the Applicant had relied on was that the General Division had made "an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it" (*Act*, para 58(1)(c)). The General Division dismissed her appeal because it found that she did not prove that she had good cause for the delay in applying for EI sickness benefits. The Applicant argued that the decision overlooked important evidence. First, she was a fully qualified human resource professional with many years of experience working

for large corporations, and she had advised many employees of their rights under the EI system – so she was aware of her rights. Second, she accessed the Service Canada website to obtain her own record of employment and to get information about her EI benefits. Third, she had contacted Service Canada agents in July 2018, and they advised her that all of the forms she needed to apply for EI were available online. Therefore, she had taken reasonably prompt steps to understand her rights and to make her claim.

[19] The Appeal Division found that the General Division had taken some of this information into account in its decision, including that the Applicant had many years of experience as a human resources professional and that she had accessed forms online. There was no basis to find that this evidence had been ignored.

[20] The Appeal Division also found that the Applicant had not submitted evidence about her contacts with Service Canada in July 2018, and so the General Division did not ignore these facts – there was simply no evidence to support this.

[21] In addition, the Appeal Division found that the Applicant had not explained the gap between her last date of work in September 2016 and her efforts to obtain EI sickness benefits starting in July 2018. She had failed to show that she had a good cause for the entire period of delay.

[22] The Applicant argues that the Appeal Division's decision is unreasonable because it failed to take into account her overall explanation for what she did. She was trying to follow the

proper approach, and she thought that she should first seek compensation from Work Safe BC before she applied for EI benefits. Rather than recognizing her efforts to avoid double dipping, the Appeal Division appears to penalize her for not acting sooner. The Applicant argues this is unreasonable.

[23] I am unable to find that the Appeal Division's decision is unreasonable. Judicial review on the standard of reasonableness involves assessing whether the decision-maker applied the right law to the essential facts, and whether its decision reflects a chain of reasoning that is logical and coherent. Was the decision within the right legal and factual box, and did it explain, in a rational and coherent way, how it got to the result? Applying this to the case before me, I find that the decision is reasonable.

[24] The Appeal Division applied the correct legal tests, both for the application to extend the time limits and the question whether to grant leave to appeal. It took into account the facts that were before it, and noted that some evidence on key points was simply not put before the General Division. The Appeal Division's analysis is clear and coherent.

[25] While I understand why the Applicant feels that the decision does not reflect her overall approach to seeking benefits first from Work Safe BC before applying for EI benefits, it is important to remember that the time limits set out in the EI system serve important policy goals and these cannot be ignored. As the Federal Court of Appeal explained in *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at paragraph 6: "sound and equitable administration of the system requires that the Commission engage in a quick verification that is as contemporaneous

as possible with the events and circumstances giving rise to the claim for benefits…". While the Applicant has explained why she thought it was the right thing to do to wait to claim EI sickness benefits, in doing so she has failed to follow the rules established by the law.

[26] The Applicant's arguments do not demonstrate that the Appeal Division's decision is unreasonable.

IV. Conclusion

[27] For all of these reasons, I am dismissing the application for judicial review.

[28] The Respondent did not seek its costs, and so no costs are awarded.

[29] I would like to express my appreciation to the Applicant, and to counsel for the Respondent, for their helpful submissions, and their professional and courteous approach to this matter.

[30] As agreed at the hearing, the style of cause is hereby amended, with immediate effect, to delete the Minister of Justice as a Respondent.

JUDGMENT in T-1092-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

3. The style of cause is amended, with immediate effect, to delete the Minister of Justice as a Respondent.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1092-19
STYLE OF CAUSE:	SANDRA MORA v ATTORNEY GENERAL OF CANADA
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APPEARANCES:

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