

**CORAM: DENAULT, J.A.
 LINDEN, J.A.
 ROBERTSON, J.A.**

Between:

BORIS MALITSKY

Applicant

- and -

ATTORNEY GENERAL
OF CANADA

Respondent

Heard at Vancouver, BC on September 3, 1997

Reasons delivered from the Bench at Vancouver, BC
on September 3, 1997

REASONS FOR JUDGMENT: LINDEN, J.A.

**CORAM: THE HONOURABLE MR. JUSTICE DENAULT
THE HONOURABLE MR. JUSTICE LINDEN
THE HONOURABLE MR. JUSTICE ROBERTSON**

Between:

BORIS MALITSKY

Applicant

- and -

**ATTORNEY GENERAL
OF CANADA**

Respondent

REASONS FOR JUDGMENT

(Delivered from the Bench at
Vancouver, B. C. on Wednesday, September 3, 1997)

LINDEN, J.A.

In our view, the Umpire committed no reviewable error of fact or law. He properly applied the legal test contained in *Albrecht* (1988), 60 N.R. 349 (F.C.A.) and implicitly *Roberts*, [1985] 1 F.C. 710 (F.C.A.). In doing so, he affirmed the Board's conclusion that the applicant failed to do that which a reasonable person in the particular circumstances of this case would have done so as to amount to good cause for the delay in filing the initial claim. We cannot interfere with this essentially factual finding. Having failed to satisfy the burden under section 9, there is no right to ante-date the claim for benefits. The application must, therefore, be dismissed.

(Sgd.) "A.M. Linden"

J.A.

September 3, 1997
Vancouver, British Columbia

NAMES OF COUNSEL AND SOLICITORS OF RECORD

STYLE OF CAUSE: BORIS MALITSKY

- 4 -

- and -

ATTORNEY GENERAL OF CANADA

COURT NO.: A-205-96

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: September 3, 1997

REASONS FOR JUDGMENT OF THE COURT BY: LINDEN, J.A.

**CONCURRED IN BY: DENAULT, J.A.
ROBERTSON, J.A.**

DATED: September 3, 1997

APPEARANCES:

Mr. Boris Malitsky for Applicant

Ms. Brenda Carbonell for Respondent

SOLICITORS OF RECORD:

**George Thomson for Respondent
Deputy Attorney General of Canada**