

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20110323

Docket: A-283-10

Citation: 2011 FCA 116

**CORAM: BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

ROBERT HOWARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Calgary, Alberta, on March 23, 2011.

Judgment delivered from the Bench at Calgary, Alberta, on March 23, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

BLAIS C.J.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on March 23, 2011)

BLAIS C.J.

[1] This is an application for judicial review in relation to a decision by Umpire Guy Goulard (“the Umpire”), dated June 8, 2010 (CUB 74682), which allowed the Commission’s appeal from the decision of Board of Referees’ (“the Board”) that, pursuant to subsection 10(4) of the *Employment Insurance Act*, S.C. 1996, c. 23 (“the Act”), the applicant had established good cause for a sixteen-month delay in applying for employment insurance benefits.

[2] The applicant's employment was terminated on February 5, 2008. He was provided with a severance package equal to 12 months of pay and a further seven weeks of pay for bonus.

[3] The applicant filed an application for benefits on June 26, 2009, but was informed that he was ineligible as a result of having failed to accumulate any hours of insurable employment between June 22, 2008 and June 20, 2009.

[4] The applicant contacted the Commission on September 1, 2009, and requested that his claim for benefits be antedated to February 5, 2008. The reason given by the applicant for his delay in applying for benefits was that he had been looking for employment while living on his severance package and his savings. When asked why he had not applied for benefits when his severance payments ran out in February 2009, the applicant indicated that he had not wanted to go to the "government with his hand out" and did not want to be thought of as a "welfare bum".

[5] By letter dated September 29, 2009, the Commission informed the applicant that he had failed to show good cause for his delayed application for benefits and, consequently, that his request for an antedate of his claim had been denied.

[6] The applicant appealed the Commission's decision to the Board, which considered his submission that, following the termination of his employment, he had cared for his wife and son who had been injured in motor-vehicle accidents and had been involved in litigation over his mother's estate. The Board allowed the appeal stating, "Based on the claimant's view of social

justice and fairness regarding the timing of an application and the mitigating ‘exceptional circumstances’ his explanations have provided good cause for his delay.”

[7] The Umpire found that the Board erred in law and allowed the Commission’s appeal. Relying on several decisions of this Court, such as *Shebib v. Canada (A.G.)*, 2003 FCA 88, the Umpire ruled that a delay in applying based on the expectation of finding employment or a good faith reliance on one’s own resources does not constitute “good cause” for purposes of subsection 10(4) of the Act.

[8] On this, we agree with the Umpire. Further, we find no reviewable error in the Umpire’s application of the jurisprudence of this Court to the facts of this case. While the Board took into account the unfortunate “extenuating circumstances” experienced by the applicant, there is no evidence in the record suggesting that these circumstances explained the entire period of delay: Canada v. Ouimet, 2010 FCA 83.

[9] Accordingly, Despite the able submission of Counsel for Mr. Howard we shall dismiss the application for judicial review

"Pierre Blais"
Chief Justice

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-283-10

STYLE OF CAUSE: ROBERT HOWARD v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: March 23, 2011

**REASONS FOR JUDGMENT
OF THE COURT BY:** BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.

DELIVERED FROM THE BENCH BY: BLAIS C.J.

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