

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120110**

**Docket: A-221-11**

**Citation: 2012 FCA 6**

**CORAM: EVANS J.A.  
SHARLOW J.A.  
STRATAS J.A.**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**KENNETH WEGG**

**Respondent**

Heard at Toronto, Ontario, on January 10, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on January 10, 2012.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

Federal Court  
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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on January 10, 2012)**

**SHARLOW J.A.**

[1] The Crown has applied for judicial review of a decision of an Umpire dated April 15, 2011 (CUB 76732) under the *Employment Insurance Act*, S.C. 1996, c. 23. The respondent Kenneth Wegg did not file a notice of appearance.

[2] Mr. Wegg had applied for and received benefits under the *Employment Insurance Act* in respect of a claim established March 16, 2008. The Employment Insurance Commission

subsequently determined that Mr. Wegg understated his earnings during the benefit period. That determination resulted in a reallocation of earnings and a determination that Mr. Wegg had been overpaid benefits in the amount of \$9,379. In a communication dated May 26, 2010, the Commission notified Mr. Wegg of the following determinations:

1. an earnings adjustment and resulting overpayment of \$9,379,
2. the imposition of a penalty in the amount of \$4,690 pursuant to section 38 of the *Employment Insurance Act* on the basis that Mr. Wegg had knowingly made false representations as to his income during the benefit period, and
3. the issuance of a notice of “very serious violation” as defined in subparagraph 7.1(5)(a)(iii) of the *Employment Insurance Act*.

[3] Mr. Wegg appealed to the Board of Referees on all three of these issues. In a decision dated October 26, 2010, the Board dismissed the appeal in relation to the reallocation of earnings but allowed the appeal in relation to the penalty and the notice of violation.

[4] The Commission appealed to the Umpire on the issues of the penalty and the notice of violation. The basis of the appeal was that the Board erred in law when it reversed the Commission’s decisions on the penalty and the notice of violation without making a finding of fact that Mr. Wegg did not knowingly make false representations.

[5] At the hearing before the Umpire, counsel for the Commission submitted that the Umpire should determine the issues raised by the Commission in relation to the penalty and in relation to the notice of violation. The Umpire allowed the Commission’s appeal in relation to the penalty and

recommended that the Commission consider reducing the penalty in whole or in part. The Umpire granted no further relief because he believed that all other issues had been dealt with.

[6] The Crown has applied for judicial review of the Umpire's decision because the Umpire's reasons do not mention the written submission of counsel for the Commission that the Commission had already reduced the penalty to \$2,814, and because the Umpire's decision does not deal with the notice of violation. The relief sought in the application is a judgment setting aside the Umpire's decision and referring the matter for redetermination by the Chief Umpire or an Umpire designated by him.

[7] The Umpire's failure to mention the penalty reduction does not prejudice the Commission and cannot, by itself, justify a new hearing.

[8] However, a rehearing is required to deal with the Umpire's failure to consider the issues raised by the Attorney General in relation to the notice of violation. Therefore, the application for judicial review will be allowed and this matter will be referred back to the Chief Umpire or an Umpire designated by him for determination of that issue.

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-221-11

**(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE HONOURABLE JUSTICE R.J. MARIN DATED APRIL 15, 2011, DOCKET NO. CUB 76732).**

**STYLE OF CAUSE:** ATTORNEY GENERAL OF CANADA v KENNETH WEGG

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 10, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** (EVANS, STRATAS & SHARLOW JJ.A.)

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

**APPEARANCES:**

Ayesha Laldin FOR THE APPLICANT

No Appearance FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada FOR THE APPLICANT

Self-Represented FOR THE RESPONDENT