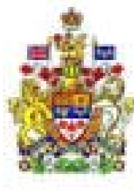
Federal Court of Appeal



Cour d'appel fédérale

Date: 20120703

Docket: A-154-11

Citation: 2012 FCA 202

CORAM: NOËL J.A.
EVANS J.A.
SHARLOW J.A.

BETWEEN:

ROB MAUCHEL

Appellant

and

ATTORNEY GENERAL OF CANADA

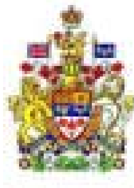
Respondent

Heard at Toronto, Ontario, on June 27, 2012.

Judgment delivered at Ottawa, Ontario on July 3, 2012.

REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: NOËL J.A.
SHARLOW J.A.

Federal Court of Appeal  Cour d'appel fédérale

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REASONS FOR JUDGMENT

EVANS J.A.

[1] Rob Mauchel applied for employment insurance (EI) benefits on September 14, 2009 and requested that his application be backdated to October 5, 2007, when he left his employment in Ottawa to move with his wife to Toronto where she had accepted a job.

[2] Mr Mauchel stated that he only realized in September 2009, when his wife applied for EI benefits, that moving to a different city with a spouse may constitute just cause for voluntarily

quitting employment, and that he could be eligible for benefits. He learned this from an agent of the Canada Employment Insurance Commission (Commission) who also suggested that he apply to have his claim backdated.

[3] The Commission rejected Mr Mauchel's application to backdate his claim, because he had not shown good cause within the meaning of subsection 10(4) of the *Employment Insurance Act,* S.C. 1996, c. 23 (Act), for applying for benefits two years late. He was not eligible for EI benefits as of the date when he applied, September 14, 2009, because he had no hours of insurable earnings in the previous twelve months.

[4] Mr Mauchel appealed the Commission's decision to a Board of Referees (Board). The only issue in dispute before the Board was the Commission's refusal to backdate the claim.

[5] Mr Mauchel testified that because of his previous experience as an EI claimant and an information technology worker accustomed to web-based research, he accepted that the information on Service Canada's website about EI eligibility was true and as authoritative as if given by an agent of the Commission. He stated that he found the information on the website "clear and unambiguous". Since it emphasized that EI was for those who lost their jobs through no fault of their own, he concluded that a person in his situation was ineligible for benefits. However, if he had searched the website more thoroughly he would have seen that it also stated that those who left their employment because they needed to move with their spouse to a different place of residence might be eligible for benefits.

[6] The Board held that, “because of his information technology background and his previous experience” as an EI claimant, it was reasonable for Mr Mauchel to have inferred from what he had read on the website that he was not eligible. He thus had no reason to verify his position with the Commission until September 2009 when he learned that he might be eligible for benefits. Consequently, it said, Mr Mauchel had done what a reasonable person in his circumstances would have done to inform himself of his rights and obligations.

[7] On this basis, the Board granted the appeal, holding that Mr Mauchel had shown good cause throughout the whole period of the delay in filing his application for benefits. The Commission appealed the Board’s decision to an Umpire, who allowed the appeal (CUB 76454).

[8] The Umpire held that, since Mr Mauchel had found the website “too complex or incomplete”, a reasonable person would have made further inquiries of the Commission about his eligibility for benefits. The Umpire stated that this was not a case where an employee of the Commission had provided incorrect information, or where illness had prevented a claimant from seeking information. He set aside the Board’s decision as being erroneous in fact and law.

[9] Mr Mauchel has applied to this Court for judicial review of the Umpire’s decision.

[10] I agree that the Umpire erred by finding that the Board agreed with Mr Mauchel that the Service Canada website was “unduly complex and did not properly give the information he required to file his application.” The Board made no such finding, but appears to have accepted Mr

Mauchel's evidence that he found the information on the website "clear and unambiguous", and that he did not contact the Commission because the information was not "confusing or misleading". Nonetheless, I am not persuaded that the Umpire's error was material because, despite this error, he was bound to conclude on the facts found by the Board that its decision was unreasonable.

[11] Mr Mauchel acknowledged that the website stated that a person who had voluntarily quit employment to move with a spouse to a different place of residence might be eligible for EI benefits. However, he argued that a reasonable person could not have been expected to locate this example of "just cause" because the principal message initially conveyed to the reader of the website was that only those who lose employment through no fault of their own are eligible, and he did not regard voluntarily leaving his job as "losing" his employment.

[12] Moreover, he said, even had he read that just cause for quitting employment can include moving to be with a spouse, he would not have thought this applied to him. With the exception of pregnancy, all the examples of just cause are "negative", and he and his wife had made a joint "positive" decision to move if she got a job in Toronto. Accordingly, he said, he did not "need" to move in the sense implied by the website.

[13] I do not agree. A reasonable person who relies on the website for information must do more thorough research than Mr Mauchel apparently undertook. A reasonable person would not have been so misled by its initial general statements about eligibility as to be deterred from looking for more specific information relevant to his or her situation. The statements early in the website that EI

is for those who lose employment through no fault of their own are general enough to include those who are longer employed because they voluntarily quit their job with just cause.

[14] In my view, the website contained enough information to have alerted a reasonable person in Mr Mauchel's position to wonder whether he or she might be eligible for benefits and to contact the Commission to find out or to make an application for benefits. The question is not whether a particular claimant found the information clear and unambiguous, and decided that further search of the website was pointless, but whether a reasonable person would have so regarded it. It is not alleged that the website contained erroneous material.

[15] Since the website does not purport to deal with the specifics of every person's particular situation, claimants cannot reasonably treat information on it as if it were personally provided to them by an agent in response to an inquiry about their eligibility on given facts. That it can now take several days to speak with a Commission agent by telephone does not justify Mr Mauchel's delay.

[16] For these reasons, I would dismiss the application for judicial review.

"John M. Evans"
J.A.

"I agree
Marc Noël J.A."

"I agree
K. Sharlow J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-154-11

(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE UMPIRE, THE HONOURABLE R.J. MARIN, DATED FEBRUARY 14, 2011, DOCKET NO. CUB76454)

STYLE OF CAUSE:	ROB MAUCHEL v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 27, 2012
REASONS FOR JUDGMENT BY:	EVANS J.A.
CONCURRED IN BY:	Noël and Sharlow JJ.A.
DATED:	July 3, 2012

APPEARANCES:

Rob Mauchel	APPLICANT ON HIS OWN BEHALF
Susan Jane Bennett	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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