

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130220

Docket: A-334-12

Citation: 2013 FCA 48

**CORAM: NOËL J.A.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

MÉLISSA PAQUET

Respondent

Heard at Québec, Quebec, on February 20, 2013.

Judgment delivered from the bench at Québec, Quebec, on February 20, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Québec, Quebec, on February 20, 2013)

TRUDEL J.A.

[1] This is an application for judicial review of a decision (CUB 79203) rendered by Umpire Blanchard dismissing the appeal of the Employment Insurance Commission (the Commission) against a decision of the Board of Referees (Docket 426-373).

[2] This application for judicial review requires consideration of the interrelation between paragraphs 18(a) and 29(c) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act).

[3] Section 18 of the Act sets out the general rule concerning disentitlement to employment insurance benefits. For the purposes of this application, it is sufficient to know that a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that he or she was capable of and available for work and unable to obtain suitable employment.

[4] As for section 29 of the Act, it is the interpretation tool for sections 30 to 33 of the Act, which deal with disqualification from receiving benefits in the case of loss of employment for misconduct or voluntary departure without just cause. Paragraph 29(c), on which the Umpire relied, sets out a non-exhaustive list of situations that could justify the voluntary abandonment of one's employment, including, in subparagraph 29(c)(v), the "obligation to care for a child or a member of the immediate family".

[5] In this case, the claimant voluntarily left her employment on October 18, 2011, in order to care for her young child. She admitted that she was not available to work as of that date and continued to be unavailable for a period of at least six months.

[6] This Court has already ruled on the general principles regarding availability and just cause in employment insurance law (*Canada (Attorney General) v. Maughan*, 2012 FCA 35; *Canada (Attorney General) v. Penney*, 2005 FCA 241 (*Penney*); *Canada (Attorney General) v. White*, [1996] F.C.J. No. 973; *Canada (Attorney General) v. Faltermeier*, [1995] F.C.J.

No. 1264). From the Court's pronouncements it emerges that a claimant who establishes just cause for voluntarily leaving employment within the meaning of paragraph 29(c) of the Act is not disentitled to benefits, but in order to receive them must still meet the obligation under section 18 of showing that "for [any] working day in a benefit period" he or she was "available for work".

[7] The Umpire therefore misdirected himself in law in accepting the conclusion of the Board of Referees that the claimant met the requirements of paragraph 18(a). As stated in *Penney*, "it was not open to the Umpire to waive the requirement of availability on the ground that the claimant had good cause for leaving her employment" (at paragraph 6).

[8] Accordingly, the application for judicial review will be allowed, the Umpire's decision set aside and the matter referred back to the Chief Umpire or to an Umpire designated by him for redetermination on the basis that the Board of Referees' decision must be set aside and the Commission's decision restored, since the claimant did not meet the requirements of section 18 of the Act and was therefore disqualified from receiving benefits as of October 19, 2011.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-334-12

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA v. MÉLISSA PAQUET

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TRUDEL J.A.
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