

*Federal Court of Appeal*



*Cour d'appel fédérale*

**Date: 20130222**

**Docket: A-68-12**

**Citation: 2013 FCA 51**

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

**BETWEEN:**

**CHRISTIAN SAVARD**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Québec, Quebec, on February 22, 2013.

Judgment delivered at Québec, Quebec, on February 22, 2013.

**REASONS FOR JUDGMENT BY:**

**TRUDEL J.A.**

**CONCURRED IN BY:**

**NOËL J.A.  
MAINVILLE J.A.**

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BETWEEN:

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**REASONS FOR JUDGMENT**

**TRUDEL J.A.**

[1] Mr. Savard brought an application for judicial review of a decision of an Umpire who held that the Board of Referees, relying on paragraph 37(b) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act), and section 55 of the *Employment Insurance Regulations* SOR/96-332 (the Regulations), did not err in determining that the applicant was not entitled to receive employment insurance benefits while he was out of the country. I agree with the Umpire.

[2] I reject the applicant's argument that the Umpire erred in failing or refusing to rule on the constitutional validity of the above-mentioned provisions of the Act and Regulations at issue, which were challenged on the basis that they violate the applicant's rights under section 6 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 (the Charter). In the first place, it does not appear from the file that this issue was correctly raised at the levels below (see the Notice of Appeal to the Board of Referees, Applicant's Record, page 43; and the Notice of Appeal to the Umpire, *ibid.*, page 69). Nor did the applicant file a notice of constitutional question as required by section 57 of the *Federal Courts Act*, R.S.C. (1985), c. F-7.

[3] In any case, subsection 6(1) of the Charter, which states that "[e]very citizen of Canada has the right to enter, remain in and leave Canada", does not shield the applicant from an economic disadvantage associated with his choice to leave Canada for the purpose of taking a vacation or seeking employment (*Smith v. Canada (Attorney General)*, [2000] F.C.J. No. 174). The applicant was free to enter and leave Canada as he pleased: the mobility rights guaranteed to the applicant by subsection 6(1) of the Charter have not been infringed (*Smith v. Canada (Attorney General)* 2001 SCC 88; [2001] 3 S.C.R. 902).

[4] Finally, the applicant invites us to adopt here this Court's reasoning in *Canada (Attorney General) v. Walsh*, 2008 FCA 220 (*Walsh*), a judgment upholding an Umpire's decision granting benefits to the claimant during 14 days of absence from Canada. This 14-day period resulted from the combination of two exceptions provided for in the Regulations: 7 days'

absence to visit a seriously ill member of the family, and 7 additional days to attend the funeral (CUB 68174).

[5] Even were I tempted to adopt the *Walsh* approach in the present case, the evidence adduced does not enable me to accept the applicant's invitation. In this case, it would be necessary to combine the exceptions found at paragraphs 55(1)(f) (job search) and 55(1)(a) (medical treatment that is not readily or immediately available in Canada) of the Regulations. However, the Board of Referees found that there was [TRANSLATION] "no evidence of hospitalization demonstrating that [the applicant] was required to prolong his stay in Haiti beyond the 14-day period" for which he was recognized as being entitled to benefits while outside of the country conducting a job search (Board of Referees' decision, Applicant's Record, page 65).

[6] I am therefore of the view that there is no reason for this Court to intervene, as I cannot identify any error of law or any other error that warrants our intervention.

[7] I accordingly propose to dismiss the application for judicial review, without costs as the respondent is seeking none.

\_\_\_\_\_  
"Johanne Trudel"

J.A.

"I concur.

Marc Noël, J.A."

"I concur.

Robert M. Mainville J.A."

Certified true translation  
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-68-12

**STYLE OF CAUSE:** CHRISTIAN SAVARD and  
THE ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** Québec, Quebec

**DATE OF HEARING:** February 22, 2013

**REASONS FOR JUDGMENT BY:** TRUDEL J.A.

**CONCURRED IN BY:** NOËL J.A.  
MAINVILLE J.A.

**CONCURRING REASONS BY:**  
**DISSENTING REASONS BY:**

**DATED:** February 22, 2013

**APPEARANCES:**

Christian Savard	SELF-REPRESENTED
Liliane Bruneau	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT
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