

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130612

Docket: A-548-12

Citation: 2013 FCA 157

**CORAM: NOËL J.A.
DAWSON J.A.
NEAR J.A.**

BETWEEN:

ZHILA KAMGAR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on June 12, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on June 12, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 12, 2013)

DAWSON J.A.

[1] Under the *Employment Insurance Act*, S.C. 1996, c. 23, a claim for benefits may be made after the time prescribed for making the claim if a claimant meets the requirements set out in subsection 10(5) of the Act. To do so, a claimant must show that there was good cause for the delay in making the claim, and that the good cause existed throughout the entire period of delay. The jurisprudence of this Court is settled that to establish good cause for delay a claimant must

demonstrate that she did what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the Act. See, for example, *Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 710.

[2] Put another way, a reasonable person is expected to take reasonably prompt steps to determine her entitlement to benefits, and ignorance of the law and good faith have been held not to amount to good cause (*Canada (Attorney General) v. Carry*, 2005 FCA 367, 344 N.R. 142).

[3] The issue raised in this application for judicial review is whether an Umpire rendered an unreasonable decision when he found the applicant had not shown good cause for her 30-month delay in claiming regular employment insurance benefits? In the Umpire's view, the Board of Referees committed no error of fact or law when it found the applicant's good faith and ignorance of the Act's requirements did not amount to good cause (CUB 80062).

[4] In the materials filed on her appeal to the Umpire, the applicant stated that after she had exhausted her initial entitlement to sickness benefits under the Act, she "did not know that I could be eligible for the [Employment Insurance] regular benefit after my [Employment Insurance] illness benefit ended" and that the Employment Insurance "representative failed to advise me to apply for the [Employment Insurance] regular benefit" (respondent's record, page 56).

[5] In our view, the applicant's statement, quoted above, supported the Umpire's conclusion that the applicant had not established good cause for her delay in claiming benefits because the

delay was the result of her failure to promptly determine her entitlement to benefits and her consequent ignorance of her entitlement to regular benefits. As the Umpire noted in his reasons:

Here though the claimant had contacts with the Commission before January 2012, it was not for inquiring about regular benefits; had she inquired, she would have been told to apply, just like she was told in January 2012.

[6] The Umpire's decision has, therefore, not been shown to be unreasonable.

[7] It follows that, notwithstanding Mr. Jordaan's forceful submissions on behalf of the applicant, the application for judicial review will be dismissed. As the respondent did not seek costs, no costs will be ordered.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-548-12

(JUDICIAL REVIEW FROM AN ORDER OF THE DECISION OF THE OFFICE OF THE UMPIRE DATED OCTOBER 26, 2012, FILE: CUB 80062)

STYLE OF CAUSE: ZHILA KAMGAR V. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 12, 2013

**REASONS FOR JUDGMENT
OF THE COURT BY:** (NOËL, DAWSON & NEAR JJ.A.)

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

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