Federal Court of Appeal | Cour d'appel fédérale

Date: 20250305

Docket: A-36-24

Citation: 2025 FCA 55

CORAM: **WOODS J.A.**
ROUSSEL J.A.
HECKMAN J.A.

BETWEEN:

REBECCA ABDO

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the Registry on March 5, 2025.

Judgment delivered from the Bench at Ottawa, Ontario, on March 5, 2025.

REASONS FOR JUDGMENT OF THE COURT BY: HECKMAN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 5, 2025).

HECKMAN J.A.

[1] The Appellant appeals from a judgment of the Federal Court (*per* McVeigh J.) dismissing her application for judicial review of a decision of the Appeal Division of the Social Security Tribunal: *Abdo v. Canada (Attorney General)*, 2023 FC 1764, 2023 A.C.W.S. 6471.

[2] The Appeal Division denied the Appellant leave to appeal a decision of the General Division of the SST (*RA v. Canada Employment Insurance Commission*, 2022 SST 1702) that found that, in refusing to comply with her employer's mandatory COVID-19 vaccination policy (Policy), the Appellant lost her employment because of misconduct and was disqualified from receiving employment insurance benefits under subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 (Act): *RA v. Canada Employment Insurance Commission*, 2023 SST 310.

[3] Stepping into the shoes of the Federal Court and reviewing afresh the Appeal Division's decision, we are of the view that the Federal Court correctly selected the reasonableness standard of review and applied it properly: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, 360 D.L.R. (4th) 411 at paras. 45-47.

[4] We agree with the Federal Court that the Appeal Division's decision that the Appellant did not raise an arguable ground upon which its proposed appeal might succeed under section 58 of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34 is reasonable. Specifically, the Appeal Division reasonably found that the Appellant had not established an arguable case that the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner without regard to the material before it.

[5] The Appeal Division's conclusion that there was no arguable case that the General Division made reviewable errors of fact in deciding that the Appellant was dismissed for failing

to comply with the Policy and that she knew or should have known that she could be dismissed if she failed to become vaccinated after her request for a religious exemption was denied, is supported by the record. The Appeal Division also reasonably found that there was no arguable case that the General Division made an error of law in applying the objective test for misconduct set down in this Court's consistent jurisprudence. This test was recently outlined in *Zagol v. Canada (Attorney General)*, 2025 FCA 40, 2025 CarswellNat 491 at paras. 26-28 [*Zagol*]. Its decision is thus based on internally coherent reasoning and is justified in light of the relevant legal and factual constraints: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 99 [*Vavilov*].

[6] The Appellant submitted that both divisions of the SST acted unreasonably in failing to address her claim that a finding of misconduct under subsection 30(1) of the Act required that her conduct be voluntary and that her failure to become vaccinated in compliance with the Policy could not be voluntary because it was based on her religious beliefs which, she claims, are recognized as immutable by the Supreme Court of Canada.

[7] This argument must be dismissed for the reasons set out by this Court in *Zagol*, *supra*. As noted by both divisions of the SST, misconduct is established under subsection 30(1) of the Act where a claimant knew or should have known that their conduct could impair the performance of duties owed to their employer and that, as a result, dismissal was a real possibility. Summarizing this well-established test, this Court observed that for a claimant's conduct to be considered "voluntary" pursuant to subsection 30(1) of the Act, it is sufficient if their acts or omissions are

conscious and that they are aware of the effects and the consequences which can or will result: *Zagol* at para. 28.

[8] The General Division found that this test was satisfied on the evidence before it. The Appeal Division found no reviewable error in this determination and concluded that the Appellant's appeal had no reasonable chance of success. The Appellant has not persuaded us that the Appeal Division's decision suffers from any sufficiently central or significant shortcoming or flaw that would make it unreasonable: *Vavilov* at para. 100.

[9] Accordingly, we will dismiss the appeal with costs to the respondent.

"Gerald Heckman"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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DELIVERED FROM THE BENCH BY:	HECKMAN J.A.

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