

Date: 20070612

Docket: A-455-06

Citation: 2007 FCA 230

**CORAM: RICHARD C.J.
LÉTOURNEAU J.A.
NADON J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

KARINE LAVOIE

Respondent

Hearing held at Québec, Quebec, on June 12, 2007.

Judgment delivered at Québec, Quebec, on June 12, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Québec, Quebec, on June 12, 2007)

LÉTOURNEAU J.A.

[1] This is an application for judicial review of a decision by the Umpire in CUB 66612.

[2] The Umpire upheld the decision of the Board of Referees, which had allowed the claimant’s appeal of a decision of the Employment Insurance Commission (Commission).

[3] In assessing the respondent’s application for benefits, the Commission found that she had not accumulated a sufficient number of insurable employment hours in her qualifying period to be entitled to benefits. Based on the five records of employment that she provided, the Commission found that the respondent had only 372 hours instead of the requisite 455 hours. This was the decision that was before the Board of Referees.

[4] At the end of the appeal, the Board of Referees determined that the respondent was entitled, under paragraph 8(2)(a) of the *Employment Insurance Act*, S.C. 1996, c. 23 (Act), to an extension of her [TRANSLATION] “qualifying period in the event of a pregnancy”: applicant’s record, page 61.

[5] Paragraph 8(2)(a) provides:

<i>Qualifying period</i>	<i>Période de référence</i>
8.	8.
...	[...]
<i>Extension of qualifying period</i>	<i>Prolongation de la période de référence</i>
(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable	(2) Lorsqu’une personne prouve, de la manière que la Commission peut ordonner, qu’au cours d’une période de référence visée à l’alinéa (1)a) elle n’a pas exercé, pendant une ou plusieurs semaines, un emploi assurable pour l’une ou l’autre des raisons ci-après, cette période de

employment because the person was	référence est prolongée d'un nombre équivalent de semaines:
(a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;	a) elle était incapable de travailler par suite d'une maladie, d'une blessure, d'une mise en quarantaine ou d'une grossesse prévue par règlement;
...	[...]

[6] Before the Umpire, the Commission argued in vain that the Board of Referees exceeded its jurisdiction in granting an extension of the respondent's qualifying period.

[7] The applicant repeated this argument before us. He reiterated that the Board of Referees and, for that matter, the Umpire both exceeded their respective jurisdictions by determining an extension of the qualifying period while the Commission's decision that was under appeal dealt only with the issue of compliance with the minimal qualification requirements for benefits set out in section 7 of the Act.

[8] We concur with this submission by the applicant. The Commission did not make a decision about extending the qualifying period, and the Board of Referees cannot assume that power and that function of the Commission. The Board of Referees [TRANSLATION] "made an error in deciding as it did because it answered a question that was not before it on the appeal": see *Attorney General of Canada v. Dyson*, A-16-94, November 3, 1994 (F.C.A.), 176 N.R. 57; *Canada (Attorney General) v. Read*, [1994] F.C.J. No. 359 (F.C.A.).

[9] The Umpire repeated this error, on the one hand by upholding the Board of Referees' decision and, on the other hand, by determining that the possibility of an extension of the qualifying period was implicitly part of the issue that was before the Board of Referees on appeal.

[10] It is clear from subsection 8(2) of the Act that a claimant must prove "in such manner as the Commission may direct" that he or she qualifies for an extension of the qualifying period and that the power to extend belongs to the Commission.

[11] The Board of Referees was not completely powerless when the issue of extending the qualifying period was raised before it. Under section 82 of the *Employment Insurance Regulations* SOR/96-332 and the decision in *Canada (Attorney General) v. Findenigg*, [1983] F.C.J. No. 87 (F.C.A.), the chairperson of the Board of Referees could have referred the question to the Commission for investigation and report. Section 82 reads as follows:

INVESTIGATION AND REPORT

82. The chairperson of a board of referees may, at any time prior to the decision of the board, refer any question arising in relation to a claim for benefits to the Commission for investigation and report.

ENQUÊTE ET RAPPORT

82. Le président d'un conseil arbitral peut, tant que le conseil n'a pas rendu sa décision, renvoyer toute question afférente à une demande de prestations à la Commission pour qu'elle fasse enquête à l'égard de cette question et produise un rapport.

[12] For these reasons, the application for judicial review will be allowed without costs, since the respondent did not contest it. The decision of the Umpire will be set aside and the matter will be remitted to the Chief Umpire or his or her designate for reconsideration based on the fact that,

according to the evidence in the record, the respondent did not meet the eligibility criteria for benefits. This is without prejudice to the respondent's right to apply to the Commission to extend her qualifying period and to submit the necessary evidence in support of her application.

“Gilles Létourneau”

J.A.

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-455-06

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. KARINE LAVOIE

PLACE OF HEARING: Québec, Quebec

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OF THE COURT BY:** RICHARD C.J.
LÉTOURNEAU J.A.
NADON J.A.

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

APPEARANCES:

Pauline Leroux FOR THE APPLICANT

Karine Lavoie FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada

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and

KARINE LAVOIE

Respondent

JUDGMENT

The application for judicial review is allowed without costs, the decision of the Umpire will be set aside and the matter will be remitted to the Chief Umpire or his or her designate for reconsideration based on the fact that, according to the evidence in the record, the respondent did not meet the eligibility criteria for benefits. This is without prejudice to the respondent's right to apply to the Commission to extend her qualifying period and to submit the necessary evidence in support of her application.

"J. Richard"
Chief Justice

Certified true translation
Mary Jo Egan, LLB