

Date: 20081016

Docket: A-232-08

Citation: 2008 FCA 307

**CORAM: LÉTOURNEAU J.A.
SHARLOW J.A.
PELLETIER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

PETER KOKAVEC

Respondent

Heard at Toronto, Ontario, on October 14, 2008.

Judgment delivered at Toronto, Ontario, on October 16, 2008.

REASONS FOR JUDGMENT BY:

LÉTOURNEAU J.A.

CONCURRED IN BY:

**SHARLOW J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

[1] The Attorney General of Canada seeks a judicial review of a decision rendered by an Umpire (CUB 70204) pursuant to section 115 of the *Employment Insurance Act*, S.C. 1996, c. 23 (Act).

[2] The Umpire set aside a decision of a Board of referees made pursuant to subsection 10(5) and 50(1) and (4) of the Act and subsection 26(1) of the *Employment Insurance Regulations*, SOR/96-332 (Regulations).

[3] In a nutshell, these provisions require a claimant to act diligently in making a claim for unemployment benefits. According to subsection 26(1) of the Regulations, a claim for benefits for a given week of unemployment in a benefit period must be made within three weeks after the week for which benefits are claimed.

[4] However, under subsection 10(5) of the Act, late claims, i.e. claims made after the period prescribed by subsection 26(1) of the Regulations, can be antedated if the claimant shows that there was good cause for the delay in making the claims.

[5] In the present instance, the Board found the respondent to be credible and acting in good faith. It acknowledged that he was confused about the process: see the decision of the Board in the applicant's record, at pages 51 and 52.

[6] While empathizing with the respondent, the Board concluded as a fact that he did not follow up on his responsibilities and did not behave as a reasonably prudent person would have behaved in the circumstances. It, therefore, concluded that the respondent did not show good cause for his delay in claiming unemployment benefits.

[7] Pursuant to paragraph 115(2)(c) of the Act, the Umpire could only intervene if the Board “based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it”.

[8] After a careful review of the material before us, I am satisfied that it was open to the Board, on the basis of the record and the evidence before it, to make the finding of fact that it did. The Umpire could not, without committing an error of law, substitute his view of the facts for that of the Board.

[9] Undoubtedly, the respondent’s case is a sympathetic one, but we are bound to apply the law as established by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (Q.L.), at paragraphs 43 to 64.

[10] For these reasons, I would allow the application for judicial review without costs, set aside the decision of the Umpire and refer the matter back to the Chief Umpire, or a person that he designates, for a new determination on the basis that the respondent’s appeal from the Board of referees’ decision be dismissed.

“Gilles Létourneau”

J.A.

“I agree
K. Sharlow J.A.”

“I agree
J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-232-08

AN APPLICATION FOR JUDICIAL REVIEW

STYLE OF CAUSE: *ATTORNEY GENERAL OF CANADA v.
PETER KOKAVEC*

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 14, 2008

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: SHARLOW J.A.
PELLETIER J.A.

DATED: October 16, 2008

APPEARANCES:

Derek Edwards

FOR THE APPLICANT

Peter Kokavec

FOR THE RESPONDENT
(Self Represented)

SOLICITORS OF RECORD:

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

FOR THE APPLICANT