

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100924**

**Docket: A-11-10**

**Citation: 2010 FCA 243**

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

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**DAVID CHALK**

**Respondent**

Heard at Québec, Quebec, on September 23, 2010.

Judgment delivered at Ottawa, Ontario, on September 24, 2010.

**REASONS FOR JUDGMENT BY:**

**PELLETIER J.A.**

**CONCURRED IN BY:**

**NOËL J.A.  
TRUDEL J.A.**

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**THE ATTORNEY GENERAL OF CANADA**

**Applicant**

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**DAVID CHALK**

**Respondent**

**REASONS FOR JUDGMENT**

**PELLETIER J.A.**

[1] The respondent applied for benefits on July 9, 2008, approximately two years after his last day of work, July 12, 2006. He asked that his application be backdated to September 2006. His request was refused on the ground that he did not have good cause for not applying for benefits earlier.

[2] The respondent had an explanation for his failure to make his application. He said that on two occasions, first in October 2006 and then in May 2008, he was told in a telephone conversation

with an agent of the Employment Insurance Commission that he did not qualify for benefits because he was not an immigrant.

[3] The Board of Referees allowed the respondent's appeal from the Commission's decision, saying that the respondent had acted as a reasonable person would have under similar circumstances. On appeal by the Commission, the Umpire upheld the Board of Referee's decision on the basis that, having regard to the Board's findings with respect to credibility, the decision was reasonable.

[4] The Attorney General (on behalf of the Employment Insurance Commission) now brings an application for judicial review of the Umpire's decision on the basis that, even if the respondent was justified in not making an application for benefits for a period of time after October 2006, he has not justified his failure to apply for benefits between July 2006 and the time of this first conversation with a representative of the Commission in October 2006.

[5] The Attorney General relies on authority from this Court, *Canada (Attorney General) v. Mehdinasab*, 2009 FCA 382, to the effect that an applicant must justify his failure to apply for benefits for the entire period of delay.

[6] As this Court explained in *Canada (Attorney General) v. Beaudin*, 2005 FCA 123, and again in *Canada (Attorney General) v. Scott*, 2008 FCA 145, the rationale for the requirement that an application for benefits be made in a timely fashion is that the retroactive payment of benefits

impedes the Commission's ability to monitor the administration of the applicant's benefits. As a result, issues such as availability for work, and the effect of any earnings which the applicant may have, cannot be dealt with as they occur.

[7] In this case, the respondent has not provided an explanation for his failure to apply for benefits during the period between July 2006 and October 2006. His failure to do so means that he has not shown good cause for the entire period of delay in applying for benefits. This conclusion assumes that the respondent was credible with respect to the period between October 2006 and May 2008. As a result, the Umpire erred in law in failing to intervene.

[8] As a result, I would allow the application for judicial review, set aside the decision of the Umpire and remit the matter to the Chief Umpire or his delegate for re-determination on the basis that the application for judicial review should be allowed without costs on the ground that the respondent had not shown good cause for the entire period of his delay in applying for benefits.

"J.D. Denis Pelletier"

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J.A.

"I agree.  
Marc Noël J.A."

"I agree.  
Johanne Trudel J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-11-10

**STYLE OF CAUSE:** THE ATTORNEY GENERAL  
OF CANADA and DAVID  
CHALK

**PLACE OF HEARING:** QUÉBEC, QUEBEC

**DATE OF HEARING:** SEPTEMBER 23, 2010

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

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

**DATED:** SEPTEMBER 24, 2010

**APPEARANCES:**

ANTOINE LIPPÉ FOR THE APPLICANT

DAVID CHALK FOR THE RESPONDENT  
ON HIS OWN BEHALF

**SOLICITORS OF RECORD:**

MYLES J. KIRVAN FOR THE APPLICANT  
DEPUTY ATTORNEY GENERAL OF CANADA

DAVID CHALK FOR THE RESPONDENT  
QUÉBEC, QUEBEC ON HIS OWN BEHALF