

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110310

Docket: A-302-10

Citation: 2011 FCA 93

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

BETWEEN:

PERRY CHAMCHUK

Applicant

and

ATTORNEY GENERAL OF CANADA et. al.

Respondents

Heard at Edmonton, Alberta, on March 9, 2011.

Judgment delivered at Edmonton, Alberta, on March 10, 2011.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**NOËL J.A.
PELLETIER J.A.**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110310

Docket: A-302-10

Citation: 2011 FCA 93

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

BETWEEN:

PERRY CHAMCHUK

Applicant

and

ATTORNEY GENERAL OF CANADA et. al.

Respondents

REASONS FOR JUDGMENT

TRUDEL J.A.

[1] This application for judicial review arises out of a decision by Umpire Beaudry in CUB 69424B, whereby he denied the applicant's request for reconsideration of a previous decision by Umpire Teitelbaum in CUB 69424A.

[2] Throughout the proceedings, the applicant has voiced his disagreement with the Commission's calculation of his entitlement to benefits pursuant to subsection 12(2) of the *Employment Insurance Act*, S.C. 1996, c. 23.

[3] The particularity of this file is that the applicant had established a benefit period effective December 18, 2005, entitling him to weekly benefits of \$333 for 22 weeks. Later on, the applicant abandoned this claim in favour of one effective April 9, 2006. As a result, he became entitled to weekly benefits for 35 weeks but at a lower rate, i.e. \$243 per week. Therefore, an overpayment was set up for the weeks paid at the higher benefit rate on the cancelled benefit period. Moreover, the Commission made errors while calculating the applicant's benefit rate and the allocation of his pay in lieu of notice received from his employer.

[4] Understandably, all this contributed to the applicant's frustration with the way he was treated by the Commission. It was apparent, at the hearing of this application, that he did not understand the decision of the Commission and how it came to its decision.

[5] More particularly, the applicant complained that he never received from the Commission a "concise worksheet of his total insurable hours in comparison with his total insurable earnings". In response, counsel for the respondent referred to his record, more precisely to the additional representations of the Commission to the Board of Referees where the Commission explains how it determined the applicant's "total weeks, his insurable hours, his rate structure, his overpayment and how [it] determined his final numbers owing or owed" (see respondent's record, volume 1, pages 151 and f.). Although he might disagree with the Commission's calculation, the applicant's queries find answers in this document.

[6] This being said, we are asked to judicially review a decision in reconsideration. The applicant did not seek judicial review of Umpire Teitelbaum's decision and is out of time to do so. This Court has repeatedly held that absent special circumstances, it will not use a judicial review of the reconsideration decision as a vehicle for a collateral attack of the original decision (See *Nickerson v. Canada (Employment Insurance Commission)*, 2006 FCA 110 at paragraph 3; *Mansour v. Canada (Attorney General)*, 2001 FCA 328; *Pollitt v. Canada (Attorney General)*, 2009 FCA 98). This is what the applicant is asking us to do.

[7] I find no special circumstances or reviewable error in the reconsideration decision warranting the intervention of this Court.

[8] Finally, the applicant has named several respondents in his application. The Attorney General of Canada is asking for the style of cause to be amended to reflect that he is the only proper respondent. I would grant this request.

Conclusions

[9] Therefore, I propose to dismiss the application for judicial review, but considering the circumstances of this case, without costs.

[10] I also propose that the style of cause be changed to read:

BETWEEN:

PERRY CHAMCHUK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

“Johanne Trudel”

J.A.

“I agree
Marc Noël J.A.”

“I agree
J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-302-10

STYLE OF CAUSE: Perry Chamchuk v.
Attorney General of Canada et. al.

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: March 9, 2011

REASONS FOR JUDGMENT BY: TRUDEL J.A.

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

DATED: March 10, 2011

APPEARANCES:

Perry Chamchuk

ON HIS OWN BEHALF

Robert Neilson

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE RESPONDENT