

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120111

Docket: A-252-11

Citation: 2012 FCA 10

**CORAM: EVANS J.A.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

JAYNE NORRIS LUE

Respondent

Heard at Toronto, Ontario, on January 11, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on January 11, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court
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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 11, 2012)

STRATAS J.A.

[1] The Crown applies for judicial review from a decision dated April 29, 2011 of Umpire Seniuk (CUB 76929). The Umpire upheld the decision dated July 29, 2010 of the Board of Referees. Both held that respondent, Jayne Norris Lue, was entitled to additional weeks of benefit under section 77.91 of the *Employment Insurance Regulations*, SOR/96-332, as amended.

[2] Paragraph 77.91(3)(c) of the Regulations provides that where a claimant's benefit period began before May 31, 2009, these additional benefits are only available where an "active return to work action plan" is in place before August 23, 2009. It is accepted that Ms. Lue's benefit period began on March 15, 2009. Therefore, under paragraph 77.91(3)(c), she could obtain additional benefits only if she had an "active return to work action plan" in place before August 23, 2009. She did not. She had an "active return to work action plan" in place on September 1, 2009.

[3] The Board of Referees imported into paragraph 77.91(3)(c) a power to forgive lateness in filing an "active return to work action plan" if "good cause" existed for the delay. The Umpire agreed. This was an error of law. There is no wording in paragraph 77.91(3)(c) to support such a power. As correctness is the applicable standard of review, we can interfere with this error.

[4] For the foregoing reasons, we shall allow the application and remit the matter to the Chief Umpire or to an Umpire designated by him for redetermination on the basis that the requirement in paragraph 77.91(3)(c) of the *Employment Insurance Regulations* has not been met.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-252-11

**(AN APPLICATION FOR A JUDICIAL REVIEW FROM A DECISION OF THE
HONOURABLE MR. JUSTICE GERALD T.G. SENIUK, DATED APRIL 29, 2011, NO.
CUB 76929)**

STYLE OF CAUSE: THE ATTORNEY GENERAL OF
CANADA V. JAYNE NORRIS LUE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 11, 2012

REASONS FOR JUDGMENT OF THE COURT BY: (EVANS, SHARLOW AND
STRATAS JJ.A.)

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Derek Edwards FOR THE APPLICANT

No Appearance FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPLICANT
Deputy Attorney General of Canada

Self-Represented FOR THE RESPONDENT