

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120917

Docket: A-83-12

Citation: 2012 FCA 237

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

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

BENDAHAN, JOSEPH

Respondent

Heard at Montréal, Quebec, on September 17, 2012.

Judgment delivered from the Bench at Montréal, Quebec, on September 17, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on September 17, 2012)

NOËL J.A.

[1] This is an application for judicial review of a decision rendered by an Umpire, CUB 78564, holding that Joseph Bendahan (the respondent) was entitled to employment insurance benefits despite being out of the country on the basis that he came within the regulatory exception set out in paragraph 55(6)(a) of the *Employment Insurance Regulations*, SOR/96-332 (the Regulations).

[2] Under paragraph 37(b) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the EIA), a claimant is not entitled to receive benefits for any period during which he or she was outside

Canada. Paragraph 55(6)(a) of the Regulations creates an exception to this principle with respect to a person who “resides” – temporarily or permanently – in a state of the United States that is “contiguous” to Canada and is available for work.

[3] The Umpire held that the claimant met these conditions. In his view, working for a total of ten days in Florida can be equated with temporary residence in that state. Furthermore, “contiguous” does not refer to a border state, but to a neighbor state, and Florida comes within that description.

[4] We agree with the applicant that the evidence does not establish that the respondent resided temporarily in Florida during the relevant period and that in any event, Florida is not a state that is “contiguous” to Canada within the meaning of paragraph 55(6)(a) of the Regulations. It was therefore not open to the Umpire to hold that the claimant was entitled to benefits while in that state.

[5] The application will accordingly be allowed, the decision of the Umpire will be set aside and the matter will be referred back to the Chief Umpire or his designate so that it may be disposed of again on the basis that the claimant is not entitled to benefits.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-83-12

STYLE OF CAUSE: Attorney General of Canada v.
Bendahan, Joseph

PLACE OF HEARING: Montréal, Quebec

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REASONS FOR JUDGMENT OF THE COURT BY: NOËL J.A.
PELLETIER J.A.
GAUTHIER J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

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SOLICITORS OF RECORD:

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FOR THE APPLICANT