Federal Court of Appeal | Cour d'appel fédérale

Date: 20211005

Docket: A-320-20

Citation: 2021 FCA 195

CORAM: **PELLETIER J.A.**
DE MONTIGNY J.A.
LOCKE J.A.

BETWEEN:

TANZER DUMLU

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the registry on October 1, 2021.

Judgment delivered at Ottawa, Ontario, on October 5, 2021.

REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: PELLETIER J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

LOCKE J.A.

[1] The applicant, Tanzer Dumlu, seeks judicial review of a decision of the Social Security Tribunal – Appeal Division (SST-AD), which affirmed a decision of the Social Security Tribunal – General Division (SST-GD) to deny employment insurance (EI) benefits to Mr. Dumlu.

[2] As noted by the respondent, the Attorney General of Canada, this Court can intervene only if it is convinced that the SST-AD's decision was unreasonable. I am not so convinced. Accordingly, I would dismiss this application.

[3] Mr. Dumlu worked for a travel agency until October 2019 when his employer dismissed him, alleging that he had fraudulently used travel credits belonging to one of the employer's customers in order to book a personal trip for himself. The Canada Employment Insurance Commission (CEIC) granted Mr. Dumlu EI benefits when he first applied, but this decision was reversed after his employer requested reconsideration and provided additional information to support its allegation that Mr. Dumlu had been dismissed for misconduct. Despite repeated attempts by the CEIC to reach Mr. Dumlu to hear his version of events, he did not respond.

[4] On appeal of the CEIC's reversal, the SST-GD considered the employer's allegations, as well as Mr. Dumlu's version of events. The SST-GD found that Mr. Dumlu had indeed engaged in misconduct, and that this misconduct led to his dismissal. The SST-GD accordingly dismissed Mr. Dumlu's appeal, and confirmed that he was not entitled to EI benefits.

[5] On further appeal, the SST-AD agreed. It noted the narrow scope for appeal under subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. Under this subsection, grounds of appeal are limited to concerns about principles of natural justice, errors of law, and "erroneous finding[s] of fact […] made in a perverse or capricious manner or without regard for the material before it." The SST-AD found that the SST-GD had

not erred either with regard to the burden of proof, or in the nature of the evidence that it found convincing.

[6] In the present application for judicial review, Mr. Dumlu raises four issues:

A. Bias by the CEIC.

B. Failure to consider that he provided documentary evidence concerning the events surrounding his dismissal, whereas the employer did not.

C. Failure of the CEIC to demand documentary evidence from the employer before accepting its version of events.

D. The inadequate training given to the decision makers concerning the travel industry to allow them to weigh and choose between conflicting versions of events.

[7] The first issue can be dismissed on the basis that nothing in Mr. Dumlu's submissions comes close to raising a reasonable apprehension of bias. Principally, Mr. Dumlu argues that the CEIC effectively shifted the burden of proof from the employer to him when it requested supporting documentation from him but failed to make the same request of the employer. I disagree that this shifted the burden of proof. After Mr. Dumlu initially denied that he had used the airplane ticket in question, and was then confronted before the SST-GD with information that the ticket and his passport had been scanned at the airport, he explained that he had purchased the ticket with his personal credit card, and that he could support this explanation with documentation. The SST-GD gave Mr. Dumlu time to submit such documentation, but he failed to do so. His follow-up email message provided only text messages unrelated to his personal credit card. This situation does not constitute a reversal of the burden of proof. Rather, the SST-GD concluded that the employer's explanations were clear, detailed, consistent and supported by more than one representative, whereas Mr. Dumlu's were inconsistent and less credible.

[8] At the hearing of this application, Mr. Dumlu alleged that he was unable, in the time granted to him after the SST-GD hearing, to obtain the documentation to support his statement that he had used his personal credit card to purchase the airplane ticket in question. He also stated that he attempted to submit that documentation to the SST-AD, but was told that its decision would be based on the documentation that was before the SST-GD. He added that he has the documentation now and can make it available. There are several problems with these allegations. Firstly, there is no indication in the record that Mr. Dumlu ever sought to introduce new evidence before the SST-AD. Secondly, Mr. Dumlu's follow-up email message to the SST-GD hearing made no indication of any difficulty in obtaining relevant documentation. Thirdly, nothing about difficulty in obtaining documentation or efforts to introduce new evidence is mentioned in Mr. Dumlu's memorandum of fact and law before this Court. Briefly stated, I am not convinced that the SST-AD's decision should be set aside based on its alleged refusal to consider new evidence.

[9] The second and third issues raised by Mr. Dumlu are related in that they both concern an argument that the CEIC, and the SST-GD and SST-AD, should not have accepted the employer's version of events over that of Mr. Dumlu without relevant supporting documentation. I am unaware of any authority indicating that these tribunals are not entitled to accept evidence against an EI claimant in the absence of supporting documentation. These bodies are not bound by strict rules of evidence: *Caron v. Canada (Attorney General)*, 2003 FCA 254 at para. 6. Though hearsay evidence not supported by documentation may be less reliable in some circumstances, that is a concern for the relevant tribunal in question to consider. In the present application, the relevant test is whether the SST-AD acted reasonably in not interfering in the

SST-GD's acceptance of the employer's version of events over that of Mr. Dumlu. I conclude that the SST-AD did act reasonably in this regard in that it clearly explained its reasoning for accepting the SST-GD's findings, and its reasoning was defensible on the facts.

[10] With regard to the fourth issue concerning inadequate training of decision makers, Mr. Dumlu has not explained precisely what specialized information was lacking, or how such lack could have affected the decisions below. I accept his submission that there is specialized information known to those in the travel industry that is not generally known. However, I do not accept that the tribunals below could not reach a reasonable conclusion on the disputed versions of events based on the evidence they received and submissions they heard. I see no merit in the argument concerning training inadequacy and competence of the tribunals.

[11] For the foregoing reasons, I would dismiss the appeal. At the respondent's request, I would not award costs.

"George R. Locke"
J.A.

"I agree.
J.D. Denis Pelletier J.A. "

"I agree.
Yves de Montigny J.A. "

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-320-20
STYLE OF CAUSE:	TANZER DUMLU v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY ONLINE VIDEO CONFERENCE
DATE OF HEARING:	OCTOBER 1, 2021
REASONS FOR JUDGMENT BY:	LOCKE J.A.
CONCURRED IN BY:	PELLETIER J.A. DE MONTIGNY J.A.
DATED:	OCTOBER 5, 2021

APPEARANCES:

Tanzer Dumlu	FOR THE APPLICANT (ON HIS OWN BEHALF)
Samaneh Frounchi	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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