

Federal Court



Cour fédérale

Date: 20160729

Docket: T-1198-15

Citation: 2016 FC 885

[ENGLISH TRANSLATION]

Montréal, Quebec, July 29, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

HAMID NADJI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Appeal Division of the Social Security Tribunal [Appeal Division], dated June 19, 2015, in which he was refused leave to appeal a decision by the General Division of the Social Security Tribunal [General Division].

[2] For the reasons that follow, I am dismissing the application for judicial review.

[3] Without repeating the facts outlined in the General Division's decision, and which do not appear to be disputed, I believe that the Appeal Division's decision is entirely reasonable.

[4] The Appeal Division correctly pointed out the requirement whereby the applicant must obtain its leave before appealing the General Division's decision. The Appeal Division also correctly identified the criteria for obtaining this leave: leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success (in accordance with subsection 58(2) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [the DESDA]).

[5] The Appeal Division also correctly identified the only grounds of appeal which apply.

Based on subsection 58(1) of the DESDA:

Grounds of appeal

58 (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Moyens d'appel

58 (1) Les seuls moyens d'appel sont les suivants :

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

[6] In my opinion, the Appeal Division considered the applicant's arguments in a reasonable manner.

[7] The applicant focused his submissions on the argument that he had been misled by the Canada Employment Insurance Commission [the Commission] because the officer to whom he communicated his intention to take full-time training did not notify him that the benefits entitlement period would continue to lapse—in other words, it was not suspended—during training. The applicant contends that, had he been informed of that fact, he would have proceeded differently to avoid losing his benefits.

[8] This argument had been put forth before the General Division, which took it into consideration. However, the General Division rendered its decision based on the criteria set out in paragraph 18(1)(a) of the *Employment Insurance Act*, SC 1996, c 23:

Availability for work, etc.

18 (1) A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

(a) capable of and available for work and unable to obtain suitable employment;

Disponibilité, maladie, blessure, etc.

18 (1) Le prestataire n'est pas admissible au bénéfice des prestations pour tout jour ouvrable d'une période de prestations pour lequel il ne peut prouver qu'il était, ce jour-là :

a) soit capable de travailler et disponible à cette fin et incapable d'obtenir un emploi convenable;

[9] The Federal Court of Appeal's decision in *Faucher v. Canada (Employment and Immigration)*, [1997] FCJ No. 215 (QL), at paragraph 3, outlined three factors to analyze for determining availability within the meaning of paragraph 18(1)(a): (i) the desire to return to the labour market as soon as a suitable job is offered; (ii) the expression of that desire through efforts to find a suitable job; and (iii) not setting personal conditions that might unduly limit the chances of returning to the labour market.

[10] The General Division found that the second and third factors (i.e. efforts to find a job and not setting personal conditions) had not been satisfied. Moreover, the General Division found that none of the exceptions to the availability requirement set out in paragraph 18(1)(a) applied.

[11] In my view, the Appeal Division acted reasonably in relying on the findings of the General Division; they were not contested by the applicant. Although the applicant claims that he was willing to abandon his training had he been offered a job, that statement alone does not satisfy the requirement of making efforts to find a job.

[12] The Appeal Division could not see any reasonable chance of establishing that the General Division had committed an error of jurisdiction, law, or fact; nor could I.

[13] I also agree with the observation by the General Division that the Court cannot decide cases on the basis that a party might have been misled about benefits, and cannot refuse to apply the law, even on the grounds of equity: *Canada (Attorney General) v. Alaie*, 2003 FCA 416; *Wegener v. Canada (Attorney General)*, 2011 FC 137, at paragraph 11.

[14] The applicant is asking me to go beyond the applicable laws to do him justice. In addition to the fact that I must comply with the laws, I do not agree that it is just to give the applicant what he is asking. In my opinion, the Commission's officers cannot be expected to know that the applicant absolutely did not want to lose his benefit weeks that he lost by taking his training. If the factor had been so important to the applicant, he should have asked precise questions in this regard.

[15] During the hearing, the respondent asked that I award costs against the applicant due to the (i) abusive nature of his application, and (ii) his being late on the day of the hearing. I will not award costs because (i) the respondent did not request them in its memorandum, and (ii) although the applicant was late, the hearing ended well before the expected time.

JUDGMENT

THIS COURT'S JUDGEMENT is that the application for judicial review is dismissed without costs.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1198-15

STYLE OF CAUSE: HAMID NADJI v. ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: JULY 7, 2016

JUDGMENT AND REASONS: LOCKE J.

DATED: JULY 29, 2016

APPEARANCES:

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(ON HIS OWN BEHALF)

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FOR THE RESPONDENT

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