Federal Court Cour fédérale

Date: 20210201

Docket: T-1305-18

Citation: 2021 FC 106

Ottawa, Ontario, February 1, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

SEYED MAHMOUD TAGHVAEI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Seyed Mahmoud Taghvaei, seeks judicial review of a decision made by the Social Security Tribunal's [SST] Appeal Division [AD], dated May 29, 2018, which refused his request for leave to appeal a decision of the SST's General Division [GD], dated April 23, 2018.

[2] The GD had dismissed the Applicant's appeal of a reconsideration decision by the Canada Employment Insurance Commission [Commission], which determined that: (i) the Applicant was not entitled to employment insurance [EI] benefits he received during two three-month periods

when he was absent from Canada; (ii) the Applicant was required to repay benefits totalling $13,570.00 to which he was not entitled pursuant to sections 43 and 44 of the *Employment Insurance Act*, SC 1996, c 23 [EIA]; and (iii) the Applicant was required to pay a penalty of $3,393.00 (reduced from $4,071.00 by the GD due to mitigating circumstances) pursuant to sections 18, 37 and 38 of the EIA.

[3] The AD refused the Applicant's request finding the appeal had no reasonable chance of success. For the reasons that follow, the application for judicial review is dismissed.

I. Background

[4] The relevant facts are fairly and succinctly set out in the Respondent's Memorandum of Fact and Law and the decisions below, and need not be repeated here.

[5] For the purposes of this judgment, it suffices to note that the Applicant does not dispute, and in fact concedes, that he received EI benefits while he was temporarily outside Canada, that he failed to report his absences, and that he was not eligible to receive those benefits during his absences from Canada pursuant to subsection 37(b) of the EIA.

[6] In response to a letter from Service Canada, the Applicant acknowledged that he provided false information to the Commission. He explained that the reason he did not report his absences from Canada was due to a family emergency and because he "didn't think it could be a big deal."

[7] The basis upon which the Applicant sought leave to appeal to the AD was the alleged failure by the GD to consider all the evidence before it and, in particular, the circumstances that led to what the Applicant characterizes as a "mistake" on his part.

[8] In its reasons, the AD found no evidence that the GD overlooked or misconstrued any evidence. Indeed, the AD pointed to specific examples in the GD's decision that referenced evidence of the Applicant's daughter's illness and the Applicant's inability to return to Canada. It further noted that the GD had accounted for these mitigating circumstances in reducing the quantum of the penalty imposed. The AD also addressed the Applicant's proclaimed lack of criminal intent, agreeing with the GD that it bore no relation to the issue of making false statements as an EI claimant.

[9] Finally, the AD rejected the Applicant's request for debt and penalty forgiveness. The AD concluded that it had no jurisdiction to forgive or reduce the debt and penalty, and determined that such a request demonstrated no arguable case under the statutory grounds of appeal. As stated earlier, the AD found the appeal had no reasonable chance of success, and refused to grant leave.

II. Standard of Review and Analysis

[10] On judicial review, the reasonableness standard of review serves as the presumptive starting point: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16 [*Vavilov*]; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27 [*CUPW*]. There are situations that can rebut this presumption. These do not arise here.

[11] On a reasonableness review, the Court must examine the administrative decision maker's reasons and determine whether the outcome and the reasoning that brought it to bear demonstrate an "internally coherent chain of reasoning, justified in light of the relevant legal and factual constraints": *CUPW*, at para 2; *Vavilov*, at para 85. If it does, the reviewing court should not interfere (*Vavilov*, at paras 85, 99).

[12] Moreover, this Court owes deference to decisions from the AD, and it ought to only interfere when a decision is unreasonable: *Atkin v Canada (Employment and Social Development)*, 2020 FCA 19 at para 6; *Cameron v Canada (Attorney General)*, 2018 FCA 100 at para 3; *Omoregbe v Canada (Attorney General)*, 2018 FC 741 at para 7. The sole issue in this application, then, is whether it was reasonable for the AD to deny the Applicant leave to appeal.

[13] Pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34, s 58(1)(a)-(c) [DESDA], only three grounds may underlie an appeal to the AD. The AD may only consider whether: (i) the GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; (ii) the GD erred in law; or (iii) the GD based its decision on an erroneous finding of fact made in a perverse or capricious manner, or without regard to the record.

[14] The AD must refuse to grant leave where it is satisfied that an appeal has no reasonable chance of success (DESDA, s 58(2)). A "reasonable chance of success" means having an arguable ground upon which the proposed appeal might succeed (*Ratman v Canada (Attorney General)*, 2020 FC 476 at para 38).

[15] The Applicant argues that this Court ought to relieve him of the verdict and the penalty that flows therefrom because of his difficult circumstances. His submissions, which, at best, amount to a plea for compassion, are misplaced and misconstrue this Court's role on judicial review.

[16] The Applicant bears the burden of demonstrating the existence of a reviewable error and cannot simply ask the Court to reassess the evidence and substitute its own opinion for that of the AD. The Applicant has failed to identify any such error in the AD's decision denying leave to appeal that would require this Court's intervention. To the contrary, the AD correctly referred to the statutory criteria under subsection 58(1) of the DESDA, as well as the need for the appellant to present an arguable case disclosing a reasonable chance of a successful appeal. It also properly rejected the Applicant's assertions that the GD ignored evidence by pointing to specific portions of the GD Decision where the GD considered the evidence in question. The Applicant so conceded at the hearing.

[17] I conclude that the AD applied intelligible and sound reasoning to the relevant facts and law. Therefore, the Court's intervention is not warranted.

[18] I should add that the Applicant repeatedly argued before the Commission and the tribunals below that he would incur financial hardship if he were required to repay the overpayment and penalty. The GD did take into account the mitigating circumstance of the Applicant's ability to pay when reaching its decision and reducing the penalty imposed. At the conclusion of the hearing, the Court reminded the Applicant that the Commission has the discretion to write-off

overpayments under certain circumstances pursuant to the *Employment Insurance Regulations*, SOR/96-332, s 56. Indeed, the Respondent's Memorandum (at para 4) specifically mentions the procedure for seeking such relief. For its part, the AD decision (at para 15) identifies another means through which the Applicant could seek debt forgiveness from the Canada Revenue Agency. In this case, the Applicant has not pursued either of these avenues for recourse.

[19] Finally, as pointed out by the Respondent, the Applicant incorrectly named the Social Security Tribunal as the Respondent in this matter. Pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106, the Attorney General of Canada ought properly have been named as Respondent. The style of cause shall be amended accordingly.

III. Conclusion

[20] For the above reasons, the application for judicial review is dismissed. Since the Respondent is not seeking costs, none will be awarded.

JUDGMENT IN T-1305-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause is amended with immediate effect to remove the Social Security Tribunal and substitute the Attorney General of Canada as the Respondent.

3. There shall be no order as to costs.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1305-18
STYLE OF CAUSE:	SEYED MAHMOUD TAGHVAEI v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, GATINEAU, QUÉBEC AND TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 11, 2020 JANUARY 28, 2021
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	FEBRUARY 1, 2021

APPEARANCES:

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Sandra Doucette	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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