

Federal Court



Cour fédérale

Date: 20120801

Docket: T-1221-11

Citation: 2012 FC 955

Ottawa, Ontario, August 1, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JAMILEH MONJAZI

Applicant

and

ING BANK OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Jamileh Monjazi worked for ING Bank of Canada from May 2000 to January 2008. She was originally hired as an IT Operations Analyst.

[2] In 2005, Ms Monjazi fell on a wet cafeteria floor and injured her back. She went on short-term disability leave. ING offered her reduced and more flexible hours. However, she was still unable to perform the core functions of her job, so ING created a temporary position for her as a

Production Control Analyst, which involved less shift work and lighter physical duties. ING expected her to return to her original position by January 2007.

[3] The January 2007 deadline passed. In October 2007, ING asked Ms Monjazi to attend an independent medical examination. The attending physician concluded that Ms Monjazi could return to her permanent position without further accommodation, so long as she avoided repetitive bending, heavy lifting, and excessive stress on her spine. ING was satisfied that Ms Monjazi could return to her original position as IT Operations Analyst.

[4] Ms Monjazi objected. She raised a number of concerns including her fragile emotional state, her fear of working alone at night, and the physical demands of the job. She asked for further direction from ING. Because she refused to return to her job, ING terminated Ms Monjazi's employment.

[5] Ms Monjazi filed a complaint with the Canadian Human Rights Commission alleging that ING had discriminated against her and failed to accommodate her disability. The Commission appointed an investigator who interviewed Ms Monjazi and gathered evidence. The investigator concluded that Ms Monjazi did not require accommodation for her disability and had not lost her job as a result of discrimination. After considering the investigator's report, as well as Ms Monjazi's and ING's submissions, the Commission dismissed the complaint.

[6] Ms Monjazi argues that the investigator acted unfairly by failing to interview the physician who prepared the medical report. She suggests that the doctor actually concluded that she could not

return to her original position, but could continue in her temporary position. Without an interview, the doctor's report remained ambiguous, she says. Ms Monjazi maintains, therefore, that the Commission rendered an unreasonable decision because it relied on the investigator's ambiguous report. She asks me to overturn the Commission's decision and order it to reconsider her complaint.

[7] In addition to disputing Ms Monjazi's substantive submissions, ING argues that her application is out of time. Generally speaking, applications for judicial review must be brought within 30 days of a decision. The Commission rendered its decision on May 28, 2009. Ms Monjazi originally applied for judicial review on June 30, 2009, but named the Commission as a respondent instead of ING. Counsel for the Commission and the Department of Justice immediately pointed out the mistake, but Ms Monjazi did not file her corrected application for judicial review until July 25, 2011. ING asks me to dismiss the application for judicial review because it was filed two years too late.

[8] In my view, this application for judicial review should be dismissed. Ms Monjazi has offered no explanation for late-filing it and has not even requested an extension. In an affidavit filed in a separate motion, Ms Monjazi mentions medical treatment she received in 2012, but does not say that she was unable to instruct counsel. In addition, ING is prejudiced by the delay because important witnesses are no longer available and, in any case, they would have to testify about events that took place several years ago.

[9] The sole issue, therefore, is whether Ms Monjazi's application for judicial review should be dismissed for delay.

II. Should Ms Monjazi's application be dismissed for delay?

[10] While Ms Monjazi has not asked for an extension of time, it is appropriate to consider the factors that would be relevant if she had.

[11] First, has Ms Monjazi expressed an ongoing intention to pursue her application? Ms Monjazi waited more than two years to file a corrected application for judicial review. In the interim, she filed an action against ING in the Superior Court of Ontario, but then abandoned it. I see no evidence of a continuing intention to pursue her application for judicial review.

[12] Second, does Ms Monjazi's application has any merit? The sole argument put forward by Ms Monjazi is that the medical assessment was ambiguous. While it is not a strong position, it is not completely devoid of merit.

[13] Third, has the delay caused prejudice? ING was not actually made aware of this application until it was filed in July 2001. Witnesses with important evidence have left ING and its ability to respond to Ms Monjazi's application and any future investigation has been compromised by the delay. This constitutes prejudice.

[14] Fourth, has Ms Monjazi given a reasonable explanation for the delay? Ms Monjazi has offered no explanation.

[15] The 30-day time limit for filing an application for judicial review is not arbitrary; “[i]t exists in the public interest, in order to bring finality to administrative decisions so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance with it, often at considerable expense” (*Budisukma Puncak Sendirian Berhad v Canada*, 2005 FCA 267, at para 60).

[16] In my view, it would be contrary to the interests of justice to allow this application to proceed. It must, therefore, be dismissed.

III. Conclusion and Disposition

[17] Ms Monjazi has not demonstrated that her application should be heard and decided on the merits. It is out of time, no satisfactory explanation has been provided for the delay, and allowing the application to proceed would be contrary to the interests of justice. I must, therefore, dismiss this application for judicial review with costs.

[18] The respondent presented a Bill of Costs putting its total fees and disbursements at \$6,450.94. I would fix total costs at \$5,000.00.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed with costs fixed at \$5,000.00.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1221-11

STYLE OF CAUSE: JAMILEH MONJAZI
v
ING BANK OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 23, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: August 1, 2012

APPEARANCES:

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Robert Wayne

FOR THE RESPONDENT

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