Federal Court of Appeal | Cour d'appel fédérale

Date: 20150717

Docket: A-319-14

Citation: 2015 FCA 167

CORAM: **NOËL C.J.**
SCOTT J.A.
BOIVIN J.A.

BETWEEN:

ANDRÉ THIBODEAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on June 18, 2015.

Judgment delivered at Ottawa, Ontario, on July 17, 2015.

REASONS FOR JUDGMENT BY: NOËL C.J.

CONCURRED IN BY: SCOTT J.A.
BOIVIN J.A.

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REASONS FOR JUDGMENT

NOËL C.J.

[1] This is an application for judicial review of a decision of the Appeal Division of the Social Security Tribunal (Appeal Division) setting aside the decision of a Board of Referees following a request for a new hearing. After concluding first that the applicant was disqualified from receiving benefits since he lost his employment because of his misconduct, the Board of Referees reached the opposite conclusion by reason of a [TRANSLATION] "new fact".

[2] More specifically, the dispute concerns the impact of an agreement reached after the first decision was rendered and under which the Board of Referees permitted itself to amend its original decision. At issue are sections 30, 31 and 120 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the Act). All of these provisions are appended to these reasons.

FACTS

[3] At the time of his dismissal, the applicant was working as a caretaker for the Office municipal d'habitation de Trois-Rivières (the employer). The employer explained that the Cogeco Cable company had made a complaint about the illegal use of its cable service. A viewing of the surveillance camera video established that it was the applicant who had made the unauthorized connection. He admitted having done this once before (Board of Referees' decision, applicant's record at pages 61 and 62).

[4] The applicant was dismissed on November 25, 2011.

[5] Following his dismissal, the applicant filed an application for benefits, which the Employment Insurance Commission (the Commission) denied on the ground that he had lost his employment because of his misconduct. In doing so, the Commission relied on the disqualification from receiving benefits provided for in subsection 30(1) of the Act.

[6] The applicant appealed the Commission's decision before a Board of Referees. He argued that he had acted out of compassion for a person who was ill and living in poverty, that he was a good employee and that the sanction was too severe. He also submitted that there was no

clear policy establishing that dismissal was an appropriate response to his conduct (Board of Referees' decision, applicant's record at pages 63 and 64).

[7] The applicant's appeal was dismissed in a decision dated March 29, 2012. In its reasons, the Board of Referees noted that the applicant committed the act a second time after Cogeco Cable had disconnected his first hook-up. Although he pleaded that he had acted out of compassion, the applicant chose not to consider the repercussions his actions could have on the relationship of trust he had to maintain with his employer (Board of Referees' decision, applicant's record at page 66).

[8] Shortly after this first decision was rendered, the applicant filed a complaint with his union, alleging that he was not properly represented when he was dismissed. This resulted in a tripartite agreement signed by the applicant, his union and his former employer on July 26, 2012.

[9] The agreement in question, entitled [TRANSLATION] "Settlement and Release" (the agreement) (applicant's record, Exhibit 16-3 at pages 69 and 70), recognizes in its preamble that [TRANSLATION] "the parties wish to settle this dispute out of court without any admission of responsibility on either side". It provides that, among other things, [TRANSLATION] "[t]he Employer agrees to substitute for the dismissal of November 25, 2011 a suspension of three (3) weeks without pay", which [TRANSLATION] "ended on December 9, 2011", and that [TRANSLATION] "[t]he Employee relinquishes his right to reinstatement, which was to take place on December 12, 2011," on which basis [TRANSLATION] "[t]he Employer agrees to pay [him] the sum of $2,000 (gross) . . .".

[10] On August 8, 2012, the applicant filed a request for a new hearing before the Board of Referees under section 120 of the Act, as it read at the relevant time, citing to the agreement signed the month before as a [TRANSLATION] "new fact". According to the applicant, by virtue of paragraph 30(1)(*b*) and section 31, he was disentitled from receiving benefits for the duration of his suspension and this nullified the Commission's finding of disqualification (letter from counsel for the applicant to the Board of Referees dated August 8, 2012, applicant's record at pages 67 and 68).

[11] The request for a new hearing was granted and, on November 26, 2012, the Board of Referees allowed, on the ground that the agreement changed the [TRANSLATION] "nature of the sanction", the appeal it had initially dismissed. More specifically, the agreement confirmed that dismissal was not the appropriate measure in the circumstances and that a three-week suspension [TRANSLATION] "should have" been imposed (Board of Referees' decision, applicant's record at page 95).

[12] The Board of Referees' decision cancelled the disqualification imposed under sections 30 and 31 of the Act and confirmed that the applicant's disentitlement was to be limited to the duration of the suspension for misconduct provided for in the agreement, that is, to the three weeks ending on December 9, 2011.

[13] This decision was immediately appealed before an Umpire. As the matter was still pending on April 1, 2013, it was transferred to the Appeal Division under the transitional

provisions set out in sections 266 and 267 of the *Jobs, Growth and Long-term Prosperity Act*, S.C. 2012, c. 19.

[14] The Appeal Division allowed the appeal on June 5, 2014. It is that decision that is the subject of the application herein.

IMPUGNED DECISION

[15] The Appeal Division recognized that the agreement was a new fact which was grounds for reconsideration by a Board of Referees (Appeal Division's reasons at paragraph 23). However, it concluded that this new fact did not allow the Board of Referees to rescind its previous decision.

[16] According to the Appeal Division, the Board of Referees' failure to correctly apply the Act constituted an error of law that justified intervention by the Appeal Division (Appeal Division's reasons at paragraph 22).

[17] The Appeal Division explained that "[n]othing in [the agreement] indicates that the employer withdrew the allegation of misconduct made against [the applicant]" (Appeal Division's reasons at paragraph 28). The fact that the employer agreed to substitute a suspension for the dismissal was not binding on the Appeal Division (Appeal Division's reasons at paragraph 29).

[18] The Appeal Division concluded that, in the end, "nothing in the . . . agreement . . . invalidates the employer's position . . . before the Board of Referees. . . ." (Appeal Division's reasons at paragraph 32).

[19] The Appeal Division also took note of the applicant's argument that ". . . sections 29, 30 and 31 of the Act explicitly exclude application of the disqualification in sections 29 and 30 if section 31 applies, that is, if there is a suspension" (Appeal Division's reasons at paragraph 33).

[20] According to the Appeal Division, this argument had to be rejected because the applicant was dismissed on account of his misconduct. The fact that, as a result of a subsequent agreement, he was suspended rather than dismissed did not in any way change the nature of the misconduct that led to his initial dismissal (Appeal Division's reasons at paragraph 34).

[21] Consequently, the Appeal Division set aside the Board of Referees' decision dated November 26, 2012, and upheld the decision dated March 29, 2012.

PARTIES' POSITIONS

[22] The applicant finds fault with the Appeal Division for having based its intervention on a finding that the Board of Referees erred in law. In his opinion, the Board of Referees made no such error. It simply placed its analysis in the appropriate legal context before accepting the position that the effect of the agreement was to change the nature of the sanction (applicant's memorandum at paragraphs 23 to 28).

[23] More specifically, the agreement changes the nature of the sanction that [TRANSLATION] "should have been imposed" (applicant's memorandum at paragraph 30). Once it was accepted that the agreement replaced the dismissal with a suspension, the effect of the suspension for misconduct was to disentitle the applicant from receiving benefits for the duration of the suspension and to render inapplicable for the entire benefit period the disqualification for misconduct, in accordance with sections 30 and 31 of the Act (applicant's memorandum at paragraph 32).

[24] With regard to the loss of employment related to his non reinstatement, the applicant contends that, in the absence of any evidence in that connection, the loss of employment cannot be linked to misconduct. There are several other possible explanations; for example, the job was simply no longer available. According to the applicant, the burden of proof in this regard was on the Commission (*Meunier v. Canada (Employment and Immigration Commission)*, [1996] F.C.J. No. 1347 (FCA) (QL), 1996 CanLII 3983 (FCA), at paragraph 2 (applicant's memorandum at paragraphs 33 to 35).

[25] In addition to the foregoing, the applicant submits that the Appeal Division erred in law by substituting its own assessment of the facts for that of the Board of Referees. In the present case, the Board of Referees' conclusion is an acceptable outcome in light of the evidence and the relevant case law (applicant's memorandum at paragraphs 37 to 43).

[26] Lastly, the Appeal Division erred in law in adopting an unduly narrow interpretation of the applicable law. The Appeal Division misapplied the criteria set out in *Canada (Attorney*

General) v. Boulton, [1996] F.C.J. No. 1682 (FCA) (QL), (1996), 208 N.R. 63 (FCA), Vol. I at page 289 (applicant's memorandum at paragraphs 48 to 65).

[27] The respondent, for his part, submits that even though the Appeal Division stated that it had identified an "error of law", a careful reading of the reasons [TRANSLATION] "rather reveals an error of mixed fact and law since [it] found the Board of Referees' decision with regard to the 'new fact' to be unreasonable" (respondent's memorandum at paragraph 30).

[28] According to the respondent, the Appeal Division was right to intervene because the Board of Referees did not explain how the agreement affected its original decision or how that effect led it to conclude that it had to rescind that decision (respondent's memorandum at paragraph 14). On that point, the agreement does not in any way alter the nature of the misconduct that the Board of Referees noted in its first decision (respondent's memorandum at paragraph 22).

[29] In any event, the applicant either lost his employment as a result of his misconduct or left his job voluntarily without just cause. In either case, the applicant was disqualified from receiving benefits (respondent's memorandum at paragraph 29).

[30] In that regard, the respondent questions the applicant's interpretation of sections 29, 30 and 31 of the Act, which is that the disqualification provided for in sections 29 and 30 cannot apply where section 31 applies, such as in the case of a suspension.

[31] In the case at bar, the applicant lost his employment as a result of his own voluntary actions. He then attempted to escape disqualification by negotiating a settlement and retroactively substituting for his dismissal a temporary suspension combined with a renunciation of reinstatement. Whether he lost his employment because of his misconduct or because he left it voluntarily, the applicant must be disqualified from receiving benefits under section 30 of the Act (applicant's memorandum at paragraph 40).

ISSUE

[32] The application for judicial review raises the question whether, in light of the applicable standard of review, the Appeal Division could rescind the Board of Referees' second decision and uphold the first one.

[33] The Appeal Division justified its intervention on the ground that the substitution of a suspension for the dismissal under the agreement did not alter the fact that the applicant had lost his employment as a result of his misconduct.

[34] The Appeal Division also noted the fact that under the agreement the applicant had relinquished his right to be reinstated (Appeal Division's decision at paragraph 26); it noted as well the applicant's argument that this relinquishment did not disqualify him from receiving benefits under subsection 30(1) (Appeal Division's decision at paragraph 33).

STANDARD OF REVIEW

[35] In determining the proper standard of review in a judicial review context, the Court must engage in a two-step process. First, it must ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to the category of question raised by the application for judicial review (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 57 [*Dunsmuir*]). When the previous jurisprudence provides the answer and when this answer has not been excluded by evolving case law, the Court may rely on that jurisprudence (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paragraph 48). Otherwise, the Court must perform its own analysis to determine the applicable standard (*ibidem*).

[36] In the case at bar, there is no decision in which this Court was called upon to identify the standard applicable to the review of a decision of the Appeal Division concerning the application of the Act. This can be explained by the fact that the Appeal Division has recently taken on the role previously fulfilled by the Board of Referees and the Umpire. We must therefore perform our own analysis.

[37] Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its mandate (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paragraph 30 [*Alberta Teachers'*]). In the present case, the Act is closely connected with the Appeal Division's mandate, hence deference is presumed to be owed unless a particular consideration militates against this.

[38] Indeed, *Alberta Teachers'* indicates that a court may set aside this presumption when the nature of the question raised by the matter before warrants it. Such questions include questions that are of central importance to the legal system and that are outside the adjudicator's expertise, questions regarding the jurisdictional lines between competing specialized tribunals and true questions of jurisdiction *(Atkinson v. Canada (Attorney General)*, 2014 FCA 187 at paragraph 25 [*Atkinson*]).

[39] No such question has been raised in the case at bar. The Court has only to determine whether the Appeal Division erred in refusing to accept the Board of Referees' reasons with respect to the impact of the agreement on the application of section 120, subsection 30(1) and paragraph 31(*b*) of the Act.

[40] The presumption that the reasonableness standard is the appropriate one may also be set aside if an analysis of the *Dunsmuir* factors points towards a correctness review (*Atkinson* at paragraph 25). In *Atkinson*, Justice Trudel, writing for this Court, performed the analysis proposed in *Dunsmuir* and found that the reasonableness standard was not excluded. While this analysis was performed as part of a judicial review of a decision of the Appeal Division interpreting a different statute, namely, the *Canada Pension Plan*, R.S.C. 1985, c. C-8, it was based mainly on the Appeal Division's own statute, that is, the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. I adopt the reasons of Justice Trudel with regard to the need to apply a deferential standard in reviewing the Appeal Division's decisions (*Atkinson* at paragraphs 27 to 31).

[41] I therefore propose to review against a standard of reasonableness the issues raised in the present application as decided by the Appeal Division.

[42] The analysis of the applicable standard of review must however be taken further. Indeed, we must also examine which standard the Appeal Division was required to apply in reviewing the Board of Referees' decision.

[43] In that regard, the Appeal Division indicated that it was gradually taking on the role that had previously belonged to the Office of the Umpire and that the appeal from the Board of Referees' decision was part of this transition (Appeal Division's reasons at paragraphs 6 and 7). The Appeal Division based its review on the grounds of appeal that were available immediately before April 1, 2013, and on the case law dealing with the standard of review applicable under the former scheme (Appeal Division's reasons at paragraphs 7 and 15, citing subsection 115(2) of the Act, *Martens v. Canada (Attorney General)*, 2008 FCA 240 [*Martens*], and *Canada (Attorney General) v. Hallée*, 2008 FCA 159).

[44] The Appeal Division took this approach because, in its view, the applicant was entitled to expect that he would be subject to the rules that were in effect when he filed his appeal before the Umpire. No one is challenging this aspect of the Appeal Division's decision, and I find the solution that the Appeal Division adopted, which took into account the applicant's legitimate expectations, to be at least reasonable. Having said that, I express no opinion on which standard will apply to the review by the Appeal Division of decisions rendered by the General Division under the new scheme.

[45] According to the case law relied on by the Appeal Division, decisions of a Board of Referees on questions of law must be reviewed on a correctness standard by the Umpire (*Martens* at paragraphs 30 and 31). More accurately, a Board of Referees, in determining whether a fact is a "new fact" within the meaning of section 120 of the Act, that is, a fact that would allow the Board to rescind a previous decision, must follow the proper legal approach as failing to do so will result in an error in law *(Canada (Attorney General) v. Hines,* 2011 FCA 252 at paragraphs 16 and 17). On the other hand, the question of whether a "new fact", once it has been correctly identified, will lead to a previous decision being varied or amended, gives rise to a question of mixed fact and law, which must be reviewed on the standard of reasonableness.

DECISION

[46] In the case at bar, the respondent recognizes that the agreement is a "new fact" in that it was reached after the Board of Referees' first decision was issued (respondent's memorandum at paragraph 33). The respondent submits, however, that this "new fact" did not allow the Board of Referees to amend its first decision and that the Appeal Division acted reasonably in rescinding the Board of Referees' second decision.

[47] On that point, there are, in my opinion, two independent reasons that justify the Appeal Division's decision, in light of the applicable standard of review. The first is based on the fact that the Board of Referees, after it found that the agreement changed the sanction by imposing a suspension rather than dismissal, should have pursued its analysis. Indeed, as the applicant relinquished the right to be reinstated under the terms of the agreement, the Board of Referees should have considered whether he was not disqualified from receiving benefits in any event.

The second reason raises the question of whether, regardless of the answer to the first question, the agreement allowed the Board of Referees to amend its first decision.

[48] Regarding the first reason, the applicant relied on paragraph 30(1)(*b*) of the Act, which specifies that subsection 30(1) does not apply if a person is disentitled under section 31, in particular in the case of a suspension. The applicant argues that the Board of Referees had to terminate its analysis after finding that his dismissal had been replaced by a suspension, since, in that case, only his disentitlement during the time of his suspension could be contemplated.

[49] Suffice it to say in this regard that disentitlement under section 31 does not preclude disqualification of the claimant from receiving benefits under section 30 when the disentitlement period expires.

[50] For example, a claimant who has been suspended from his or her employment for three weeks is disentitled from receiving benefits during that period under paragraph 31(*b*). If, at the end of the suspension, the claimant chooses not to return to his or her job without just cause, the disentitlement ends, and the claimant is then disqualified from receiving benefits under subsection 30(1).

[51] This reading gives effect to the grammatical meaning of the words, read in context, and is consistent with Parliament's purpose, which is to assist those who have lost their jobs involuntarily.

[52] On another note, counsel for the applicant argued that there was no evidence concerning the cause of the loss of employment resulting from his client's non-reinstatement, hence it cannot be concluded that his client voluntarily relinquished without just cause the right to hold his job. He suggests that the applicant may, for example, have agreed to not being reinstated because the position he had occupied [TRANSLATION] "was simply no longer available" (applicant's memorandum at paragraph 33).

[53] Suffice it to say in that regard this is a fact that could have been easily established, and that, moreover, the absence of evidence does not work in the applicant's favour. It was the applicant who raised the existence of a new fact to challenge the Board of Referees' first decision, and the burden was on him to establish that he was entitled to benefits in light of the agreement he had signed. To do so, he had to bring this issue before the lower tribunals and demonstrate that the relinquishment of his right to be reinstated was attributable to something other than the $2,000 he received under the terms of the agreement [TRANSLATION] "for relinquishing his right to reinstatement".

[54] In the absence of evidence to the contrary, the agreement must be accepted as it reads.

[55] Counsel for the applicant also argued during the proceedings that the agreement provided a reconstructed version of the facts and that, realistically, his client could not have renounced reinstatement when the suspension ended, on December 12, 2011 (agreement at paragraph 4). If I understood him correctly, this aspect of the agreement does not accurately reflect the facts and should not be taken into account.

[56] It goes without saying that all aspects of the agreement are the product of a reconstruction of past events, and I fail to see how we can disregard aspects of the agreement that do not support the applicant's position and only consider those that do.

[57] I therefore conclude that the Board of Referees, after finding that the agreement had the effect of changing the sanction, should have continued its analysis and that, had it done so, it could not have done otherwise than conclude that the applicant was disqualified from receiving benefits because he voluntarily left his employment without just cause within the meaning of subsection 30(1) of the Act.

[58] I find it useful to add that, in any event, the Appeal Division acted reasonably in concluding that the agreement did not have the effect of changing the sanction and therefore did not allow the Board of Referees to vary its original decision.

[59] Quite apart from the reasons stated by the Appeal Division in this respect, the Board of Referees' error is apparent in the following sentence from the conclusion of its decision (Board of Referees' decision, respondent's record at page 95):

> [TRANSLATION]
>
> The fact that the agreement stipulates that a three-week suspension should have been and will be imposed [on the applicant] instead of a dismissal truly constitutes a new fact within the meaning of section 120 of the Act.
>
> [Emphasis added.]

In so saying, the Board of Referees approved the reading proposed by counsel for the applicant in his letter dated August 8, 2012, according to which [TRANSLATION] ". . . the parties have

concluded that the events giving rise to this dispute should only have resulted in a three-week suspension" (applicant's record at pages 67 and 68).

[60] Yet the parties to the agreement specified that it did not entail any admission of responsibility. The employer therefore did not acknowledge that it [TRANSLATION] "should have" imposed a temporary suspension rather than a dismissal. To suggest that the employer agreed that it took the wrong measure when the parties specified that the agreement did not entail any admission of responsibility gives the agreement a perverse effect since the parties agreed to change the sanction by explicitly refusing to recognize that dismissal was not appropriate. It follows that it was open to the Appeal Division to conclude that the Board of Referees' interpretation of the agreement was not an acceptable one.

[61] I therefore conclude that the Appeal Division was entitled to rescind the second decision rendered by the Board of Referees and to uphold its original one.

[62] I would dismiss the application for judicial review with costs.

"Marc Noël"

Chief Justice

"I agree.
A.F. Scott J.A."

"I agree.
Richard Boivin J.A."

Ttranslation

ANNEX

Employment Insurance Act, S.C. 1996, c. 23

Disqualification — misconduct or leaving without just cause

30. (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(*a*) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(*b*) the claimant is disentitled under sections 31 to 33 in relation to the employment.

Length of disqualification

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

Not retroactive

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event

Exclusion : inconduite ou départ sans justification

30. (1) Le prestataire est exclu du bénéfice des prestations s'il perd un emploi en raison de son inconduite ou s'il quitte volontairement un emploi sans justification, à moins, selon le cas :

a) que, depuis qu'il a perdu ou quitté cet emploi, il ait exercé un emploi assurable pendant le nombre d'heures requis, au titre de l'article 7 ou 7.1, pour recevoir des prestations de chômage;

b) qu'il ne soit inadmissible, à l'égard de cet emploi, pour l'une des raisons prévues aux articles 31 à 33.

Exclusion non touchée par une perte d'emploi subséquente

(2) L'exclusion vaut pour toutes les semaines de la période de prestations du prestataire qui suivent son délai de carence. Il demeure par ailleurs entendu que la durée de cette exclusion n'est pas affectée par la perte subséquente d'un emploi au cours de la période de prestations.

Rétroactivité

(3) Dans les cas où l'événement à l'origine de l'exclusion survient au cours de sa période de prestations, l'exclusion du prestataire ne comprend pas les semaines de la période de prestations qui

occurs.

précèdent celle où survient l'événement.

Suspension

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

Suspension de l'exclusion

(4) Malgré le paragraphe (6), l'exclusion est suspendue pendant les semaines pour lesquelles le prestataire a autrement droit à des prestations spéciales.

Restriction on qualifying for benefits

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:
(*a*) hours of insurable employment from that or any other employment before the employment was lost or left; and
(*b*) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

Restriction : application des articles 7 et 7.1

(5) Dans les cas où le prestataire qui a perdu ou quitté un emploi dans les circonstances visées au paragraphe (1) formule une demande initiale de prestations, les heures d'emploi assurable provenant de cet emploi ou de tout autre emploi qui précèdent la perte de cet emploi ou le départ volontaire et les heures d'emploi assurable dans tout emploi que le prestataire perd ou quitte par la suite, dans les mêmes circonstances, n'entrent pas en ligne de compte pour l'application de l'article 7 ou 7.1.

Restriction on number of weeks and rate of benefits

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

Restriction : nombre de semaines et taux de prestations

(6) Les heures d'emploi assurable dans un emploi que le prestataire perd ou quitte dans les circonstances visées au paragraphe (1) n'entrent pas en ligne de compte pour déterminer le nombre maximal de semaines pendant lesquelles des prestations peuvent être versées, au titre du paragraphe 12(2), ou le taux de prestations, au titre de l'article 14.

Interpretation

(7) For greater certainty, but subject to paragraph (1)(*a*), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

Précision

(7) Sous réserve de l'alinéa (1)*a*), il demeure entendu qu'une exclusion peut être imposée pour une raison visée au paragraphe (1) même si l'emploi qui précède immédiatement la demande de prestations — qu'elle soit initiale ou non — n'est pas l'emploi perdu ou quitté au titre de ce paragraphe.

Disentitlement — suspension for misconduct

31. A claimant who is suspended from their employment because of their misconduct is not entitled to receive benefits until

(*a*) the period of suspension expires;

(*b*) the claimant loses or voluntarily leaves the employment; or

(*c*) the claimant, after the beginning of the period of suspension, accumulates with another employer the number of hours of insurable employment required by section 7 or 7.1 to qualify to receive benefits.

Inadmissibilité : suspension pour inconduite

31. Le prestataire suspendu de son emploi en raison de son inconduite n'est pas admissible au bénéfice des prestations jusqu'à, selon le cas :

a) la fin de la période de suspension;

b) la perte de cet emploi ou son départ volontaire;

c) le cumul chez un autre employeur, depuis le début de cette période, du nombre d'heures d'emploi assurable exigé à l'article 7 ou 7.1.

Amendment of decision

120. The Commission, a board of referees or the umpire may rescind or amend a decision given in any particular claim for benefit if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.

Modification de la décision

120. La Commission, un conseil arbitral ou le juge-arbitre peut annuler ou modifier toute décision relative à une demande particulière de prestations si on lui présente des faits nouveaux ou si, selon sa conviction, la décision a été rendue avant que soit connu un fait essentiel ou a été fondée sur une erreur relative à un tel fait.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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APPEARANCES:

Jean-Guy Ouellet	FOR THE APPLICANT
Dominique Guimond Laurent Brisebois	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ouellet Nadon et Associées Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT