Date: 20090929

Dockets: A-278-08
A-279-08

Citation: 2009 FCA 281

CORAM: **SEXTON J.A.**
SHARLOW J.A.
RYER J.A.

A-278-08

BETWEEN:

NEELAM MEHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

A-279-08

BETWEEN:

TINA MEHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Judgment delivered at Vancouver, British Columbia, on September 29, 2009.

REASONS FOR JUDGMENT BY: RYER J.A.

CONCURRED IN BY: SEXTON J.A.
SHARLOW J.A.

Date: 20090929

Dockets: A-278-08
A-279-08

Citation: 2009 FCA 281

CORAM: **SEXTON J.A.**
SHARLOW J.A.
RYER J.A.

A-278-08

BETWEEN:

NEELAM MEHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

A-279-08

BETWEEN:

TINA MEHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

RYER J.A.

[1] Ms. Neelam Mehan brought an application for judicial review (A-278-08) of a decision (CUB 68812A) of Umpire Teitelbaum, dated April 15, 2008, dismissing her application, pursuant to section 120 of the *Employment Insurance Act*, S.C. 1996, c. 23 (the "Act"), for reconsideration of his decision (CUB 68812), dated August 23, 2007. Ms. Tina Mehan brought an application for judicial review (A-279-08) of Umpire Teitelbaum's decision (CUB 69110A) dismissing her application, pursuant to section 120 of the Act, for reconsideration of his decision (CUB 69110), dated August 23, 2007.

[2] These reasons will apply to both applications for judicial review, which were heard together, and will be filed as reasons for judgment in the files for each of those applications.

[3] Section 120 of the Act reads as follows:

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.	**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.

[4] The Umpire's decisions in CUB 68812 and in CUB 69110 upheld decisions of the Board of Referees (the "Board"), dated September 15, 2006, which affirmed the decisions of the Employment Insurance Commission to cancel the Mehans' benefit periods and to impose penalties and notices of violation on each of them for knowingly making false or misleading statements.

[5] Underpinning the Board's decisions were findings that the Mehans did not actually work as tree planters for Dewan Enterprises Ltd., a corporation operated by one of their relatives, as they had stated in their applications for benefits.

[6] The Mehans did not attend the hearings of their appeals of the Board's decisions and the Umpire rendered his decisions in their appeals based upon the records that were before him. He concluded that there was substantial evidence to support the Board's conclusions that the Mehans did not actually work for Dewan Enterprises Ltd. as tree planters, as they indicated in their applications for benefits, and that they had knowingly made false or misleading statements. Accordingly, he upheld the Board's decisions.

[7] Unhappy with the Umpire's decisions, the Mehans applied to have them reconsidered. In support of those applications, the Mehans sought to explain their non-attendance at the hearings of their appeals before the Umpire. In addition, they stated that if the Umpire agreed to reconsider his decisions, they had witnesses who would come to the reconsideration and confirm that the Mehans had worked for Dewan Enterprises Ltd. as tree planters at the times referred to in their applications for benefits.

[8] In considering the Mehans' reconsideration requests, the Umpire referred to the test for new facts, for the purposes of section 120 of the Act, as set forth in the decisions of this Court in *Canada (Attorney General) v. Chan* (1994), 178 N.R. 372, [1994] F.C.J. No. 1916 (QL) and *Mansour v. Canada (Attorney General),* 2001 FCA 328, [2001] F.C.J. No. 1639 (QL). One of the requirements of that test, the discoverability requirement, is that the alleged new facts could not have been discovered before the hearing by a claimant who acted diligently.

[9] The Umpire then determined that the Mehans had presented no new evidence that would meet the test for new facts. In particular, he found that their failure to attend at the hearing of their appeals and their explanations for their non-attendance did not constitute new facts. He also stated that he was satisfied that his decisions in CUB 68812 and CUB 69110 were given with knowledge of all material facts and were not based upon a mistake as to some material fact. Accordingly, he dismissed their reconsideration applications.

[10] In their applications for judicial review, the Mehans request this Court to consider evidence from several individuals that they believe will establish that they worked for Dewan Enterprises Ltd. at the times referred to in their applications for benefits, and after considering this evidence, to reinstate the benefits that they requested and cancel the penalties and notices of violation that have been imposed upon them. I cannot accede to these requests.

[11] The issue before this Court is whether the Umpire made any reviewable error in refusing the Mehans' request for reconsideration of his decisions in CUB 68812 and CUB 69110. In my view, no such error has been established.

[12] The witness letters that have been put forward in the applications before this Court cannot establish such an error because the Umpire did not have those letters before him when he rendered his reconsideration decisions. Moreover, even if those letters had been presented to him, in my view, they would not have constituted new facts, for the purposes of section 120 of the Act, because they do not meet the discoverability requirement. Those letters refer to events that occurred, and were known, prior to the hearings before the Board and the Umpire and could have been presented in those hearings if the Mehans acted diligently.

[13] The Mehans stated to this Court that they were told by the person upon whom they relied for representation before the Board that they should not attend and give evidence at the hearing before the Board. They further stated that they were unaware that their representative had failed to present to the Board evidence similar to that which is contained in the witness letters or that evidence of that type could have been presented to the Umpire when he heard their appeals from the Board's decisions.

[14] While these assertions may explain some of the actions that were taken by the Mehans, in my view, they provide no basis upon which this Court can intervene in the reconsideration decisions of the Umpire, which are the subject of the applications before this Court.

[15] Finally, the Mehans appear to be asking this Court to conduct a new hearing of the merits of their applications for benefits and the imposition of a penalties and notices of violation against them, something that this Court cannot do.

[16] In conclusion, I am not persuaded that the Umpire made any error that warrants intervention by this Court when he refused the Mehans' applications to reconsider his decisions in CUB 68812 and CUB 69110. Accordingly, the applications for judicial review will be dismissed. As the Crown has not requested costs, none will be awarded.

"C. Michael Ryer"
J.A.

"I agree
J. Edgar Sexton J.A."

"I agree
K. Sharlow J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-278-08 A-279-08
STYLE OF CAUSE:	Neeham Mehan v. Attorney General of Canada; Tina Mehan v. Attorney General of Canada
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	September 29, 2009
REASONS FOR JUDGMENT BY:	RYER J.A.
CONCURRED IN BY:	SEXTON J.A. SHARLOW J.A.
DATED:	September 29, 2009

APPEARANCES:

Neeham Mehan	ON HER OWN BEHALF
Tina Mehan	ON HER OWN BEHALF
Ryan Gellings	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT