

**Date: 20090929**

**Docket: A-93-09**

**Citation: 2009 FCA 282**

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

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**MANSOUREH MEHDINASAB**

**Respondent**

Heard at Vancouver, British Columbia, on September 29, 2009.

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

**REASONS FOR JUDGMENT OF THE COURT BY:**

**RYER J.A.**

**Date: 20090929**

**Docket: A-93-09**

**Citation: 2009 FCA 282**

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

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**MANSOUREH MEHDINASAB**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on September 29, 2009)**

**RYER J.A.**

[1] This is an application for judicial review of a decision (CUB 71716) of Umpire Teitelbaum, dated January 8, 2009, allowing the appeal of Mansoureh Mehdinasab (the “respondent”) from a decision of the Board of Referees (the “Board”), dated August 11, 2008.

[2] In its decision, the Board denied the respondent’s request to antedate her claim for benefits to a date earlier than the date that she actually made her claim. Antedating of a claim is permitted by

subsection 10(4) of the *Employment Insurance Act*, S.C. 1996, c. 23 (the “Act”), where the claimant can demonstrate good cause for the delay in making the claim.

[3] The relevant portion of the Act is subsection 10(4), which reads as follows:

10(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

10(4) Lorsque le prestataire présente une demande initiale de prestations après le premier jour où il remplissait les conditions requises pour la présenter, la demande doit être considérée comme ayant été présentée à une date antérieure si le prestataire démontre qu’à cette date antérieure il remplissait les conditions requises pour recevoir des prestations et qu’il avait, durant toute la période écoulée entre cette date antérieure et la date à laquelle il présente sa demande, un motif valable justifiant son retard.

[4] The record confirms that the respondent took ill on a flight to the Middle East on November 15, 2007, was hospitalized outside Canada and returned to Canada on March 1, 2008. She reported for work on March 3, 2008 and put in her claim for benefits on May 13, 2008, requesting that it be antedated to November 18, 2007, the earliest date that she qualified to receive benefits. It is also clear that upon her return to work, or some time shortly after that date, the respondent’s employer gave her a Record of Employment form that referred to medical leave as the reason for her cessation of employment on November 15, 2007.

[5] The Board found that the respondent delayed making her claim until May 13, 2008 because she was unaware that she had the right to apply for benefits and no one informed her of that right. In addition, the Board held that she did not take reasonable steps to acquaint herself with her rights.

[6] The Board determined that during the period that she was absent from Canada, the respondent had good cause for not making her claim for benefits. However, the Board found that she did not have good cause for delaying the application from March 3, 2008, when she returned work, until May 13, 2008, when she made her claim for benefits.

[7] The Board held that good cause had to exist during the entire period from November 18, 2007 to May 13, 2008, and that for the latter part of that period, after she returned to work, her only reason for the delay in making the claim was her unawareness of her right to do so. That reason, together with its finding that the respondent did not take reasonable steps to acquaint herself with her right to claim benefits, led the Board to dismiss her appeal.

[8] The respondent appealed the Board's decision to the Umpire who essentially adopted the factual findings made by the Board and agreed that the respondent's ignorance of her legal rights was not a sufficient basis upon which to grant her request to have an antedated benefit commencement date. However, the Umpire then found that there were "special circumstances" that justified granting her appeal. In particular, he stated:

The claimant left Canada for Iran and became extremely ill. She returned to Canada and went to work as soon as she could but was not told that she could apply for benefits. Upon learning of this possibility, she filed immediately.

[9] With respect, we must conclude that the Umpire's decision to grant the respondent's appeal cannot stand. In our view, the Umpire erred in law by substituting his view of the facts for that of the Board, when the Board's appreciation of the facts was reasonable, given the evidence before it.

[10] Accordingly, the application for judicial review will be allowed, the decision of the Umpire will be set aside and the matter will be remitted to the Chief Umpire for redetermination on the basis that the decision of the Board was reasonable.

"C. Michael Ryer"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-93-09

**STYLE OF CAUSE:** Attorney General of Canada v.  
Mansoureh Mehdinasab

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** September 29, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (SEXTON, SHARLOW, RYER  
JJ.A.)

**DELIVERED FROM THE BENCH BY:** RYER J. A.

**APPEARANCES:**

Cindy Mah FOR THE APPLICANT

**SOLICITORS OF RECORD:**

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