Federal Court of Appeal

Cour d'appel fédérale

Date: 20240530

Docket: A-58-23

Citation: 2024 FCA 102

CORAM: **BOIVIN J.A.**
WOODS J.A.
BIRINGER J.A.

BETWEEN:

ANTHONY CECCHETTO

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on May 30, 2024.

Judgment delivered from the Bench at Toronto, Ontario, on May 30, 2024.

REASONS FOR JUDGMENT OF THE COURT BY: BIRINGER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on May 30, 2024).

BIRINGER J.A.

[1] The appellant appeals from a judgment of the Federal Court (*per* Pentney J.) dismissing his application for judicial review of a decision of the Appeal Division of the Social Security Tribunal: 2023 FC 102.

[2] The Appeal Division denied leave to appeal a decision of the General Division of the Social Security Tribunal (2022 SST 588) that found the appellant ineligible for employment insurance benefits because he had been dismissed from his employment for misconduct: 2022 SST 587. Specifically, the General Division found that the appellant had wilfully failed to comply with the COVID-19 vaccination requirements at his workplace, Lakeridge Health.

[3] In an appeal from a decision on an application for judicial review, this Court must determine whether the Federal Court correctly selected and applied the standard of review: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 45. In effect, this Court must step into the shoes of the Federal Court and review afresh the Appeal Division's decision to deny leave to appeal: *Horrocks* at para. 10.

[4] In our view, the Federal Court correctly selected the reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 16; *Kuk v. Canada (Attorney General)*, 2024 FCA 74 at para. 5; *Bhamra v. Canada (Attorney General)*, 2023 FCA 121 at para. 3. It also correctly applied that standard, finding the Appeal Division's decision to be reasonable.

[5] The Appeal Division correctly identified the limited basis on which leave to appeal may be granted — if the proposed appeal has a "reasonable chance of success" based on at least one of the grounds set out in subsection 58(1) of the *Department of Economic and Social Development Act*, S.C. 2005, c. 34 (DESDA). These are: a failure to observe a principle of

natural justice, an error in law, and an erroneous finding of fact made in a perverse or capricious manner.

[6] The Appeal Division reviewed the General Division's key findings. The General Division found that the appellant had been suspended and later terminated because he failed to comply with Directive 6, which Lakeridge Health had implemented, as they were required (General Division Decision at para. 46). We disagree with the appellant's submission that there was no policy. Lakeridge employees were required to provide proof of full vaccination against COVID-19, submit to regular antigen testing and provide verification of negative test results or obtain an exemption. The appellant chose none of these options.

[7] The General Division also found that the appellant was aware that his non-compliance with Directive 6 would lead to discipline, including termination.

[8] The General Division was satisfied that the appellant lost his job because of misconduct within the meaning of subsection 30(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 and the case law (*Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 at para. 14) and accordingly the appellant was not entitled to receive employment insurance benefits.

[9] Finding no reviewable error in these determinations, based on the limited grounds in subsection 58(1) of the DESDA, that would give an appeal a reasonable chance of success, the Appeal Division denied leave to appeal.

[10] We agree with the Federal Court that the Appeal Division's decision was reasonable. The reasons provide an internally coherent and rational chain of analysis that is justified in relation to the factual and legal constraints: *Vavilov* at para. 85. The reasons refer to the well-established test for misconduct and explain why the appellant had not identified a reviewable error in the General Division's application of that test to the facts. The Appeal Division's decision is also consistent with many recent decisions of this Court in similar circumstances: *Kuk* at para. 9, and the decisions referred to therein; see also *Palozzi v. Canada (Attorney General)*, 2024 FCA 81.

[11] The appellant did not establish at the Federal Court and has not established in this Court that the Appeal Division's decision is unreasonable.

[12] We also do not accept the appellant's submission that there was procedural unfairness. There is no indication that the appellant did not know the case to meet or have a full and fair chance to respond: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 56.

[13] For these reasons, we will dismiss the appeal. Given the circumstances of this case, there will be no award of costs.

"Monica Biringer"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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