Federal Court  Cour fédérale

Date: 20200311

Docket: T-278-19

Citation: 2020 FC 363

Ottawa, Ontario, March 11, 2020

PRESENT: Mr. Justice Boswell

BETWEEN:

VALAMARTHY PARAPARAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Valamarthy Paraparan, has applied for judicial review of a decision of the Appeal Division of the Social Security Tribunal of Canada [SST] dated January 10, 2019. The Appeal Division denied Mrs. Paraparan leave to appeal a decision of the General Division of the SST because the appeal had no reasonable chance of success.

[2] Mrs. Paraparan, who represents herself in this proceeding, asks that her employment benefits be antedated to the date she lost her employment and that the Court set aside the General

Division's decision as well as the Appeal Division's decision, with costs. The issue therefore is whether the Court should grant the requested relief.

[3] For the following reasons, this application for judicial review will be dismissed.

I. Background

[4] Mrs. Paraparan worked as an attendant at a retirement residence until she was dismissed from her employment in December 2016. She initiated a grievance through her union over her dismissal, hoping to be reinstated. After denial of her grievance in October 2017, her union recommended that she apply for employment insurance [EI] benefits.

[5] Mrs. Paraparan filed an initial claim for EI sickness benefits in November 2017. The Canada Employment Insurance Commission [Commission] denied her claim in January 2018 because she had insufficient hours of insurable employment in her qualifying period, which was the 52 weeks prior to her application date.

[6] Mrs. Paraparan contacted the Commission in February 2018 and asked that her initial claim for benefits be antedated to the date she lost her employment. Mrs. Paraparan clarified that she was requesting regular benefits from the date she lost her employment until September 27, 2017, and then sickness benefits as of September 28, 2017 when she became too ill to work.

[7] Mrs. Paraparan told the Commission the reason for the delay in making her initial claim was that she was waiting for the grievance to be resolved and believed she would be reinstated to

her employment. She stated that she decided to delay applying for an additional month because she thought she had to wait until she received a letter from her employer with her employment details before making a claim for benefits.

[8] Mrs. Paraparan contacted the Commission again in March 2018. She explained that as of September 28, 2017 she was unable to apply for EI benefits because she was ill and put on bed rest. She confirmed that she did not make inquiries with the Commission about her entitlement to EI benefits during the entire period of delay.

[9] In a written decision dated March 28, 2018, the Commission denied Mrs. Paraparan's request to antedate her claim, finding that she failed to prove good cause for the entire period of the delay and, as a result, her benefit period start date remained as of October 29, 2017.

[10] In April 2018, Mrs. Paraparan applied for reconsideration of the Commission's decision and supplied medical documentation supporting her claim. The Commission reconsidered its prior decision and, in a decision, dated May 11, 2018, antedated her claim to the week her illness began in September 2017. Because of the new qualifying period, Mrs. Paraparan had enough insurable hours to qualify for sickness benefits. The Commission confirmed its position on Mrs. Paraparan's request to antedate her claim to the date her employment ended because she did not show good cause for the whole period of delay.

II. The General Division Decision

[11] In June 2018, Mrs. Paraparan filed a notice of appeal with the General Division of the SST because she disagreed with the Commission's decision not allowing her to antedate her claim. Her justification for her delay was threefold; that she was: waiting for the resolution of her grievance; waiting for a letter from her employer with employment details; providing full-time care to her son, who was recovering from a gunshot wound, and was caring for his family, all of whom had moved in with her during this period.

[12] Although Mrs. Paraparan was engaged in a grievance appeal of her dismissal and was hopeful she would be reinstated in her position, in the General Division's view, a reasonable person would have made a telephone call or visited a Service Canada location or looked online to inquire about her entitlement to benefits. The General Division concluded that Mrs. Paraparan had not acted as a reasonable person.

[13] The General Division remarked that it was Mrs. Paraparan's burden to satisfy herself of her rights and obligations under the *Employment Insurance Act*, SC 1996, c 23 [*EI Act*]. It noted that, by her own admission she took no steps to inquire with the Commission about her rights until over ten months after becoming unemployed and after receiving advice from her union to make a claim.

[14] The General Division determined that Mrs. Paraparan had failed to prove she had good cause for the entire period of delay. The General Division refused her request to antedate her claim for regular EI benefits and dismissed the appeal.

III. The Appeal Division Decision

[15] Mrs. Paraparan sought leave to appeal to the SST Appeal Division in November 2018. The Appeal Division refused leave to appeal in a decision dated January 10, 2018 on the basis that her appeal had no reasonable chance of success because she had not raised an arguable case that the General Division ignored or misconstrued the evidence or that its conclusions were not rationally connected to the evidence.

[16] The Appeal Division noted that under subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*DESDA*] there are only three grounds of appeal. That the General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[17] The Appeal Division also noted that it had to be satisfied there was a reasonable chance of success on one or more grounds of appeal. The Appeal Division further noted that a reasonable chance of success has been equated to an arguable case at law.

[18] The Appeal Division considered Mrs. Paraparan's arguments that the General Division had made errors of fact. According to Mrs. Paraparan, she was not advised to apply in a period

that would have avoided the delay or that she would be penalized for applying when she did; and, she did not consider it necessary to apply for benefits because she had expected to return to work. The Appeal Division noted Mrs. Paraparan's submissions that the General Division erred when it found that she did not act as a reasonable person.

[19] The Appeal Division found the General Division had recognized that Mrs. Paraparan's union representative did not advise her to apply until there had already been a substantial delay and that her expectation was that she would be returning to work. The Appeal Division noted that, while the General Division had not mentioned that Mrs. Paraparan was not advised she could be penalized for making a late claim, the Federal Court of Appeal has established that the General Division is not required to mention every piece of evidence but, rather, may be presumed to have considered the evidence before it.

[20] The Appeal Division remarked that, despite the fact Mrs. Paraparan may not have been fully aware of the consequences of delaying her application for benefits, this was not relevant to whether she had a good cause for the delay. In the Appeal Division's view, the General Division had appropriately noted that Mrs. Paraparan was responsible for satisfying herself of her rights and obligations under the *EI Act*.

[21] The Appeal Division concluded that the General Division had not ignored or misconstrued the evidence, noting that Mrs. Paraparan disagreed with the General Division's findings of fact but this disagreement did not establish a ground of appeal under subsection 58(1) of the *DESDA*. The Appeal Division remarked that it lacked authority to reweigh the evidence

and substitute its judgement for that of the General Division, except in connection with an error under subsection 58(1).

[22] In the Appeal Division's view, the General Division was vigilant not to apply the language of subsection 58(1) of the *DESDA* in a mechanistic way when considering grounds of appeal advanced by a party. The Appeal Division said it had considered whether there was an arguable case that any other significant evidence had been ignored or misunderstood, but this was not the case. The Appeal Division thus determined that Mrs. Paraparan had no reasonable chance of success on appeal.

IV. The Parties' Submissions

A. *Mrs. Paraparan's Submissions*

[23] Mrs. Paraparan asserts that the Appeal Division's decision refusing to antedate her EI benefits is unreasonable because it was based on a serious misapprehension of evidence and a flawed fact-finding process. She claims she acted as a reasonable person and applied for EI benefits as soon as her union representative told her she could do so. She says she was informed that she first needed a letter from her employer to apply for EI.

[24] Mrs. Paraparan notes that when she was dismissed from her job, the information her employer provided concerning her rights and responsibilities for EI did not indicate there was a time limit for applying for EI benefits. She contends that the Appeal Division did not consider

whether her circumstances were exceptional, and that the SST should have considered her inexperience with the EI program to show good cause.

[25] Mrs. Paraparan says the Appeal Division did not consider the cumulative effect of the extreme exceptional circumstances she underwent during the delay period. She notes that when her son was shot, she not only had to care for him but also for his pregnant wife, his daughter and his wife's immediate family, and she also had to undergo surgery. She further notes that, since the hearing before the General Division was via teleconference, she struggled to communicate, and there was telephone line interference that affected her testimony and could have led to a misunderstanding of evidence.

B. *The Respondent's Submissions*

[26] The respondent says the Appeal Division reasonably denied leave to appeal because it found that Mrs. Paraparan failed to raise an arguable case that the General Division erred under subsection 58(1) of the *DESDA*. According to the respondent, the Appeal Division identified the proper test for leave to appeal and properly applied it.

[27] In the respondent's view, the Appeal Division reviewed each of Mrs. Paraparan's reasons for delay and found there was no arguable case that the General Division had misunderstood or ignored this evidence or that its conclusions were perverse or capricious. The respondent points out that the Appeal Division noted that the General Division had recognized that Mrs. Paraparan's union representative did not advise her to apply for EI benefits until after there had been substantial delay, and that she delayed making her claim because she expected to return to

work. According to the respondent, the Appeal Division reasonably noted that Mrs. Paraparan's ignorance of the consequences of delaying her claim was irrelevant to whether she had a good cause for the delay.

[28] The respondent submits that Mrs. Paraparan disagrees with the General Division's application of settled principles to the facts and its finding that she did not act as a reasonable person. According to the respondent, the Appeal Division reasonably found this was not a basis to intervene because it lacked authority to reweigh the evidence and substitute its decision for that of the General Division, except in connection with an error under subsection 58(1) of the *DESDA*.

V. Analysis

A. *What is the Standard of Review?*

[29] The standard of review applicable to the Appeal Division's decision to deny leave to appeal with respect to an error in law or an erroneous finding of fact, under paragraphs 58(1)(b) and (c) of the *DESDA*, is reasonableness (*Sherwood v Canada (Attorney General)*, 2019 FCA 166 at para 7; *Quadir v Canada (Attorney General)*, 2018 FCA 21 at para 9 [*Quadir*]). The appropriate standard of review for failing to observe a principle of natural justice under paragraph 58(1) (a) is correctness (*Sjogren v Canada (Attorney General)*, 2019 FCA 157 at para 6 [*Sjogren*]).

[30] Mrs. Paraparan raises no issues or concerns that the Appeal Division acted unfairly or breached a principle of natural justice. Rather, her arguments center on findings of fact and on whether the Appeal Division misconstrued the evidence. Therefore, the applicable standard of review in this case is reasonableness.

[31] The Supreme Court of Canada recently recalibrated the framework for determining the applicable standard of review for administrative decisions on the merits.

[32] The starting point is the presumption that a standard of reasonableness applies in all cases, and a reviewing court should derogate from this presumption only where required by a clear indication of legislative intent, or when the rule of law requires the standard of correctness to be applied (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16 and 17 [*Vavilov*]; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27). Neither circumstance arises in this case to justify a departure from the presumption of reasonableness review.

[33] Reasonableness review is concerned with both the decision-making process and its outcome. It tasks the Court with reviewing an administrative decision for the existence of internally coherent reasoning and the presence of justification, transparency, and intelligibility. It also tasks the Court with determining whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 86 and 99; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[34] If the process and the outcome fit comfortably with the principles of justification, transparency, and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome; nor is it the function of the reviewing court to reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61; *Vavilov* at para 125).

B. *Was the Appeal Division's Decision Reasonable?*

[35] Subsection 58(2) of the *DESDA* requires the Appeal Division to grant leave to appeal a General Division decision if the appeal has a reasonable chance of success. A reasonable chance of success means having some arguable ground upon which the proposed appeal might succeed (*Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12). Subsection 58(1) of the *DESDA* prescribes the only grounds of appeal: a breach of natural justice, an error of law, or an erroneous finding of fact made in a perverse and capricious manner or without regard for the material before it (*Cameron v Canada (Attorney General)*, 2018 FCA 100 at para 2).

[36] Subsection 10(4) of the *EI Act* allows the antedating of claims in circumstances where good cause for the delay in applying for benefits is established. The Federal Court of Appeal summarized the requirements under subsection 10(4) in *Canada (Attorney General) v Kaler*, 2011 FCA 266:

> [4] The antedating of claims is permissible under subsection 10(4) of the Act in circumstances where good cause for the delay in applying for benefits is established. To establish good cause, the jurisprudence of this Court requires that a claimant "be able to show that [she] did what a reasonable person in [her] situation would have done to satisfy [herself] as to [her] rights and obligations under the Act": *Canada (A.G.) v. Albrecht*, [1985] 1

> F.C. 710 (C.A.) (*Albrecht*). It is also settled law that a claimant has an obligation to take "reasonably prompt steps" to determine entitlement to benefits and to ensure her rights and obligations under the Act: *Canada (A.G.) v. Carry*, 2005 FCA 367, 344 N.R. 142 (*Carry*). This obligation imports a duty of care that is both demanding and strict: *Albrecht*, para. 13. Good cause must be shown throughout the entire period for which the antedate is required: *Canada (A. G.) v. Chalk*, 2010 FCA 243. Ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause: *Canada (A.G.) v. Somwaru*, 2010 FCA 336; *Carry*, para. 5.

[37] I disagree with Mrs. Paraparan that the SST misapprehended the evidence. The Appeal Division's reasons show that it was alive to and acknowledged Mrs. Paraparan's difficult circumstances as well as her inexperience concerning the process to make the initial application for EI benefits.

[38] The Appeal Division appropriately determined that Mrs. Paraparan disagreed with the finding that she did not act as a reasonable person, and that her disagreement with findings of fact did not establish a ground of appeal under subsection 58(1) of the *DESDA*. It was reasonable for the Appeal Division to conclude it lacked jurisdiction to reweigh the evidence.

[39] The application of settled principles to the facts is a question of mixed fact and law; it is not an error of law. The Appeal Division therefore lacked jurisdiction to interfere with the General Division decision (*Quadir* at para 9).

VI. Conclusion

[40] It was reasonable for the Appeal Division to find Mrs. Paraparan's appeal had no reasonable chance of success because she had not raised an arguable case that the General Division ignored or misconstrued the evidence or that its conclusions were not rationally connected to the evidence. The Appeal Division's decision is coherent, transparent, intelligible, and justified, and is an acceptable outcome defensible in respect of the facts and law.

[41] Mrs. Paraparan's application for judicial review is dismissed. There is no order as to costs.

JUDGMENT in T-278-19

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and there is no order as to costs.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Valamarthy Paraparan	FOR THE APPLICANT ON HER OWN BEHALF
Matthew Vens	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT