Federal Court  Cour fédérale

Date: 20210209

Docket: T-1333-20

Citation: 2021 FC 115

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 9, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

COLETTE BLANCHETTE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Colette Blanchette [the applicant] is seeking judicial review of the decision of the Appeal Division of the Social Security Tribunal [the Appeal Division] denying her application for leave to appeal the decision of the General Division of the same Tribunal [the General Division]. The Appeal Division determined that Ms. Blanchette's appeal had no reasonable chance of success.

[2] For the reasons set out below, Ms. Blanchette's application for judicial review will be dismissed.

II. Background

[3] On April 30, 2018, Ms. Blanchette began working on a casual basis for her employer, the Sûreté du Québec [the SQ], and on April 30, 2019, her employer terminated her employment because of a shortage of work.

[4] During the one-year period ending on April 30, 2019, Ms. Blanchette accumulated 810 hours of insurable employment for the purposes of the *Employment Insurance Act*, SC 1996, c 23 [the Act]. The number of hours is greater than the minimum necessary to claim benefits under the Act.

[5] On July 16, 2019, Ms. Blanchette submitted a claim for benefits under the Act. However, during the one-year period ending on July 16, 2019, Ms. Blanchette instead accumulated 643 insurable hours for the purposes of the Act, which is less than the minimum number of hours required to claim benefits under the Act.

[6] According to the information in the record, on the same day, Ms. Blanchette requested by telephone that her claim be antedated to April 30, 2019. Ms. Blanchette then indicated that (1) she thought she needed her Record of Employment to claim benefits and did not have it; (2) she asked her employer for her Record of Employment several times, as her employer was having

problems with its computer system; and (3) she did not know that she only had four weeks following her last day of work to claim benefits.

[7] On July 31, 2019, the Canada Employment Insurance Commission [the Commission] denied Ms. Blanchette's claim for benefits. The Commission told Ms. Blanchette that she was not entitled to benefits, as she had accumulated only 643 insurable hours, when she needed to have accumulated at least 700 hours.

[8] On August 7, 2019, the Commission refused to antedate Ms. Blanchette's claim. The Commission concludes that Ms. Blanchette was unable to demonstrate that, for the period from April 30, 2019, to July 16, 2019, there was a valid reason for her delay in submitting her claim.

[9] On August 14, 2019, Ms. Blanchette applied for a review of the Commission's refusal to antedate her claim for benefits (Respondent's Record, pages 111 to 113). On the form she submitted, Ms. Blanchette mentioned that she did not know that a claim could be made before receiving her Record of Employment, and in the letter she appended to her form, she added that she had acted honestly and with goodwill. On August 20, 2019, she participated in a group meeting convened by the Ministère du Travail, de l'Emploi et de la Solidarité sociale du Québec, the province's department of labour, employment and social solidarity.

[10] On August 29, 2019, the Commission informed Ms. Blanchette that it would not vary its initial decision. The Commission then confirmed the decision [TRANSLATION] "Issue: Benefit period not established", later corrected as [TRANSLATION] "Issue: Antedate" (Respondent's

Record, page 75). The Commission determined that Ms. Blanchette had not established reasonable cause to justify her delay.

[11] On September 9, 2019, Ms. Blanchette filed an appeal of the Commission's decision with the General Division. She argued that her delay was due to a technical issue with her former employer regarding the issuance of her Record of Employment and to the fact that she had been waiting to receive her Record of Employment before taking any steps. She noted that she attended a meeting on August 20, 2019, even though she did not know whether she would receive benefits, and that this showed her goodwill and that everything was conducted in an honest manner (Exhibit A-8, Applicant's Record).

[12] On September 26, 2019, the General Division heard Ms. Blanchette's appeal. Ms. Blanchette once again submitted that she was unaware that a claim for benefits could be initiated without a Record of Employment and that, as soon as a colleague informed her of this, she filed her application.

[13] On September 30, 2019, the General Division dismissed Ms. Blanchette's appeal. The General Division noted that claimants must make their claim for benefits as soon as possible after they stop working, and that this is a strict requirement (*Canada (AG) v Brace*, 2008 FCA 118 [*Brace*]). The General Division also noted that a request to antedate a claim for benefits will only be granted if two criteria are met, namely (1) the claimant qualified to receive benefits at an earlier date and (2) the claimant had good cause for the delay throughout the period of delay. The General Division noted that "antedating" is applied only exceptionally and that, in this case, only

the second criterion was at issue. In this regard, the General Division concluded that Ms. Blanchette did not show that she did what a reasonable and prudent person would have done in the same circumstances. The General Division considered that Ms. Blanchette's arguments did not constitute good cause for the delay. The General Division noted that the Federal Court of Appeal determined that waiting for a Record of Employment did not constitute good cause for the delay in making a claim for benefits (*Brace*; *Canada (AG) v Ouimet*, 2010 FCA 83 [*Ouimet*]) and that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause (*Canada (AG) v Kaler*, 2011 FCA 266).

[14] The General Division had no doubts about Ms. Blanchette's good faith, but could only conclude that she did not do what a reasonable and prudent person would have done in similar circumstances.

[15] On October 28, 2019, Ms. Blanchette sought leave to appeal the decision of the General Division to the Appeal Division.

[16] Ms. Blanchette then submitted two letters, one dated September 9, 2019, and another dated October 28, 2019. She then argued that (1) the sole ground for refusal is [TRANSLATION] "Ignorance of the law is no excuse", which is, according to her, a popular adage and in no way a legal obligation; (2) her day-to-day concerns led her to set aside her priorities to help an aging person close to her, a ground that was raised for the first time; (3) tools on a website do not create an obligation to know the law; (4) several factors (not named) weighed against her; (5) she was honest and cooperative (Exhibit A-12, Applicant's Record); and (6) she was waiting for her

Record of Employment before taking any steps. Despite the Appeal Division's request for more information, Ms. Blanchette did not add any details to her grounds.

[17] On November 25, 2019, the Appeal Division denied leave to appeal, having concluded that none of the grounds of appeal raised by Ms. Blanchette gave the appeal a reasonable chance of success.

[18] The Appeal Division cited the grounds of appeal specified in subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [Department of Employment Act] and the burden imposed on the appellant. Thus, the appellant must raise a question of a principle of natural justice, of jurisdiction, or of law or fact, the answer to which could lead to the quashing of the impugned decision. The Appeal Division stated that leave to appeal will be granted if it is satisfied that at least one of the grounds of appeal raised by the claimant gives the appeal a reasonable chance of success.

[19] The Appeal Division summarized the grounds of appeal that Ms. Blanchette raised in support of her application for leave to appeal. The Appeal Division noted that the Federal Court of Appeal has repeatedly determined that claimants who are late in filing a claim for benefits because their employer failed to issue a Record of Employment or issued a Record of Employment late do not have good cause for delay (*Brace*; *Canada (Attorney General) v Chan*, A-185-94; *Ouimet*). The Appeal Division determined, as did the General Division, that a reasonable and prudent person in the applicant's situation would have taken the necessary steps to enquire with the Commission and file an application for benefits without delay.

[20] On January 31, 2020, Ms. Blanchette sought judicial review of the Appeal Division's decision.

[21] The Court must determine whether the Appeal Division erred in denying Ms. Blanchette's application for leave to appeal the General Division's decision.

III. Positions of the parties and analysis

A. *Standard of review*

[22] Ms. Blanchette did not make any submissions with respect to the standard that the Court must use to review the decision of the Appeal Division. The respondent, the Attorney General of Canada [AGC], submitted that the reasonableness standard should be used.

[23] The Appeal Division's decision to deny leave to appeal must be reviewed on the standard of reasonableness (*Langlois v Canada (Attorney General)*, 2018 FC 1108 at para 4; *Lazure v Canada (Attorney General)*, 2018 FC 467 at para 18; *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paras 17–22). None of the situations allowing this presumption to be rebutted apply in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Where the applicable standard of review is reasonableness, the role of the Court on judicial review is to examine the reasons given by the administrative decision maker and determine whether the decision is one that is based on "an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67

[*Canada Post Corp.*] at paras 2, 31). The Court must consider the "outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15).

[24] It is not the task of the Court, on judicial review, to reweigh the evidence on record, or to reassess a decision maker's findings of fact and substitute its own (*Canada Post Corp.* at para 61; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Rather, it must consider the reasons as a whole, in the context of the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53) and simply limit itself to whether the conclusions are irrational or arbitrary.

B. *General principles*

(1) Employment Insurance claim

[25] It is useful to note that the purpose of the *Employment Insurance Act* is to ensure the security of citizens by providing assistance to those who have lost their jobs and by helping the unemployed return to work.

[26] A claimant is required to make a claim for benefits once the eligibility conditions are met (subsection 10(1) of the Act), and subsection 26(1) of the *Employment Insurance Regulations*, SOR/96-332, provides that, subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed.

[27] However, subsection 10(4) of the Act provides for a mechanism for antedating an initial claim for benefits:

> (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.

[28] According to this subsection of the Act, the claimant must therefore show, among other things, that there was "good cause" for the delay in filing his or her claim. As the AGC pointed out, the Federal Courts have developed certain principles to clarify what constitutes "good cause". Accordingly, (a) to establish just cause, a claimant must be able to demonstrate that he or she did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act; (b) the mechanism is exceptional in nature (*Canada (AG) v Scott*, 2008 FCA 145 at para 9, citing *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at paras 6–7); and (c) ignorance of the law, even if coupled with good faith, is not generally sufficient to establish good cause, barring exceptional circumstances (*Quadir v Canada (Attorney General)*, 2018 FCA 21 at para 12: "As noted by this Court in *Rodger v. Canada (Attorney General)*, 2013 FCA 222, 449 N.R. 295, ignorance of the law does not constitute good cause unless an individual can show that what they did was reasonable under the circumstances.").

(2) Appeal Division

[29] The Social Security Tribunal is constituted under the Department of Employment Act. It consists of a General Division and an Appeal Division (subsection 44(1) of the Department of

Employment Act). In general, an appeal to the Appeal Division may only be brought if leave to appeal is granted (subsection 56(1) of the Department of Employment Act).

[30] Subsection 58(1) of the Department of Employment Act sets out the grounds of appeal that may be raised before the Appeal Division. Thus, the only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[31] Lastly, subsection 58(2) of the Department of Employment Act provides that an application for leave to appeal is only granted if the appeal has a reasonable chance of success.

[32] This Court has determined that "having a 'reasonable chance of success' in this context means having some arguable ground upon which the proposed appeal might succeed" (*Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12). Leave to appeal is granted when, among other reasons, important evidence has been arguably overlooked or possibly misconstrued (*Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20, citing *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10).

C. *Discussion and conclusion*

[33] The Court must determine here whether it was reasonable for the Appeal Division to find that Ms. Blanchette's appeal had no reasonable chance of success.

[34] In her affidavit and her memorandum filed with this Court, Ms. Blanchette reiterated that she was waiting to have the documents in hand before making her claim for benefits, [TRANSLATION] "which for [her] represented the correct way to proceed". She stated that she should not have to suffer the consequences of the negligence of others. Again, she said her employer had a computer issue, and that she did not receive the documents related to her claim for benefits in time. She mentioned that she made several telephone calls and did some research, in particular to draft her written pleadings, which demonstrates her honesty and good faith. She reiterated that the assertion that ignorance of the law is no excuse is a popular adage and not an obligation. She also pointed out that she was helping an aging person, a ground raised for the first time before the Appeal Division.

[35] Ms. Blanchette asks the Court to set aside the decision, with costs.

[36] The AGC responds that the decision of the Appeal Division is reasonable, since Ms. Blanchette did not rely on any of the available grounds of appeal against the General Division's decision. The AGC adds that Ms. Blanchette does not identify any error that could render the Appeal Division's decision unreasonable.

[37] The AGC notes, among other things, that the Appeal Division (1) set out the relevant test under section 58 of the Department of Employment Act, namely a reasonable chance of success of the appeal; (2) stated the available grounds of appeal; (3) further stated that the burden on Ms. Blanchette is lower than the one imposed at a hearing on the merits; and (4) followed the case law of the Federal Court of Appeal.

[38] The AGC therefore asks the Court to dismiss the application for judicial review, without costs.

[39] As noted by the AGC, the Appeal Division correctly stated the grounds of appeal provided for in the Act and the burden and test applicable to an application for leave to appeal.

[40] Ms. Blanchette essentially argued before the administrative tribunals and the Court that (1) she was waiting for her Record of Employment and did not know that she could make a claim for benefits without it; (2) ignorance of the law is not an obligation and therefore is "good cause" to antedate her application for benefits; and (3) she acted in good faith.

[41] It is not disputed that Ms. Blanchette made no attempt to contact the Commission or enquire about her obligations between April 30, 2019, and early July 2019.

[42] However, as mentioned above, the Federal Court of Appeal has repeatedly determined that the situation as presented by Ms. Blanchette does not constitute "good cause for the delay" within the meaning of subsection 10(4) of the Act. The law is therefore clear that, barring exceptional circumstances, prospective claimants in Ms. Blanchette's situation are expected to "take reasonably prompt steps" to understand their obligations under the Act (Canada (*Attorney General*) *v Carry*, 2005 FCA 367 at para. 5 [*Carry*]; see also Canada (*Attorney General*) *v Kaler*, 2011 FCA 266 at para. 4 [*Kaler*]).

[43] The Appeal Division could indeed conclude that the appeal had no chance of success, as the decision of the General Division sets out and applies the principles established by the Federal Court of Appeal to the effect that (1) waiting for her Record of Employment does not constitute "good cause" that can justify Ms. Blanchette's delay and therefore allow her claim for benefits to be antedated (*Brace*; *Ouimet*); and (2) ignorance of the law cannot justify her delay, given the circumstances described above (*Carry*; *Kaler*).

[44] Ms. Blanchette did not "take prompt steps", and given the consistent case law of the Federal Court of Appeal, it was therefore reasonable for the Appeal Division to find that Ms. Blanchette's appeal had no chance of success.

[45] Finally, and as mentioned at the hearing, the Court has absolutely no doubts about Ms. Blanchette's good faith. Even though Ms. Blanchette's case inspires sympathy, she has not persuaded me that the Appeal Division's decision is unreasonable in light of the principles mentioned above.

[46] The application for judicial review will be dismissed, and no costs will be awarded.

[47] Finally, the Court will grant the AGC's motion to be substituted for the Employment Insurance Commission as the respondent named herein, pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106.

JUDGMENT in T-1333-20

THIS COURT'S JUDGMENT is as follows:

1. The Attorney General of Canada is substituted for the Employment Insurance Commission as the respondent named herein, pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106.
2. The application for judicial review is dismissed.
3. Without costs.

"Martine St-Louis"
Justice

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1333-20
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APPEARANCES:

Representing herself	FOR THE APPLICANT (REPRESENTING HERSELF)
Charles Maher	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Colette Blanchette (Representing herself)	FOR THE APPLICANT (representing herself)
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