

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210310

Docket: A-25-19

Citation: 2021 FCA 53

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

BETWEEN:

KISHAN P.S. AUJLAY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the registry
on March 10, 2021.

Judgment delivered from the Bench at Ottawa, Ontario, on March 10, 2021.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 10, 2021).

BOIVIN J.A.

[1] Mr. Aujlay, the applicant, applies for judicial review of the decision from the Social Security Tribunal (Appeal Division) rendered on October 22, 2018 (file AD-18-2).

[2] The applicant applied for Employment Insurance (EI) benefits on December 15, 2014 but, thereafter, did not file EI claims reports with the Canada Employment Insurance

Commission (the Commission) because a quick financial settlement with his former employer for wrongful dismissal seemed to be imminent. However, the wrongful dismissal settlement did not occur as envisaged, and, one year later, on January 26, 2016, the applicant requested that his claim be re-activated.

[3] On October 19, 2016, the applicant requested that his application be antedated to December 14, 2014, which was denied by the Commission on the basis that he did not show good cause throughout the entire period for the delay filing his EI claim reports.

[4] The General Division also denied the antedated request on the same grounds pursuant to section 10 of the *Employment Insurance Act*, S.C. 1996 c. 23.

[5] For its part, the Appeal Division granted the applicant leave to appeal and found that the General Division erred because it did not address contradictory evidence regarding a telephone call between the applicant and a representative of Service Canada. Exercising its statutory power under section 59 of the *Department of Employment and Social Development Act*, S.C. 2005 c. 34, the Appeal Division opted to “give the decision the General Division should have given had it considered the said evidence”.

[6] Following a review of the evidence that was before the General Division, the Appeal Division also found, despite the error of the General Division, that the applicant did not show good cause throughout the entire period of delay - *i.e.*, between the time of his initial claim in December 2014, and when he contacted the respondent in January 2016. Notwithstanding

whatever was said to the applicant on January 2015 by Service Canada, the Appeal Division concluded that, on the basis of the evidence, the applicant should have promptly followed up with the Commission when he soon realized after January 2015 that the settlement expected, was not forthcoming. The Appeal Division concluded that the applicant failed to demonstrate good cause because he waited a year to clarify his rights and obligations.

[7] The day prior to this hearing, the applicant submitted a two-page document to be added to his application record. However, this document has no impact on the outcome of this case.

[8] After careful consideration of the applicant's arguments, we are all of the view that the decision of the Appeal Division is reasonable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1), and that there was no breach of natural justice.

[9] The application for judicial review will therefore be dismissed. The respondent did not seek costs and none will be awarded.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-25-19

STYLE OF CAUSE: KISHAN P.S. AUJLAY v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: BY ON LINE
VIDEOCONFERENCE

DATE OF HEARING: MARCH 10, 2021

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
BOIVIN J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

Kishan P.S. Aujlay FOR THE APPLICANT
(SELF REPRESENTED)

Sandra Doucette FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada