Federal Court Cour fédérale

Date: 20251211

Docket: T-1497-25

Citation: 2025 FC 1958

Ottawa, Ontario, December 11, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

BRENT WILLIAM TYMCHUK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Social Security Tribunal of Canada [SSTC], Appeal Division [Appeal Division] dated April 14, 2025 [the AD Decision].

[2] In the AD Decision, the Appeal Division refused to grant the Applicant leave to appeal the decision of the General Division of the SSTC [General Division], which (among other things) found that the Applicant was disqualified from receiving Employment Insurance [EI]

benefits, because he had voluntarily left his employment without just cause, and found that the Applicant had knowingly misrepresented his work and earnings [the GD Decision]. Pursuant to subsection 58(2) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA], the Appeal Division refused the Applicant's application for leave to appeal, because the Appeal Division was not satisfied the Applicant's appeal had a reasonable chance of success.

[3] As explained in greater detail below, this application is dismissed, because the Applicant has not demonstrated that he was deprived of procedural fairness or that the AD Decision is unreasonable.

II. Background

[4] The Applicant, who makes a living as a truck driver, filed a claim for EI benefits on May 28, 2023. While on a continuing claim, he began working at Royal Environmental Inc [RE] on June 8, 2023, but that employment ended after one day. On July 12, 2023, the Applicant started another job with Marid Industries Limited [MIL], and again the employment ended after one day. On February 6, 2024, the Applicant again began working at RE, and the employment ended after one day.

[5] The Canada Employment Insurance Commission [the Commission] initiated an investigation of the Applicant's EI claim and, in calls with a representative of the Commission on May 17, 2024, June 10, 2024, and October 8, 2024, the Applicant explained the reasons that the employment described above had ended. The Applicant stated that he quit the first employment with RE because of family circumstances and that he felt unsafe driving a truck due

to mental health problems. The Applicant stated that he quit his employment with MIL due to similar feelings of unsafety, and to take care of his father. The Applicant stated that he quit his second employment with RE to look after his fiancée who was ill.

[6] By letter dated June 28, 2024, the Commission imposed a disqualification for benefits pursuant to section 30 of the *Employment Insurance Act*, SC 1996, c 23 [EIA], because the Commission determined that the Applicant did not demonstrate just cause for voluntarily leaving the three jobs referenced above. After the Applicant requested reconsideration, the Commission maintained its decision by letter dated October 10, 2024 [the Reconsideration Decision].

[7] The Applicant appealed the Reconsideration Decision to the General Division. A hearing with a member of the General Division took place on February 7, 2025.

[8] On March 7, 2025, the General Division issued the GD Decision, allowing in part the Applicant's appeal of the Reconsideration Decision, finding that he had shown that he was capable of and available for work, but unable to find a suitable job, as of August 9, 2023 (but not prior to that date). Otherwise, the General Division dismissed the Applicant's appeal.

[9] The General Division found that the Applicant did not have just cause to voluntarily leave the three jobs, because he had reasonable alternatives to quitting. In relation to the Applicant's mental health and stress that he referenced on appeal, the General Division concluded that the Applicant could have seen his doctor about his mental health concerns for

support, and he could have spoken to his employers to arrange for time off or an accommodation to take care of his fiancée.

[10] The General Division also found that the Applicant knowingly misrepresented his work and earnings by failing to report that he quit three jobs and by incorrectly reporting that he was available for work. Consequently, the General Division found that the Applicant was disqualified from receiving EI benefits, because he voluntarily left jobs in June and July 2023 and February 2024, and that the Commission had properly imposed a non-monetary penalty of a warning and an unclassified violation.

[11] The Applicant filed an application with the Appeal Division seeking leave to appeal the GD decision.

[12] On April 14, 2025, the Appeal Division issued the AD Decision that is the subject of this application for judicial review.

III. Decision under Review

[13] For the reasons explained below, the Appeal Division found that the Applicant's appeal lacked a reasonable chance of success pursuant to subsection 58(1) of the DESDA and, consequently, refused the Applicant leave to appeal.

A. *Factual Errors*

(1) Voluntarily leaving employment

[14] The Applicant argued that the General Division made factual errors in determining that he voluntarily left his employments. The Applicant asserted that the evidence demonstrated he did not leave any of his jobs, including demonstrating that one of his employers did not properly fill out the relevant Record of Employment. As such, the Applicant argued that there was no issue as to whether there was just cause or any other reasonable alternative to leaving his employment.

[15] The Appeal Division found that there was not an arguable case that the General Division had based its decision on a factual error, made in a perverse or capricious manner or without regard for the material before it, on the issues of voluntary leaving. Relying on the Applicant's statements in his calls with the Commission and his testimony before the General Division, the Appeal Division concluded that the evidence in the file before the General Division demonstrated that the Applicant voluntarily quit.

(2) Misrepresentation of work and earnings

[16] The Applicant submitted that the General Division made factual errors in relation to the conclusion that the Applicant misrepresented his work and earnings. The Applicant argued that the evidence demonstrated that he did not appreciate his actions at the time because of his mental health and the struggles involving his fiancée's health and that, as such, there was no intent to

misrepresent. The Applicant asserted that he had testified that he informed his immediate supervisor that his fiancée was sick with cancer and that he had to care for her.

[17] The Appeal Division found that there was not an arguable case that the General Division had based its decision on a factual error, made in a perverse or capricious manner or without regard for the material before it, on the issue of whether the Applicant knowingly made any misrepresentations. The Appeal Division concluded that the General Division is not required to address all of the evidence before it, as it is presumed that it considered all the evidence.

[18] Further, the Appeal Division concluded that, in any event, the General Division had cited the Applicant's evidence about his mental health and his fiancée's health. The General Division did not ignore or misapprehend this evidence and, indeed, accepted the fact that the Applicant was dealing with these issues. The General Division simply did not accept that this reasonably explained the Applicant's misrepresentations. The Appeal Division explained that it was not its role to reassess the evidence.

B. *Legal Error*

[19] The Appeal Division understood the Applicant's argument concerning the misrepresentation of his work and earnings as including an argument that the General Division made a legal error by misstating the legal test or by not taking into account all of the relevant considerations when assessing whether the Applicant had knowingly made false representations.

[20] The Appeal Division concluded that the Applicant did not have an arguable case that the General Division erred in this manner when it considered whether the Applicant had knowingly made misrepresentations. The Appeal Division concluded that the General Division could impose a penalty for knowingly making a false or misleading representation even in the absence of intent. The Appeal Division noted that the General Division found the Applicant had mental health issues and did not have the intent to deceive or mislead but, in finding that intent was irrelevant, relied on *Canada (Attorney General) v Gates*, 1995 CanLII 3601 (FCA), in which the Federal Court of Appeal held that it is incorrect to require a misrepresentation to have been knowingly made with the general intent to deceive or mislead.

[21] The Applicant also argued that the General Division erred in concluding that the stress the Applicant was under was not a reasonable explanation for the incorrect information that he provided in his EI submissions. However, the Appeal Division explained that, pursuant to *Quadir v Canada (Attorney General)*, 2018 FCA 21, it does not have jurisdiction to interfere with the application of settled principles to the facts (in other words, questions of mixed fact and law), unless there is an extricable legal issue. The Appeal Division held that, in the absence of an extricable legal issue, there was no arguable case that the General Division had made an error of law when it found that the Applicant's explanation was not a reasonable one.

IV. Issues

[22] This matter raises the following issues for the Court's determination:

A. Has the Applicant submitted new evidence that is inadmissible on judicial review?

B. Has the Applicant established that he was deprived of procedural fairness?

C. Is the Decision reasonable?

V. Standard of Review

[23] Consistent with the articulation of the final issue above, both parties submit, and I concur, that arguments related to the merits of the Decision are governed by the standard of reasonableness (*Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paras 20-21, aff'd 2024 FCA 102, leave to appeal to SCC requested; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17).

[24] The parties have not made submissions on the standard of review applicable to the allegation of a breach of procedural fairness, including allegations by the Applicant as to a reasonable apprehension of bias by the SSTC. However, *Yang v Canada (Attorney General)*, 2025 FC 169 [*Yang*] addressed the applicable standard as follows at paragraphs 25 to 26:

> 25. […] matters of procedural fairness are typically subject to the correctness standard of review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to SCC refused, 39522 (5 August 2021)). Put otherwise, the Court is required to assess whether the procedure followed was fair having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).
>
> 26. However, to the extent the Applicant is challenging findings by the Appeal Division as to whether the General Division afforded the Applicant the requisite procedural fairness, the applicable standard of review does not appear to be settled (see, e.g., *Papouchine v Canada (Attorney General)*, 2018 FC

> 1138 [*Papouchine*] at paras 15–20). The Respondent takes the position that the reasonableness standard applies. This position is consistent with *Milner v Canada (Attorney General)*, 2024 FCA 4 at paragraph 24. On the other hand, *Sjogren v Canada (Attorney General)*, 2019 FCA 157 adopted the standard of correctness at paragraphs 5–7, 10.

[25] The Applicant does not challenge findings by the Appeal Division as to the fairness of the process before the General Division. Rather, I read his submissions as generally asserting a reasonable apprehension of bias on the part of the General Division and/or the Appeal Division (which represents an assertion of a breach of procedural fairness), as well as asserting that the hearing before the General Division was conducted in a manner that was not procedurally fair. I will address these assertions on the correctness standard, i.e., the standard that is more favourable to the Applicant.

VI. Law

[26] Relevant components of the applicable legislative framework were summarized in *Yang* at paragraphs 8 to 12 as follows:

> ***A. Appealing a decision of the General Division***
>
> 8. A decision of the General Division may be appealed to the Appeal Division only if leave to appeal is granted by the Appeal Division (DESDA, s 56(1)).
>
> 9. The grounds to appeal a decision of the General Division are as follows:
>
> > **Grounds of appeal — Employment Insurance Section**
> >
> > **58 (1)** The only grounds of appeal of a decision made by the Employment Insurance Section are that the Section

> **(a)** failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> **(b)** erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> **(c)** 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.

10. If the Appeal Division is satisfied that the appeal has no reasonable chance of success, then leave to appeal is refused (DESDA, s 58(2)).

B. Disqualification from EI benefits

11. A claimant is disqualified from receiving EI benefits if they voluntarily left their employment without just cause (EIA, s 30(1)). Voluntarily leaving employment includes the refusal of employment offered as an alternative to an anticipated loss of employment (EIA, s 29(b.1)(i)).

12. For purposes of section 30 of the EIA, just cause exists if the claimant had no reasonable alternative to leaving their employment, having regard to all the circumstances (EIA, s 29(c)), including those circumstances enumerated in subparagraphs 29(c)(i) — (xiv) of the EIA.

[27] Also relevant to this application, paragraph 38(1)(a) of the EIA affords the Commission wide discretion to impose a penalty upon a claimant for EI benefits who makes a representation that the claimant knew was false or misleading:

Penalty for claimants, etc.	**Pénalité : prestataire**
38 (1) The Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each of the following acts or omissions if the Commission becomes aware of facts that in its	38 (1) Lorsqu'elle prend connaissance de faits qui, à son avis, démontrent que le prestataire ou une personne agissant pour son compte a perpétré l'un des actes délictueux suivants, la Commission peut lui infliger une pénalité pour chacun de ces actes :

opinion establish that the claimant or other person has	
(a) in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading;	**a)** à l'occasion d'une demande de prestations, faire sciemment une déclaration fausse ou trompeuse

[28] The Federal Court of Appeal in *Canada (Attorney General) v Bellil*, 2017 FCA 104 provided the following guidance on the issuance of such penalties (at paras 10-11, 14).

> 10. Paragraph 38(1)(a) of the Act provides that the Commission may impose a penalty if the claimant has made a representation that he or she "knew" was false or misleading in relation to a claim for benefits. That provision (as well as subsection 33(1) of the Unemployment Insurance Act, R.S.C. 1985, c. U-1, which is essentially to the same effect) has been interpreted several times by this Court, notably in *Canada (Attorney General) v. Gates*, 1995 CanLII 3601 (FCA), [1995] 3 F.C. 17, 125 D.L.R. (4th) 348 (F.C.A.) (*Gates*); *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 F.C.R. 644, 40 Admin. L.R. (2d) 40 (F.C.A.) (*Purcell*); and *Mootoo v. Canada (Minister of Human Resources* Development), 2003 FCA 206, 304 N.R. 198. This case law shows that the provision does not create a criminal offence but results in a simple administrative penalty, for which the Commission bears the burden of proof on the balance of probabilities.
>
> 11. When it comes to the interpretation of the word "knew", this Court has specified that a subjective test should be used to determine whether the required knowledge exists. The issue is therefore not whether the claimant ought to have known that his representation was false or misleading; a false but innocent representation does not give rise to penalties. That being said, it is not sufficient to proclaim one's ignorance to avoid sanctions; it is permissible to consider common sense and objective factors to decide whether a claimant had subjective knowledge of the falsity of his or her representations. Justice Linden stated the following in *Gates* (at para. 5);

> In deciding whether there was subjective knowledge by a claimant, however, the Commission or Board may take into account common sense and objective factors. In other words, if a claimant claims to be ignorant of something that the whole world knows, the fact finder could rightly disbelieve that claimant and find that there was, in fact, subjective knowledge, despite the denial. Not to know the obvious, therefore, might properly lead to an inference that the claimant is lying. This does not make the test objective; it does, however, take into account objective matters in coming to a decision on subjective knowledge.
>
> […]
>
> 14. The SST-AD erred in implicitly endorsing the SST-GD's decision according to which an intent to defraud is required for a person to be considered to have knowingly made a false or misleading representation. As previously mentioned, the only requirement imposed by Parliament is that of knowingly, that is, with full knowledge of the facts, making a false or misleading representation. The lack of defrauding or the fact of having integrity has no relevance. The SST-AD should have intervened under paragraph 58(1)(b) of the Department of Employment and Social Development Act to correct this error in law. By not doing so and thereby maintaining the confusion denounced by this Court between subjective knowledge of a false or misleading representation and intent to defraud, the SST-AD rendered an unreasonable decision.

VII. Analysis

A. *Has the Applicant submitted new evidence that is inadmissible on judicial review?*

[29] The Applicant's record includes a letter from his physician dated October 7, 2025 [the Physician's Letter], which speaks to elements of the Applicant's medical and family history. The Respondent takes the position that this letter is inadmissible in this application, because it does not form part of the record that was before the Appeal Division.

[30] As explained in *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 [*Tsleil-Waututh*], as a general, rule, only the evidentiary record that was before the administrative decision-maker is admissible in judicial review (at para 86). This rule respects the distinction between the respective roles of administrative tribunals and reviewing courts, in that it is the former that are empowered by Parliament to decide the merits of a matter (at para 85). *Tsleil-Waututh* identifies exceptions to this rule (at para 98), but none of these exceptions apply to the Physician's Letter.

[31] As such, I agree with the Respondent that the Physician's Letter is inadmissible and will not take it into account in my analysis. That said, the record before the SSTC included other evidence of the Applicant's medical history, including his mental health condition, upon which his submissions to the SSTC and to this Court focus. That evidence is properly before the Court.

B. *Has the Applicant established that he was deprived of procedural fairness?*

[32] As previously noted, the Applicant asserts a reasonable apprehension of bias (which is a matter of procedural fairness) on the part of the General Division and/or the Appeal Division, as well as asserting that the hearing before the General Division was conducted in a manner that was not procedurally fair. In connection with the latter assertion, he argues that the General Division member conducted his hearing in a manner that misled him and fed him answers to questions.

[33] The Respondent notes that Rule 17 of the *Social Security Tribunal Rules of Procedure*, SOR/2022-256, provides that the SSTC actively adjudicates appeals, which can include asking parties questions at an oral hearing. The Respondent submits that, to the extent the Applicant may have found the member's questioning intrusive or leading, this is a function of the statutorily

prescribed process of active adjudication, and the Applicant has not pointed to any evidence supporting a finding of a reasonable apprehension of bias or other breach of procedural fairness.

[34] The test for a reasonable apprehension of bias is an assessment of whether a reasonable and informed person, viewing the matter realistically and practically—and having thought the matter through—would conclude that it is more likely than not that the decision-maker, whether consciously or not, would not decide the matter fairly (*Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at 386, 1976 CanLII 2 (SCC) at 394, as cited in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 46). The threshold for meeting this test is high and requires the argument to be supported by material evidence, rather than mere suspicion or impression of an applicant (*Yang* at para 42).

[35] I agree with the Respondent's submission that the Applicant has not identified any evidence supportive of his assertions of bias or, more broadly, a breach of procedural fairness.

C. *Is the Decision reasonable?*

[36] The Applicant's submissions challenging the reasonableness of the AD Decision focus on his mental health condition and its relevance to the Appeal Division's assessment of whether the General Division had erred in concluding that the Applicant knowingly made false statements when he failed to report that he had quit several jobs while on claim, inaccurately reported his availability, and inaccurately reported his earnings.

[37] In support of his application to the Appeal Division for leave to appeal the GD Decision, the Applicant argued that he did not intend to make misrepresentations to the Commission. He submitted that the circumstances that led to the finding of misrepresentation were simply mistakes that resulted from his mental health condition that was not properly controlled, as well as from the effect upon him of his fiancée's physical illness. In this application for judicial review, the Applicant raises broadly similar arguments.

[38] However, as the Respondent submits, an application for judicial review is not an opportunity to relitigate the matter that was before the administrative decision-maker. Rather, the Court's role is to ensure that the administrative decision is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85).

[39] In my view, the AD Decision satisfies this requirement. As the Appeal Division noted, in considering the Applicant's arguments that the General Division had erred, the General Division cited the Applicant's evidence about his mental health issues and his fiancée's illness, demonstrating that the General Division did not ignore or misapprehend that evidence. Similarly, that analysis by the Appeal Division demonstrates that the Appeal Division did not ignore or misapprehend the evidence upon which the Applicant focuses. Rather, as the AD Decision states, the Appeal Division concluded that the General Division had accepted the fact that the Applicant was dealing with the issues to which this evidence relates but that the General Division simply did not accept that this evidence reasonably explained the Applicant's misrepresentations.

[40] This analysis by the Appeal Division is intelligible and withstands scrutiny under the reasonableness standard as informed by *Vavilov*.

VIII. Conclusion and Costs

[41] As the Court has found that the AD Decision is reasonable, and as the Applicant has not demonstrated that he was deprived of procedural fairness, this application for judicial review will be dismissed.

[42] Notwithstanding its success in responding to this application, the Respondent has not claimed costs against the Applicant. As such, my Judgment will not award costs to either party.

JUDGMENT IN T-1497-25

THIS COURT'S JUDGMENT is that this application is dismissed, without any award of costs.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	HALIFAX, NOVA SCOTIA
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