Federal Court Cour fédérale

Date: 20251219

Docket: T-771-25

Citation: 2025 FC 2013

2025 FC 2013 (CanLII)

Ottawa, Ontario, December 19, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

KAMAL HALIMEH

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 May 9, 2024 [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 had found that the Applicant was disqualified from receiving Employment Insurance [EI] benefits for a certain

period of time because he was not available for work [the GD Decision]. Pursuant to subsection 58(2) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [the 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.

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

II. Background

[4] On June 12, 2022, the Applicant submitted his application for EI benefits after being laid off from his job as an electrician. He received benefits from June 19, 2022, to February 25, 2023.

[5] In a letter dated October 25, 2023, the Commission decided that the Applicant was disentitled to benefits from June 13, 2022, because he failed to show that he was available for work and failed to return an Active Job Search form [the Job Search Form]. The Commission also imposed a penalty for knowingly making false representations by reporting that he was capable of work. The Commission maintained its decision by a letter dated January 8, 2024 [the Reconsideration Decision].

[6] The Applicant appealed the Reconsideration Decision to the General Division. A hearing with a member of the General Division occurred on March 20, 2024. In the GD Decision dated March 25, 2024, the General Division allowed in part the Applicant's appeal of the Reconsideration Decision.

[7] The Commission had concluded that the Applicant was disentitled from benefits in part because he had not returned the completed Job Search Form. The General Division explained the requirement under s 50(8) of the *Employment Insurance Act*, SC 1996, c 23 [the EIA] that, for the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that they are making reasonable and customary efforts to obtain suitable employment. The General Division accepted the Applicant's argument that he had not received the Job Search Form from the Commission and therefore was not given the opportunity to provide the Commission with information on job search efforts pursuant to that request.

[8] The Commission had also concluded that the Applicant was disentitled from benefits because he had not shown that he was capable of and available for work but unable to find a suitable job, as required by s 18(1)(a) of the EIA. On this ground of appeal, the General Division found that the Applicant had shown that he was available for work from June 19, 2022, to October 22, 2022, but failed to show that he was available from October 23, 2022, to February 25, 2023. The Applicant had explained to the General Division that he was waiting to be recalled by his previous employer, which accommodated his physical restrictions due to a shoulder industry that precluded him from doing overhead work. The General Division concluded that it was reasonable for the Applicant to wait for a 4-month period to see if his previous employer would recall him (as the Applicant said had been his past experience). However, he didn't make efforts to find another job after that 4-month period and failed to provide evidence to demonstrate that he would not have been hired elsewhere.

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[9] The General Division also concluded that the Commission had failed to show that the Appellant had knowingly given false information to the Commission.

[10] The Applicant appealed the General Division's conclusion that he failed to prove his availability to work from October 23, 2022, to February 25, 2023. On May 9, 2024, the Appeal Division issued the AD Decision that is the subject of this application for judicial review.

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III. Decision under Review

[11] 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.

[12] The Applicant argued that the General Division made an error of fact. The Applicant asserted that the General Division ignored that he could have returned to work with accommodations. Additionally, the Applicant submitted that the General Division failed to consider that he did not receive the Job Search Form, as a result of which he could not provide his job search activities.

[13] The Appeal Division explained that it could only intervene if the GD Decision was based on an erroneous finding of fact, made in a perverse or capricious manner or without regard for the material before it. The Appeal Division further explained that the General Division does not have to mention every piece of evidence, and it is not the role of the Appeal Division to reweigh

the evidence, nor to consider whether there is an error with how the General Division applied the law to the facts.

[14] The Appeal Division concluded that the General Division considered the Applicant's arguments and that the Applicant was attempting to reargue his case to the Appeal Division, seeking for the Appeal Division to reweigh the evidence and come to a different outcome. The Appeal Division explained that the EIA requires the claimant to show that they are available for work (s 18(1)), part of which requires looking for work. The Appeal Division did not accept that the Applicant was unaware of this obligation, because it is set out in the application for regular EI benefits. The Appeal Division observed that the General Division found that it was reasonable for the Applicant to wait for four months to be called back to work based on past experience and that, after that period, the Applicant failed to show efforts to find a job. Additionally, the Appeal Division explained that the General Division engaged in a meaningful analysis of what suitable employment would be for the Applicant, taking into account his health and physical capabilities.

[15] Alternatively, the Appeal Division concluded that there was no error of law, as the General Division stated the correct legal test.

[16] The Appeal Division therefore refused to grant leave to appeal.

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IV. Issues and Standard of Review

[17] Based on the parties' submissions, this matter raises the following issues for the Court's determination:

A. Was the Applicant deprived of procedural fairness?

B. Is the AD Decision reasonable?

C. Should the style of cause be amended to name the Attorney General of Canada as the Respondent?

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[18] Consistent with the articulation of the second issue above, both parties submit, and I concur, that to the extent the Applicant's arguments challenge the Appeal Division's treatment of factual determinations or otherwise relate to the merits of the Decision under review, the standard of reasonableness applies (*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).

[19] In relation to the first issue above, I note that in *Yang v Canada (Attorney General)*, 2025 FC 169 [*Yang*] at paragraphs 25 to 26 and 28, this Court provided the following comments on the standard of review that applies when procedural fairness arguments are raised on judicial review of an Appeal Division decision:

> 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.
>
> ….
>
> 28. However, as was the case in *Papouchine* (see para 20), it is not necessary for the Court to resolve this uncertainty as to the standard of review applicable to the allegations of bias and other procedural fairness arguments. As will be explained later in these Reasons, either standard of review produces the same result in the case at hand.

[20] I will return to these comments when analyzing the Applicant's procedural fairness argument below.

V. Law

[21] Paragraph 18(1)(a) of the EIA provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work and unable to find suitable employment. As explained by the Federal Court of Appeal in *Faucher v Canada (Employment and Immigration Commission)*, 1997 CanLII 4856 (FCA), being available for work within the meaning of paragraph 18(1)(a) of the EIA means that the claimant has a desire to go back to work as soon as a suitable job is available; this desire is expressed through efforts to find a suitable job; and the

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claimant did not set personal conditions that might unduly limit their chances of returning to work.

[22] Further relevant components of the applicable legislative framework were summarized in *Yang* at paragraphs 8 to 10 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)).

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VI. Analysis

A. *Was the Applicant deprived of procedural fairness?*

[23] The Applicant argues that he was deprived of procedural fairness, because he did not receive the Job Search Form from the Commission. When the Commission initially concluded that the Applicant was disentitled to benefits, this was in part because he failed to return the Job Search Form that the Commission asserted it had sent to him in October 2023. However, the General Division subsequently agreed with the Applicant that the Commission had not sent him the Job Search Form. As reflected in the Applicant's Notice of Application, initiating this application for judicial review, he argues that because he did not receive that correspondence from the Commission, he was not given a fair opportunity to respond or to comply with requirements identified by the Commission.

[24] While not expressly described as a concern about procedural fairness, the Applicant raised similar arguments in his appeal to the Appeal Division. In documentation filed in support of that appeal, he asserted that he did not know that he was expected to look for another job, especially given the restrictions attributable to his shoulder injury. He emphasized that that he did not receive the communication from the Commission asking him to complete and return the Job Search Form.

[25] The Appeal Division addressed this argument, noting that the General Division considered the Applicant's assertion that he didn't understand he had to search for a job. The Appeal Division then proceeded to conduct what I would characterize as a procedural fairness analysis, although (like the Applicant) it did not employ that terminology. The Appeal Division explained that the law is clear, in that subsection 18(1) of the EIA says that, in order to receive EI regular benefits, a

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claimant must show that they are available for work. The Appeal Division also noted that, although the Applicant said that he wasn't aware of this obligation, it is set out under the Rights and Responsibility section of the application that the Applicant filled out when applying for benefits, which section states that, when requesting EI regular benefits, a claimant must actively search for and accept offers of suitable employment.

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[26] With respect to the Job Search Form itself, the Appeal Division noted that the General Division had agreed with the Applicant that the evidence did not show that the Commission had sent him that document. However, given the legislative requirement and the content of the Rights and Responsibilities section of the EI benefits application, as canvassed in the AD Decision, I find no basis to conclude that the Applicant was deprived of procedural fairness. Whether analysing this issue under the standard of correctness, or analyzing it under the more deferential standard of reasonableness that focuses upon the reasoning in the AD Decision, I find no basis for the Court to interfere.

B. *Is the AD Decision reasonable?*

[27] Challenging the reasonableness of the AD Decision, the Applicant argues that, particularly given his medical condition, he reasonably expected that he would in due course return to work with his previous employer, for which he had worked for 24 years, which had previously accommodated his condition, and which had allowed the Applicant to keep its vehicle. I understand his position to be that it was therefore unreasonable for the Appeal Division to conclude that he did not have a reasonable chance of success in challenging the General Division's finding that he was required to demonstrate, and failed to demonstrate, that he had made enough efforts to find a suitable job from

October 23, 2022 to February 25, 2023 (i.e., following the four-month period after he was laid off by his employer).

[28] Again, the Applicant raised similar arguments in his appeal to the Appeal Division. In documentation filed in support of that appeal, he asserted that he had been called back to work with his employer when laid off in the past, that he had been told that he would be called back when there was work available, and that he still had the company vehicle and a company-provided phone.

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[29] While the General Division devoted several paragraphs to the question whether the Applicant had demonstrated efforts to find a suitable job, its analysis and conclusions are well summarized as follows in paragraphs 40 to 41 of the GD Decision:

> 40. I find that it was reasonable for the Appellant to see if he would be recalled by his previous employer for a 4-month period, from June 19, 2022, to October 22, 2022. To make this decision, I have considered the Appellant’s physical restrictions and the accommodation provided to him by his previous employer, his lengthy work history with his previous employer, and that he still had the employer’s work truck parked in his driveway. The Appellant’s [sic] testified that prior layoffs lasted up to 4 months, and that he thought he would be recalled after 3 or 4 months.
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> 41. The Appellant hasn’t shown that he made enough effort to find a suitable job from October 23, 2022, to February 25, 2023. This is because he didn’t call his previous employer to enquire about getting his job back, even though he thought he would be recalled after 3 or 4 months. As well, the Appellant says that he didn’t make any efforts to find another job. Although the Appellant says that he wouldn’t be hired elsewhere, he didn’t provide any supportive evidence to show this, including a failed job search.

[30] The Appeal Division in turn canvassed this aspect of the GD Decision as follows in paragraphs 20 to 23 of the AD Decision:

> 20. The General Division considered the Applicant's arguments. In fact, the Commission had denied the Applicant benefits from June 19, 2022 to February 25, 2023. But the General Division found that, although he didn't look for any work, it was reasonable for the Applicant to have waited to be called back to work as this had happened in the past. Due to this history of being laid off and recalled, it found it was reasonable that the Applicant waited to be recalled during the first four months he wasn't working. So, the General Division said the Applicant was available from June 19, 2022 to October 22, 2022.
>
> 21. The General Division also analysed whether the Applicant had shown that he was available from October 23, 2022 to February 25, 2023. The General Division decided that the Applicant didn't make enough efforts to find a suitable job.
>
> 22. During this time the General Division found that the Applicant didn't engage in any job search activities. So, he didn't prepare a resume, register with any job sites, and didn't do any kind of networking.
>
> 23. The General Division had a meaningful analysis about what suitable employment for the Applicant would be. This analysis included what the Applicant's health and physical capabilities were.

[31] The Appeal Division then canvassed (as noted earlier in these Reasons) the explanation in the EIA and the Rights and Responsibilities section of the EI benefits application of the requirement to search for employment, and it found that the General Division had considered, and therefore had not overlooked or ignored, the Applicant's arguments. The Appeal Division noted its impression that the Applicant was attempting to reargue his case before the Appeal Division with the hope of a different outcome, and it explained that it was not the role of the Appeal Division to reweigh the evidence that was before the General Division.

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[32] Similarly, it is not the role of a court on judicial review to reweigh the evidence that was before the administrative decision-maker. It is clear that the Appeal Division considered the Applicant’s argument but found that the General Division had also done so and had made no factual or legal error in arriving at its conclusion that, while it was reasonable for the Applicant to wait four months to be recalled by his employer, he was thereafter required to demonstrate job search activities. The Appeal Division’s reasoning is intelligible and reasonable within the meaning of the principles explained in *Vavilov*.

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[33] Before leaving this component of the analysis, I note the Applicant’s assertion in oral submissions at the hearing of this matter that there had been a previous occasion on which he had been recalled by his employer after having been laid off for over a year. Based on this assertion, the Applicant questioned the conclusion by the General Division and the Appeal Division that he was required to search for work four months after he was laid off.

[34] As the Respondent observes, the Federal Court of Appeal has explained that an EI claimant may be entitled to wait to see if they will be recalled to their previous employment before being required to search for alternative employment (*Page v Canada (Attorney General)*, 2023 FCA 169 at para 82). I agree with the Respondent’s submission that what amounts to a reasonable time for a claimant to wait before searching for alternative employment will vary according to the circumstances of the individual case.

[35] In the case at hand, it is clear that the conclusion, that four months was a reasonable time for the Applicant to wait before initiating a job search, was based on what the General Division

described as his testimony that prior layoffs lasted up to four months and that he thought he would be recalled after three to four months. Neither party has provided a transcript of the Applicant's testimony before the General Division, but the Applicant confirmed at the hearing of his application that there is nothing in the record before the Court supporting his assertion that he had previously been recalled after more than a year. Moreover, the record before the Court does not indicate that the Applicant argued in his appeal to the Appeal Division that the General Division had misunderstood or overlooked testimony or other evidence surrounding his past recall periods.

[36] The Applicant bears the burden in this application for judicial review of demonstrating a reviewable error in the decision under review, and there is no basis in the record before the Court to conclude that the Appeal Division, when considering the arguments raised on appeal, erred in its analysis of the evidence that was before the General Division.

C. *Should the style of cause be amended to name the Attorney General of Canada as the Respondent?*

[37] In its written submissions, the Respondent notes that Rule 303 of the *Federal Courts Rules*, SOR/98-106, provides that, where there is no person directly affected by an application who can be named as a respondent, other than the tribunal in respect of which the application is brought, the application must name the Attorney General of Canada [AGC] as the respondent. As the style of cause in this application names "Service Canada Employment and Social Department" as the Respondent, the Respondent's counsel asks that the Court amend the style of cause to name the AGC instead.

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[38] The Applicant has taken no position on this issue, which is purely a matter of procedure and does not affect the outcome of this application. I agree with the Respondent's position that the style of cause should be amended, and my Judgment will so provide.

VII. Conclusion and Costs

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

[40] As the Respondent has prevailed in this application but has not claimed costs against the Applicant, my Judgment will award no costs.

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JUDGMENT in T-771-25

THIS COURT'S JUDGMENT is that:

1. this application is dismissed, without any award of costs.
2. the style of cause is amended, as set out above, by replacing "Service Canada Employment and Social Department" with "Attorney General of Canada" as the Respondent.

"Richard F. Southcott"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-771-25
STYLE OF CAUSE:	KAMAL HALIMEH v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 17, 2025
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	DECEMBER 19, 2025

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