

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250116

Docket: A-135-24

Citation: 2025 FCA 7

**CORAM: GLEASON J.A.
GOYETTE J.A.
HECKMAN J.A.**

BETWEEN:

KHALIQ HUSSAIN ANWAR

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 15, 2025.

Judgment delivered at Ottawa, Ontario, on January 16, 2025.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**GLEASON J.A.
GOYETTE J.A.
HECKMAN J.A.**

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REASONS FOR JUDGMENT

GLEASON, J.A.

[1] The appellant appeals from the order of the Federal Court (*per* Rochester J.) in *Anwar v. Nawaz*, 2023 FC 1345, in which the Federal Court dismissed a motion to set aside an earlier order of Associate Judge Horne, dated August 30, 2023. In that order, the Associate Judge dismissed the appellant's application for judicial review of an order of the Appeal Division of the

Social Security Tribunal, refusing him leave to appeal a decision of the General Division of the Social Security Tribunal. The Associate Judge dismissed the appellant's application for judicial review because more than 180 days had passed since the Notice of Application was filed, the appellant had not taken any meaningful steps to advance his application, the appellant provided no plan to advance his application, and much of the relief the appellant sought in his application could not in any event be granted by the Federal Court.

[2] In his motion seeking to set aside the Associate Judge's order, the appellant relied on Rule 399(2)(b) of the *Federal Courts Rules*, SOR/98-106 [the *Rules*] and alleged that the order was obtained by fraud. However, the appellant filed no evidence whatsoever in support of his motion.

[3] In the absence of any allegations that could constitute fraud as defined in the jurisprudence and of any supporting evidence, the Federal Court dismissed the appellant's motion to set aside the Associate Judge's order.

[4] On appeal, the appellant appears to essentially make the following arguments: (1) the Federal Court was biased against him; (2) the Federal Court failed to accommodate his alleged inability to comply with the *Rules*—an inability he claims is caused by the Canadian government's alleged unlawful actions in subjecting him to electronic surveillance and torture; and (3) the Federal Court failed to consider the merits of his judicial review application and the merits of the Associate Judge's order. In support of the last argument, the appellant points to the

fact that this Court allowed him to file a motion, seeking leave to file a reply, on an informal basis without an affidavit.

[5] The appellant's arguments are without merit.

[6] There is not a shred of evidence to support the appellant's bias allegations. Accordingly, it was improper for the appellant to have made them.

[7] As for the alleged failure to accommodate the appellant's inability to comply with the *Rules*, contrary to the appellant's allegation, the Federal Court showed him considerable flexibility and heard his motion despite his refusal to file a motion record as required by Rule 369(2) of the *Rules*.

[8] Finally, the Federal Court was not required to consider the merits of the appellant's judicial review application or the merits of the Associate Judge's order. The appellant asked the Federal Court to set aside the Associate Judge's decision on the basis that it was obtained by fraud, and the Federal Court addressed this issue.

[9] Allegations of fraud must be supported by credible evidence to establish that a false representation was made either knowingly or in a reckless or careless manner: *Pfizer Canada Inc. v. Canada (Health)*, 2011 FCA 215, 336 D.L.R. (4th) 49 at para. 20–21; *Shen v. Canada (Citizenship and Immigration)*, 2017 FC 115 at para. 26; *Barkley v. Canada*, 2018 FC 227 at para. 26. The appellant did not allege that the Associate Judge's decision was based on a false

representation, nor provide evidence in support of such a claim. There is thus no basis to interfere with the Federal Court's decision. The fact that in other instances motions have been allowed to proceed in the absence of an affidavit is entirely irrelevant to the issues before the Federal Court in the order under appeal.

[10] I would therefore dismiss this appeal without costs since the respondent does not seek them. As requested by the respondent, I would remove the Social Security Tribunal Appeal Division and the Appeal Division member Neil Nawaz as respondents and instead name the Attorney General of Canada as the respondent in accordance with Rule 338 of the *Rules*.

"Mary J.L. Gleason"

J.A.

"I agree.

Nathalie Goyette J.A."

"I agree.

Gerald Hackman J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-135-24

STYLE OF CAUSE: KHALIQ HUSSAIN ANWAR v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 15, 2025

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: GOYETTE J.A.
HECKMAN J.A.

DATED: JANUARY 16, 2025

APPEARANCES:

Khaliq Hussain Anwar ON HIS OWN BEHALF

Nathan Beck FOR THE RESPONDENT
Andrew Kirk

SOLICITORS OF RECORD:

Shalene Curtis-Micallef FOR THE RESPONDENT
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