Federal Court  Cour fédérale

Date: 20180611

Docket: T-1916-17

Citation: 2018 FC 606

Ottawa, Ontario, June 11, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

PAUL ANDREWS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Andrews applied for a Canada Pension Plan [CPP] disability pension in April 1997. He was ultimately successful and a pension was awarded in October 2003.The date of onset of his disability was identified as January 1996, 15 months prior to his date of application. This retroactive period is described in the record as being the maximum period of retroactivity available.

[2] He has long taken issue with the deemed date of onset and has pursued multiple reviews and appeals in an effort to have the issue reconsidered. Most recently the Social Security Tribunal Appeal Division [SST-AD] refused his application for leave to appeal a decision of the Social Security Tribunal General Division [SST-GD].

[3] Mr. Andrews, who represents himself, now brings this application pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7 seeking review of the October 30, 2017 decision of the SST-AD. I am unable to conclude that the SST-AD decision is unreasonable or the SST-AD otherwise committed a reviewable error warranting this Court's intervention. For the reasons that follow, the application is dismissed

II. Procedural History

[4] Mr. Andrews contests the calculation of his CPP disability benefits. In 2011 the Federal Court of Appeal in *Andrews v Canada (Attorney General)*, 2011 FCA 75 [*Andrews* FCA] summarized the procedural history at paras 2-5 as follows:

> [2] Mr. Andrews has a lengthy history in relation to his claim for disability benefits under section 42 of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the Act). He initially applied for benefits in April, 1997. After a number of hearings and appeals, on October 3, 2003, a third Review Tribunal granted him disability benefits. In accordance with the provisions of the Act, the date of his deemed disability was January, 1996. Mr. Andrews did not appeal that decision. However, he did dispute the calculation of his benefits.
>
> [3] Upon the request of Mr. Andrews, the Minister reconsidered the quantification and concluded that the pension was properly calculated. Mr. Andrews unsuccessfully appealed the Minster's [*sic*] reconsideration to a Review Tribunal. On March 1, 2006, the PAB dismissed an appeal from the Review Tribunal's decision. In so doing, the PAB determined: (1) the late application

> provision under subsection 44(1) did not apply to Mr. Andrews; (2) the deduction provisions of sections 48 and 56 did not apply to him; and (3) the incapacity provisions contained in section 60 did not apply to him either. On December 15, 2006, this Court dismissed an application for judicial review of the PAB decision. The Supreme Court denied leave to appeal on February 9, 2007.
>
> [4] Mr. Andrews continued to forward correspondence, which can be described benevolently as confusing, to the PAB. Eventually, a hearing before the PAB was held on December 10, 2009. In a decision dated August 26, 2010, the PAB identified three issues that appeared to arise from Mr. Andrews' various communications: (1) a constitutional issue; (2) a request for discovery; and (3) a request to re-open the matter based on new facts. The PAB dismissed all of the "applications". It is this PAB decision that is the subject of the application for judicial review before us.
>
> [5] It is evident that Mr. Andrews continues to be dissatisfied with the amount of his disability benefits and believes that his payments should be retroactive to 1979 (the time of his first injury), or at least to 1993, when he last worked. In our view, his most recent "application" to the PAB is but another attempt to revisit the quantum of his benefit. As previously noted, all avenues of appeal with respect to that issue have been exhausted.

[5] In 2014 Mr. Andrews again applied for an amendment to or rescission of the original 2003 decision granting him disability benefits [the 2014 Application]. The application was made to the Social Security Tribunal [SST] pursuant to section 66 of the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA]. The SST was established in the *Jobs, Growth and Long-term Prosperity Act*, SC 2012, c 19 and replaced the Pension Appeals Board.

[6] Section 66 of the DESDA states as follows:

66 (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if	**66 (1)** Le Tribunal peut annuler ou modifier toute décision qu'il a rendue relativement à une demande particulière :

(a) in the case of a decision relating to the Employment Insurance Act, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; or	**a)** dans le cas d'une décision visant la Loi sur l'assurance-emploi, si des faits nouveaux lui sont présentés ou s'il est convaincu que la décision a été rendue avant que soit connu un fait essentiel ou a été fondée sur une erreur relative à un tel fait;
(b) in any other case, a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.	**b)** dans les autres cas, si des faits nouveaux et essentiels qui, au moment de l'audience, ne pouvaient être connus malgré l'exercice d'une diligence raisonnable lui sont présentés.
(2) An application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to the appellant.	**(2)** La demande d'annulation ou de modification doit être présentée au plus tard un an après la date où l'appelant reçoit communication de la décision.
(3) Each person who is the subject of a decision may make only one application to rescind or amend that decision.	**(3)** Il ne peut être présenté plus d'une demande d'annulation ou de modification par toute partie visée par la décision.
(4) A decision is rescinded or amended by the same Division that made it.	**(4)** La décision est annulée ou modifiée par la division qui l'a rendue.

[7] In June 2015 the SST-GD dismissed the 2014 Application [the 2015 Decision]. The SST-GD found that the Application was outside the one-year time limit provided for at subsection 66(2) of the DESDA and that Mr. Andrews had also failed to place any "new evidence" before the SST-GD establishing new material facts as required by paragraph 66(1)(b).

[8] The SST-AD refused Mr. Andrew's application for leave to appeal the 2015 Decision. Judicial review of that Decision was not pursued.

[9] In June 2016 Mr. Andrews again applied to the SST-GD pursuant to section 66 of the DESDA requesting that the SST-GD rescind or amend the 2015 Decision. In August 2016 [the 2016 Decision] the SST-GD found that it lacked jurisdiction over the Application as Mr. Andrews produced no evidence of a new material fact, relying instead upon the same evidence that had been presented with the 2014 Application. Alternatively the SST-GD found that the Application was statute-barred because the issue of incapacity had previously been decided and that the Application was an indirect attempt to reverse a binding decision that he could not attack directly.

[10] Mr. Andrews again sought leave to appeal the 2016 Decision to the SST-AD. He was late in perfecting his application for leave to appeal. The SST-AD rejected his application for an extension of time and for leave to appeal in a Decision dated October 30, 2017. It is that Decision that is the subject of this judicial review.

III. Decision under Review

[11] In its Decision the SST-AD identified two issues: (1) whether to grant an extension of time to apply for leave to appeal; and (2) whether to grant leave on the basis that the application has a reasonable chance of success.

[12] In addressing the request for an extension of time the SST-AD noted that Mr. Andrews had provided no explanation for the late filing. The SST-GD then noted that in considering the request for an extension of time the "overriding consideration is that the interests of justice be served." The SST-AD then concluded that the interests of justice would best be assessed by considering whether the application satisfied the test for granting leave to appeal - "whether the appeal has a reasonable chance of success."

[13] The SST-AD identified Mr. Andrew's grounds of appeal and concluded the grounds did not disclose that the appeal had a reasonable chance of success. Specifically the SST-AD found that the SST-GD had not summarily dismissed the Application nor did it err in not holding a hearing. The SST-AD further noted that a person subject to a decision of the SST may make only one application to rescind or amend that decision and that Mr. Andrews had brought forward two separate applications based on the same "new" documents and arguments. The SST-AD found that the appeal had no chance of success and refused the application for an extension of time and for leave to appeal.

IV. Analysis

[14] In seeking judicial review Mr. Andrews does not identify any error in respect of the SST-AD Decision. In his written submissions he has advanced a series of bulleted points highlighting prior decisions relating to his disability claim and identifying specific sections of legislation.

[15] In his oral submissions, Mr. Andrews raised issues with the disclosure of documentation, and identified constitutional concerns. He argues that these concerns warrant the re-opening of

his disability claim based on new facts. These were the very issues addressed in the 2010 decision of the Pensions Appeal Board [PAB] (*Andrews* FCA at para 4). As was noted by the Federal Court of Appeal in its review of the PAB's 2010 Decision all avenues with respect to the quantum of Mr. Andrew's disability benefits have been exhausted (*Andrews* FCA at para 5).

[16] The sole issue raised by this application for judicial review is whether the SST-AD unreasonably refused Mr. Andrews' application for leave to appeal the 2016 Decision of the SST-GD.

[17] A decision of the SST-AD denying leave is to be reviewed against a standard of reasonableness (*Griffin v Canada (AG),* 2016 FC 874 at paras 13-14; *Marcia v Canada (AG),* 2016 FC 1367 at para 23). The SST-AD is owed deference in respect of its findings of fact, mixed fact and law, and in the interpretation of its home statute (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51 [*Dunsmuir*]; *Canada (AG) v Hoffman*, 2015 FC 1348 at para 33). Deference requires that reviewing courts be attentive to the reasons offered or which could have been offered in support of a decision (*Dunsmuir* at para 48). While reviewing courts should not substitute their own reasons for those of a decision-maker they may, where necessary, look to the record for the purpose of assessing the reasonableness of the outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]).

[18] In considering the SST-AD Decision it is worth noting that the SST-GD Decision to deny the Application to amend or rescind was based on an absence of jurisdiction. The SST-GD noted

that it only had jurisdiction to amend or rescind a prior decision where new material facts had been placed before it (DESDA s 66(1)(b)). In this case no new evidence had been provided by Mr. Andrews and therefore the SST-GD concluded that on this basis alone the Application was to be denied.

[19] The SST-AD Decision does not expressly address the jurisdiction question. However its reasons need not be perfect and must be read within the context of the evidence and the submissions (*Newfoundland Nurses* at para 18). In this case the SST-AD does recognize that the "new evidence" placed before the SST-GD was not new - it was the "same two documents that had been submitted and reviewed in the May 2014 application." The SST-AD then concluded that:

> [32] The applicant's second application to rescind or amend is essentially the same as his first application. The Applicant seeks to rescind or amend the June 2016 General Division decision based on the same purported "new evidence" as was on the record of the June 2015 decision. There is no reasonable argument of an error of law upon which this appeal might succeed.

[20] While the SST-AD Decision could have been clearer in addressing the underlying basis for the SST-GD Decision, the reasons clearly conclude that the appeal did not have a reasonable chance of success as the Application was not supported by new evidence. The Decision, when read in light of the record, explains the basis for the Decision. I am satisfied that the SST-AD's Decision to refuse an extension of time and deny leave was within the range of acceptable outcomes.

V. Conclusion

[21] The SST-AD Decision is reasonable, the application is denied. The respondent has not sought costs and none are awarded.

JUDGMENT IN T-1916-17

THIS COURT'S JUDGMENT is that the application is dismissed. Costs are not awarded.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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