Federal Court  Cour fédérale

Date: 20210705

Docket: T-1821-19

Citation: 2021 FC 708

Ottawa, Ontario, July 5, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

KHALID ABDULLE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Khalid Abdulle, is a veteran of the Regular Forces of the Canadian Armed Forces where he served for just over eleven years as a Signal Officer from December 14, 2005 to January 12, 2017. The medical exam at the time he enrolled did not reveal any back issues.

[2] Mr. Abdulle suffered three back injuries during his service. The first injury occurred in 2007 while he was moving a military-issue barrack box from under his bed. He sustained the second injury in 2009 while performing reverse crunches. Both of these injuries were considered "soft tissue" injuries. An x-ray about one month after his 2009 injury, however, disclosed degenerative disc disease. The third injury happened in 2015 while he was moving his military kit back to storage after cleaning. Following an MRI in January 2018, about one year after his release from service, Mr. Abdulle was diagnosed with disc disease.

[3] Mr. Abdulle applied for, but was denied, a disability pension from Veterans Affairs Canada regarding the lumbar degenerative disc disease that had developed since his enrollment in 2005, because the disability was not considered as "resulting from a service-related injury or disease" pursuant to section 45 of the *Veterans Well-being Act*, SC 2005, c 21 [*VWBA*]. Through successive review, appeal and reconsideration proceedings, Mr. Abdulle eventually was granted a four-fifths disability (or pain and suffering) entitlement; one-fifth pension was withheld because of missing information regarding the cause of his degenerative disc disease disclosed by the x-ray in 2009.

[4] In its second reconsideration, the Reconsideration Panel [Panel] of the Veterans Review and Appeal Board Canada [Board] declined to re-open the initial reconsideration decision that awarded Mr. Abdulle his four-fifths pension. In the initial reconsideration, the Panel accepted that Mr. Abdulle aggravated his back condition in the course of cleaning his military kit in 2015 and that such injury was service-related.

[5] In his judicial review application brought pursuant to s.18.1 of the *Federal Courts Act*, RSC 1985, c F-7, Mr. Abdulle seeks an Order quashing or setting aside the Panel's second reconsideration decision, and requiring the Panel to grant him the full disability pension or, alternatively, referring the matter back to a differently constituted panel for redetermination. Mr. Abdulle contends that (i) the Panel acted unfairly in denying him the full disability pension because the same panel that made the initial reconsideration determination also made the second reconsideration decision under review, and (ii) the second reconsideration decision is unreasonable.

[6] Having regard to section 32 of the *Veterans Review and Appeal Board Act*, SC 1995, c 18 [*VRAB Act*], I disagree that the Panel acted unfairly, as claimed. I agree with the Applicant, however, that the decision is unreasonable in the circumstances. In my view, the Panel erred in its application of the *VRAB Act* sections 38 and 39, as well as paragraphs 50(f) and 51(b) of the *Veterans Well-being Regulations*, SOR/2006-50 [*VWBR*]. For the more detailed reasons that follow, I therefore grant the Applicant's judicial review application. The second reconsideration decision is set aside and the matter will be sent back for redetermination by a differently constituted reconsideration panel.

II. Relevant Provisions

[7] See Annex "A" below for the applicable legislative provisions.

III. Standard of Review

[8] Breaches of procedural fairness in administrative contexts have been considered subject to a "reviewing exercise … 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness is context-specific, flexible and variable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 77. In sum, the focus of the reviewing court is whether the process was fair and just.

[9] Otherwise, the presumptive standard of review is reasonableness: *Vavilov*, at para 10. A reasonable decision must be "based on an internally coherent and rational chain of analysis" and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, at para 85. Courts should intervene only where necessary. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

IV. Analysis

A. Same Reconsideration Panel

[10] I disagree with the Applicant's assertion that neither Parliament nor the *VRAB Act* intended to prevent applicants from having fresh eyes review their application. In other words,

the same three members of the Board should not be permitted to review an appeal and reconsider their own decisions. In my view, however, the Panel acted in accordance with its enabling statute and, thus, in that sense arrived at its decision fairly. Further, I find that "the issue could have been but was not raised" with the administrative decision maker; in the circumstances, the Court has the discretion not to consider the issue: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-23.

[11] In support of his assertion, the Applicant points to subsection 27(2) of the *VRAB Act*, which prohibits review panel members from sitting on an appeal panel. The Review provisions and the Appeals provisions of the *VRAB Act* indicate that review panels, on the one hand, and appeal panels, on the other hand, tend to be differently constituted and perform different functions. Further, subsection 32(1) of the *VRAB Act* provides that, on its own motion, or by application of a person, an appeal panel (of the Board) may reconsider a decision it made and confirm, amend or rescind the decision if it finds that an error was made regarding the interpretation of any law or any finding of fact. I note that the Review provisions similarly contemplate that a review panel, on its own motion, may reconsider a decision it made and confirm, amend or rescind the decision if it finds that an error was made regarding the interpretation of any law or any finding of fact: *VRAB Act*, subsection 23(1).

[12] The enabling statute, therefore, empowers both review panels and appeal panels to reconsider their own decision. In my view, the grammatical and ordinary sense of the words "a decision made by it" reflects Parliament's expressed intention that the reconsideration panel, whether review or appeal, may be comprised of the same panel members who made the decision

being reconsidered: *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21. This includes any previous reconsideration decisions.

B. Second Reconsideration Decision

(1) *VRAB Act* Section 38 – Medical Opinion

[13] The Panel was empowered under Section 38 of the *VRAB Act* to obtain a more detailed medical opinion regarding the 2009 x-ray results, which the Panel believed would have been beneficial in the circumstances. Absent such medical opinion, I find the Panel's conclusion that the x-ray results in 2009 cannot be related to the 2009 injury unreasonable, for the reasons explained below, in that it lacks internal coherence and is not justified in relation to the applicable facts and legal constraints: *Vavilov*, above at para 85.

[14] The appeal and initial reconsideration decisions held that the x-ray result in 2009 that showed early signs of degenerative disc disease cannot be related to the 2009 injury, which occurred one month before the x-ray, because of the short period of time between the injury and the result. Contrary to the appeal decision, the initial reconsideration decision held that the 2015 injury was considered service-related but that it aggravated (permanently worsened) the disc disease that was present in 2009. Further, the initial reconsideration decision noted the September 10, 2018 letter from Dr. Dhami, Mr. Abdulle's doctor, and held that, while the letter described the 2018 MRI results, it did not provide any details as to how the disc disease can be explained, in consideration of the previous soft tissue injuries. On this point, the decision

concluded that, "[a] detailed medical opinion would have been beneficial to better understand the diagnosis in 2009."

[15] The initial reconsideration decision explained that, according to applicable Veterans Affairs Canada [VAC] Medical Guideline on Disc Disease, a specific injury is needed to result in long-standing damage to discs of the spine. Otherwise, discs tend to degenerate in all adults with the passage of time, regardless of occupational factors, unless there has been an acute work-related injury. Further, for disc disease to be worsened or accelerated because of an injury, the injury must have been acute and, expectedly, have provoked a recorded medical complaint at the time it happened or shortly after. If a 5-year window passes without complaint, an inference can be drawn that the injury did not result in permanent damage.

[16] In addition, according to the VAC Entitlement Eligibility Guidelines [EEGs] for Osteoarthritis, a "specific trauma" means a physical injury to a joint, including a fracture involving the intra-articular surface of the joint, surgery, and penetrating injuries from projectiles such as bullets and shrapnel.

[17] While Mr. Abdulle's 2015 injury was considered to meet the definition of trauma in both reconsideration decisions, his 2007 and 2009 injuries were soft tissue injuries that, according to his testimony, were not significant. The initial reconsideration decision confirmed the appeal decision to the effect that the 2009 x-ray is inconsistent with the reported 2007 and 2009 soft tissue injuries. The second reconsideration decision stated definitively that "the 2007 and 2009 incidents were soft tissue injuries, which eventually resolved and are not considered as trauma."

The Respondent argues this is reasonable because the EEGs for Osteoarthritis specifically exclude soft tissue injuries from the definition of "specific trauma."

[18] While I agree these EEGs exclude certain types of soft tissue injuries (i.e. such as bursitis and tendonitis which produce acute signs and symptoms that may last for several weeks and do not result in an unstable joint), neither reconsideration decision mentions this exclusion. It is not for this Court, however, to back fill gaps in the decision maker's reasons: *Vavilov*, above at para 96.

[19] Instead, the Panel again concluded, in the second redetermination decision, that "such [x-ray] results in 2009, showing early signs of the degenerative process, cannot be related to the 2009 injury because of the short period of time between the injury and the results." This conclusion does not appear to be based on any independent medical advice, which Section 38 of the *VRAB Act* permits the Board to obtain.

[20] Rather, the Panel referred to two conjunctive criteria to be met, as described in the EEGs, "[f]or cumulative joint trauma associated with occupations to cause [osteoarthritis] in an individual with a normal lumbar spine." The first criterion is that the "[c]umulative joint trauma associated with occupations should take place for at least 2 hours per day, on at least 51% of the days work <u>for a period of at least 10 years</u>" [emphasis in original]. The second criterion is that the "[s]igns/symptoms of [osteoarthritis] should be present in the affected part of the lumbar spine during this timeframe or within 25 years after the activity ceases."

[21] Mr. Abdulle's medical exam when he enrolled did not disclose any back issues. Further, at the time of his 2009 injury and subsequent x-ray, Mr. Abdulle had been a Signal Officer for just under 4 years. The Panel held that this was insufficient to satisfy the above criteria regarding the applicability of the "rigors of service." The Panel did not explain, however, if this was the basis for its conclusion that the x-ray results in 2009 cannot be related to the 2009 injury because of the short, one-month period of time between the injury and the results. In addition, the Panel does not appear to have considered whether Mr. Abdulle can be said to have had a "normal lumbar spine," given that within 4 years of enrollment x-rays disclosed early signs of degenerative disc disease. In my view, this gives rise to the question of whether the 2009 soft tissue injury, being the second of two such injuries within two years, fell within the exclusion or whether it could have constituted a specific trauma in Mr. Abdulle's case. This the Panel also failed to consider, which I find was unreasonable.

[22] Further, the Panel also referred to Dr. Dhami's September 10, 2018 letter. The Panel held, in the second redetermination decision, that Dr. Dhami did not provide further details explaining how Mr. Abdulle's disc disease can be explained in consideration of his previous soft tissue injuries. Yet, Dr. Dhami's letter opines that, "[a]ctivities such as running and rucksack; and injuries that Mr. Abdulle has documented in Aug 2009 and Apr 2015, could have aggravated and contributed to his current back pain symptoms, leading to the current MRI findings." There is no suggestion in either reconsideration decision that Dr. Dhami's medical advice or opinion was not credible. In fact, the appeal decision stated, "The Appeal Panel is not saying that Dr. Dhami is not credible as a doctor or professional…"

[23] That said, the appeal panel found Dr. Dhami's September 10, 2018 letter insufficient to establish a causal link (between military service and the claimed condition), although the initial reconsideration panel was prepared to find the military service an aggravating factor. The appeal panel further held that if Dr. Dhami had considered every possible factor, such as Mr. Abdulle's trade, his actual physical training, etiology, injuries to soft tissue that resolved with treatment, previous injuries, and medical history, it would have expected the doctor's opinion to cover these factors, in addition to the medical literature on degenerative disc disease/osteoarthritis. The initial reconsideration panel did not repeat this description of what it would have liked to see in a medical opinion. I am prepared to infer that this is what it had in mind when it stated that a detailed medical opinion would have been beneficial, in light of the fact that the appeal and initial reconsideration panels (as well as the Panel), were comprised of the same members in this case.

[24] Previous jurisprudence of this Court, however, has held the fact that the section 38 of the *VRAB Act* permits the Board to seek medical advice, suggests that the Board does not have any specific medical expertise: *Rivard v Canada (Attorney General)*, 2001 FCT 704 [*Rivard*] at para 40. In my view, this extends to whether a medical opinion is necessarily reflective of what the doctor may or may not have considered in reaching that opinion.

[25] I agree with the Applicant that in the face of Dr. Dhami's uncontradicted and seemingly credible medical advice or opinion, that is, without any supporting contrary evidence obtained by the Board pursuant to Section 38 of the *VRAB Act*, it was unreasonable for the Panel to draw its own medical conclusion that the 2009 injury and x-ray results were not related because the one-

month period of time between these events was too short: *Rivard*, at para 42. I am not persuaded that the EEGs, in themselves and in Mr. Abdulle's circumstances, contradict Dr. Dhami's medical advice. I find it was within the Panel's control to invoke section 38 to obtain the very opinion it stated, in the initial reconsideration decision, would have been beneficial in the circumstances, and containing what the appeal decision described as one that considered every possible factor: paraphrasing *Rivard*, at para 42.

[26] I agree with the Respondent, however, that there is no basis for Mr. Abdulle's suggestion, alternative or otherwise, that the Panel relied on medical evidence not disclosed to Mr. Abdulle concerning its conclusion about the 2009 injury and x-ray results not being related. That said, a future reconsideration panel should share with Mr. Abdulle any extrinsic information or medical report it obtains and on which it intends to rely, and provide him with an opportunity to make submissions regarding same, to ensure Mr. Abdulle knows the case to be met, and thus, avoid a potential breach of procedural fairness.

(2) *VRAB Act* Section 39 – Rules of Evidence

[27] Although the Panel acknowledged the evidentiary requirements stipulated in section 39 of the *VRAB Act*, I find that it did not apply them, thus rendering the second reconsideration decision unreasonable.

[28] Section 39 of the *VRAB Act* requires the Board to draw reasonable inferences, from the circumstances and evidence, in favour of an applicant/appellant; to accept any credible, uncontradicted evidence presented by an applicant/appellant; and, in weighing evidence, resolve

any doubt in favour of an applicant/appellant as to whether the applicant/appellant has established a case. This provision must be read in light of the overarching principle described in section 3, which stipulates that the provisions of the *VRAB Act* shall be construed liberally and interpreted with the goal of fulfilling the recognized obligation of Canadians and their government to those who have served their country well and to their dependents.

[29] The VRAB thus was required to consider the entirety of Mr. Abdulle's circumstances, with a liberal and generous interpretation of the evidence, to determine if his condition was sufficiently causally connected to his military service to establish eligibility for a disability (or pain and suffering) entitlement; in that regard, a connection other than a direct or immediate one may be sufficient: *Ouellet v Canada (Attorney General)*, 2016 FC 608 [*Ouellet*] at para 56.

[30] The initial reconsideration panel found, with reference to the 2018 MRI and Dr. Dhami's September 10, 2108 letter, that the 2015 injury was service-related and that it aggravated the disc disease that was present in 2009. It held, however, that Dr. Dhami's opinion was insufficient to establish a causal link, notwithstanding that Dr. Dhami's letter opined service related activities of running and rucksack, as well as his 2009 and 2015 injuries, could have contributed to Mr. Abdulle's back pain and the resultant MRI findings. It also held that there was insufficient time (one month) between Mr. Abdulle's 2009 injury and the 2009 x-ray results for the injury to be causally related to his emerging disc disease.

[31] In my view, sections 38 and 39 and the case law, when read together, require that contradictory evidence be adduced before rejecting the medical evidence Mr. Abdulle submitted;

unless the Panel was satisfied that the evidence was not credible, which was not the case here, it could not reject Dr. Dhami's opinion without having contradictory evidence before it: paraphrasing *Rivard*, at para 43. Further, although Dr. Dhami's letter could have been more definitive regarding causal or aggravating factors, any doubt this raised should have been resolved in Mr. Abdulle's favour, absent proof to the contrary which was lacking in this case. In addition, the Panel does not have the medical expertise to determine the sufficiency of the period of time between the 2009 injury and the subsequent 2009 x-ray results, nor to dismiss the 2007 and 2009 injuries as causally related to the emerging disc disease disclosed in 2009.

(3) *VWBR* Sections 50(f) and 51 – Presumption of Fitness on Enrollment

[32] Because there was no medical evidence in this case establishing beyond a reasonable doubt that Mr. Abdulle suffered any back issue prior to enrollment, I consider the Panel's finding that a disease or injury might have been present on enlistment unjustified and, hence, unreasonable.

[33] For the purpose of establishing entitlement to disability or pain and suffering compensation under the *VWBA* s 45, a presumption that an injury is service-related, or that a non-service injury is aggravated by service, is established, absent evidence to the contrary, if the veteran demonstrated that the injury or its aggravation occurred in the course of an established military custom or practice, whether or not failure to perform the act would have resulted in discipline: *VWBR* para 50(f). In this case, the initial reconsideration panel was satisfied that maintaining one's military kit was part of the military custom and practice; hence, the disability (or pain and suffering) award.

[34] In addition, *VWBR* para 51(b) provides that if the disability was not obvious at the time the veteran became a member of the forces, and was not recorded on their medical exam prior to enrollment, then there is a further presumption that the veteran had the medical condition found on their enrollment medical exam, unless medical evidence establishes "beyond a reasonable doubt" that the disability existed prior to enrollment.

[35] On a plain reading of *VWBR* paras 50(f) and 51(b), I find the Panel reasonably concluded that "[t]he presumption of fitness supposes there was no disability or disabling condition at the time of enlistment, unless it is recorded or obvious on medical examination." In my view, however, the Panel veered into unfounded speculation when it stated that, "a disease or injury may have been present on enlistment, but might not have been symptomatic or disabling." There simply was no medical evidence that established "beyond a reasonable doubt" that Mr. Abdulle's disc disease existed prior to his enrollment. To the contrary, his medical exam at the time of enrollment did not reveal any back issues.

[36] Further, Mr. Abdulle provided evidence of two subsequent service related back injuries in 2007 and 2009, resulting in the 2009 x-ray results showing early signs of disc disease. As stated above, I am not persuaded that such evidence can be excluded pursuant to the EEGs.

V. Conclusion

[37] For the foregoing reasons, I grant the Applicant's judicial review application. The Panel's second reconsideration decision, having number 100003952184 and dated October 13, 2019, is set aside. The matter is referred back for redetermination by a differently constituted panel taking

into account these reasons. The Applicant is entitled to his costs. If the parties cannot agree on an amount, they will have an opportunity to make costs submissions in turn as detailed below.

JUDGMENT in T-1821-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.
2. The second reconsideration decision of the Reconsideration Panel of the Veterans Review and Appeal Board Canada, having number 100003952184 and dated October 13, 2019, is set aside.
3. The matter is referred back for redetermination by a differently constituted panel taking into account the above reasons.
4. The Applicant is entitled to his costs. If the parties cannot agree on an amount of such costs within 20 days of the date of this Judgment, then the Applicant will have 30 days from the date of this Judgment to serve and file written costs submissions not exceeding 5 pages, and the Respondent will have 40 days from the date of this Judgment to serve and file responding costs submissions, also not exceeding 5 pages. The Court will make a separate determination as to the amount of the Applicant's costs award following the receipt of the parties' costs submissions, if any.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Veterans Well-being Act,* SC 2005, c 21**

Pain and Suffering Compensation	**Indemnité pour douleur et souffrance**
Eligibility	**Admissibilité**
45 (1) The Minister may, on application, pay pain and suffering compensation to a member or a veteran who establishes that they are suffering from a disability resulting from **(a)** a service-related injury or disease; or **(b)** a non-service-related injury or disease that was aggravated by service.	**45 (1)** Le ministre peut, sur demande, verser une indemnité pour douleur et souffrance au militaire ou vétéran qui démontre qu'il souffre d'une invalidité causée : **a)** soit par une blessure ou maladie liée au service; **b)** soit par une blessure ou maladie non liée au service dont l'aggravation est due au service
Compensable fraction	**Fraction**
(2) Pain and suffering compensation may be paid under paragraph (1)(b) only in respect of that fraction of a disability, measured in fifths, that represents the extent to which the injury or disease was aggravated by service.	**(2)** Pour l'application de l'alinéa (1)b), seule la fraction — calculée en cinquièmes — de l'invalidité qui représente l'aggravation due au service donne droit à une indemnité pour douleur et souffrance.

***Veterans Well-being Regulations,* SOR/2006-50**

Pain and Suffering Compensation	**Indemnité pour douleur et souffrance**
50 For the purposes of subsection 45(1) of the Act, a member or veteran is presumed, in the absence of evidence to the contrary, to have established that an injury or disease is a service-related injury or disease, or a non service-related injury or disease that was aggravated by service, if it is demonstrated that the injury or disease or its aggravation was incurred in the course of **…** **(f)** any military operation, training or administration, as a result of either a specific order or an established military	**50** Pour l'application du paragraphe 45(1) de la Loi, le militaire ou le vétéran est présumé démontrer, en l'absence de preuve contraire, qu'il souffre d'une invalidité causée soit par une blessure ou une maladie liée au service, soit par une blessure ou maladie non liée au service dont l'aggravation est due au service, s'il est établi que la blessure ou la maladie, ou leur aggravation, est survenue au cours : **…** **f)** d'une opération, d'un entraînement ou d'une activité administrative militaire, soit par suite d'un ordre précis, soit par

custom or practice, whether or not a failure to perform the act that resulted in the injury or disease or its aggravation would have resulted in disciplinary action against the member or veteran;	suite d'usages ou de pratiques militaires établis, que l'omission d'accomplir l'acte qui a entraîné la blessure ou la maladie, ou leur aggravation, eût entraîné ou non des mesures disciplinaires contre le militaire ou le vétéran;
51 Subject to section 52, if an application for pain and suffering compensation is in respect of a disability or disabling condition of a member or veteran that was not obvious at the time they became a member of the forces and was not recorded on their medical examination prior to enrolment, the member or veteran is presumed to have been in the medical condition found on their enrolment medical examination unless there is	**51** Sous réserve de l'article 52, lorsque l'invalidité ou l'affection entraînant l'incapacité du militaire ou du vétéran pour laquelle une demande d'indemnité pour douleur et souffrance a été présentée n'était pas évidente au moment où il est devenu militaire et n'a pas été consignée lors d'un examen médical avant l'enrôlement, l'état de santé du militaire ou du vétéran est présumé avoir été celui qui a été constaté lors de l'examen médical, sauf dans les cas suivants :
(a) recorded evidence that the disability or disabling condition was diagnosed within three months after enrolment; or	**a)** il a été consigné une preuve que l'invalidité ou l'affection entraînant l'incapacité a été diagnostiquée dans les trois mois qui ont suivi l'enrôlement;
(b) medical evidence that establishes beyond a reasonable doubt that the disability or disabling condition existed prior to enrolment.	**b)** il est établi par une preuve médicale, hors de tout doute raisonnable, que l'invalidité ou l'affection entraînant l'incapacité existait avant l'enrôlement.

***Veterans Review and Appeal Board Act,* SC 1995, c 18**

Reconsideration of decisions	**Nouvel examen**
23 (1) A review panel may, on its own motion, reconsider a decision made by it under section 21 or this section and may either confirm the decision or amend or rescind the decision if it determines that an error was made with respect to any finding of fact or the interpretation of any law.	**23 (1)** Le comité de révision peut, de son propre chef, réexaminer une décision rendue en vertu de l'article 21 ou du présent article et soit la confirmer, soit l'annuler ou la modifier s'il constate que les conclusions sur les faits ou l'interprétation du droit étaient erronées.

Board may exercise powers (2) The Board may exercise the powers of a review panel under subsection (1) if the members of the review panel have ceased to hold office as members.	**Cessation de fonctions** (2) Le Tribunal, dans les cas où les membres du comité ont cessé d'exercer leur charge, peut exercer les fonctions du comité visées au paragraphe (1).
Appeal panel **27 (1)** An appeal shall be heard, determined and dealt with by an appeal panel consisting of not fewer than three members designated by the Chairperson.	**Comités d'appel** **27 (1)** L'appel est entendu par un comité composé d'au moins trois membres désignés par le président.
Prohibition **(2)** A member of a review panel may not sit on an appeal panel that has been established to hear an appeal of a decision made by that review panel.	**Incompétence** **(2)** Un membre ne peut statuer sur l'appel d'une décision à laquelle il a participé à titre de membre d'un comité de révision.
Reconsideration of decisions **32 (1)** Notwithstanding section 31, an appeal panel may, on its own motion, reconsider a decision made by it under subsection 29(1) or this section and may either confirm the decision or amend or rescind the decision if it determines that an error was made with respect to any finding of fact or the interpretation of any law, or may do so on application if the person making the application alleges that an error was made with respect to any finding of fact or the interpretation of any law or if new evidence is presented to the appeal panel.	**Nouvel examen** **32 (1)** Par dérogation à l'article 31, le comité d'appel peut, de son propre chef, réexaminer une décision rendue en vertu du paragraphe 29(1) ou du présent article et soit la confirmer, soit l'annuler ou la modifier s'il constate que les conclusions sur les faits ou l'interprétation du droit étaient erronées; il peut aussi le faire sur demande si l'auteur de la demande allègue que les conclusions sur les faits ou l'interprétation du droit étaient erronées ou si de nouveaux éléments de preuve lui sont présentés.
Board may exercise powers **(2)** The Board may exercise the powers of an appeal panel under subsection (1) if the members of the appeal panel have ceased to hold office as members.	**Cessation de fonctions** **(2)** Le Tribunal, dans les cas où les membres du comité ont cessé d'exercer leur charge, peut exercer les fonctions du comité visées au paragraphe (1).

Other sections applicable	**Application d'articles**
(3) Sections 28 and 31 apply, with such modifications as the circumstances require, with respect to an application made under subsection (1).	**(3)** Les articles 28 et 31 régissent, avec les adaptations de circonstance, les demandes adressées au Tribunal dans le cadre du paragraphe (1).
Medical opinion	**Avis d'expert médical**
38 (1) The Board may obtain independent medical advice for the purposes of any proceeding under this Act and may require an applicant or appellant to undergo any medical examination that the Board may direct.	**38 (1)** Pour toute demande de révision ou tout appel interjeté devant lui, le Tribunal peut requérir l'avis d'un expert médical indépendant et soumettre le demandeur ou l'appelant à des examens médicaux spécifiques.
Notification of intention	**Avis d'intention**
(2) Before accepting as evidence any medical advice or report on an examination obtained pursuant to subsection (1), the Board shall notify the applicant or appellant of its intention to do so and give them an opportunity to present argument on the issue.	**(2)** Avant de recevoir en preuve l'avis ou les rapports d'examens obtenus en vertu du paragraphe (1), il informe le demandeur ou l'appelant, selon le cas, de son intention et lui accorde la possibilité de faire valoir ses arguments.
Rules of evidence	**Règles régissant la preuve**
39 In all proceedings under this Act, the Board shall	**39** Le Tribunal applique, à l'égard du demandeur ou de l'appelant, les règles suivantes en matière de preuve :
(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant; **(b)** accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and **(c)** resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.	**a)** il tire des circonstances et des éléments de preuve qui lui sont présentés les conclusions les plus favorables possible à celui-ci; **b)** il accepte tout élément de preuve non contredit que lui présente celui-ci et qui lui semble vraisemblable en l'occurrence; **c)** il tranche en sa faveur toute incertitude quant au bien-fondé de la demande.

FEDERAL COURT

SOLICITORS OF RECORD

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