

Federal Court



Cour fédérale

Date: 20230713

Docket: T-1135-22

Citation: 2023 FC 947

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 13, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

FERNAND KENNEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Fernand Kenney is seeking judicial review of the decision dated May 3, 2022, by the Reconsideration Panel of the Veterans Review and Appeal Board [the Reconsideration Panel] denying his application to reconsider the decision of the Assessment Appeal Panel of the same Board [the Appeal Panel] dated July 19, 2021. At that time, the Appeal Panel essentially (1)

increased the attendance allowance granted to Mr. Kenney under section 38 of the *Pension Act*, RSC 1985, c P-6 from the Grade 5 rate that had previously been granted to him to the higher Grade 4 rate; and (2) granted this new grade as of March 2015, the date of Mr. Kenney's statement.

[2] Mr. Kenney argues that he should receive a higher grade of attendance allowance, either a Grade 2 "Significant" or alternatively Grade 3 "Intermittent", and that this allowance should be granted to him from the date of his initial application in December 2013 rather than from the date of his statement.

[3] It is important to note that the Reconsideration Panel's powers are set out in subsection 32(1) of the *Veterans Review and Appeal Board Act*, SC 1995, c 18 [Appeal Board Act], reproduced in the appendix. Thus, under this provision, the Reconsideration Panel may, upon request, affirm, vary, or rescind an earlier decision if the applicant alleges that an error was made with respect to any finding of fact or the interpretation of any law (in the earlier decision) or if new evidence is presented.

[4] It is also important to note that when it deals with such an application for reconsideration, the Reconsideration Panel proceeds in two stages. In the first stage, it determines whether one of the above-mentioned grounds for reconsideration under subsection 32(1) of the Appeal Board Act has been established. It is therefore a preliminary stage. If the Reconsideration Panel concludes that there is such a ground, it proceeds to the second stage and reconsiders the previous decision. If the Reconsideration Panel concludes that there is no such ground, it does

not move on to the second stage and therefore does not reconsider the previous decision. The threshold to be met is fairly low (*Thomson v Canada (Attorney General)*, 2022 FCA 97 at para 25 [*Thomson*]).

[5] Thus, before the Reconsideration Panel, Mr. Kenney had to first submit new evidence or demonstrate that the findings of fact in the Appeal Panel's decision or its interpretation of the law was wrong. However, before the Reconsideration Panel, Mr. Kenney did not submit any new evidence, nor did he explain how the Appeal Panel had apparently erred in fact or how the Appeal Panel had erred in its interpretation of the law. Mr. Kenney then argued that he should have been granted a higher grade and that the Appeal Panel misinterpreted the evidence.

[6] In its May 3, 2022 decision, the Reconsideration Panel reviewed the three grounds under subsection 32(1) of the Appeal Board Act allowing for reconsideration and, because of the absence of grounds, dismissed Mr. Kenney's application for reconsideration at the preliminary stage. Since it dismissed the application at the preliminary stage, the Reconsideration Panel did not reconsider the Appeal Panel's decision, did not decide on the merits of the case, and upheld the Appeal Panel's decision on the choice of the grade and the start date of the attendance allowance paid to Mr. Kenney.

[7] In this application for judicial review, Mr. Kenney does not explain to the Court how the Reconsideration Panel erred in applying subsection 32(1) of the Appeal Board Act and concluding that the preliminary stage could not be completed. Mr. Kenney instead again

challenges the merits of the case, and in all likelihood the Appeal Panel's decision, rather than the Reconsideration Panel's decision.

[8] Before the Court, Mr. Kenney argues that the fundamental flaw undermining the decision is [TRANSLATION] "the incorrect use and analysis of the evidence submitted in relation to the characteristics to be considered in order to enable it to determine in which grade the applicant should be classified for his attendance allowance" (Applicant's Memorandum of Fact and Law at paragraph 4). Mr. Kenney adds that in failing to apply the evidence in respect of the characteristics, or in conducting a superficial analysis or assessment of said evidence to guide the Board in determining the grade, the decision was made unreasonable. Mr. Kenney requests that the matter be referred back to the Board for redetermination by a differently constituted panel.

[9] The respondent, the Attorney General of Canada [the AGC], essentially responds that the Reconsideration Panel's decision is reasonable because Mr. Kenney has not established the existence of one of the grounds for reconsideration under the Appeal Board Act giving rise to the reconsideration. The AGC added that the Reconsideration Panel did not make any errors that could justify this Court's intervention and that the application for judicial review must therefore be dismissed.

[10] I am sensitive to Mr. Kenney's situation; however, he has not shown that the Reconsideration Panel's decision is unreasonable on the basis of the record and the representations made to it. Therefore, and for the reasons detailed below, this application for judicial review will be dismissed.

II. Background

[11] Mr. Kenney is a veteran. From July 8, 1976, to October 23, 2005, he served in the Regular Forces and, in particular, from April 28, 1993, to October 30, 1993, he served in a Special Duty Area in Bosnia.

[12] Under section 21 and subsection 72(1) of the *Pension Act*, Mr. Kenney is receiving a disability pension in excess of 100% and an exceptional incapacity allowance. In addition, the Canada Revenue Agency considers that Mr. Kenney's situation makes him eligible for the disability tax credit for the 2003 to 2022 taxation years. As part of his application to the Canada Revenue Agency, Mr. Kenney included an evaluation report prepared by Dr. Villeneuve.

[13] On December 5, 2013, Mr. Kenney applied for an attendance allowance under subsection 38(1) of the *Pension Act*. In support of this application, Mr. Kenney submitted an evaluation report from Nurse Gagné dated October 29, 2013, which was prepared to assess his situation for the exceptional incapacity allowance application.

[14] On March 7, 2014, Veterans Affairs Canada granted Mr. Kenney a Grade 5 attendance allowance effective December 5, 2013, the date of his initial application for an attendance allowance. In accordance with the guidelines contained in Chapter 5 of the Veterans Affairs Canada Table of Disabilities, this grade is granted to those who require "occasional care" with respect to most of the six basic activities of daily living: feeding, bathing, dressing, toileting, medication administration, and mobility.

[15] Dissatisfied with this departmental decision, Mr. Kenney filed an appeal with the Assessment Review Panel [the Review Panel] under section 18 of the Appeal Board Act. He contended that the level of the attendance allowance granted to him should be increased from Grade 5 to a higher grade (Grade 2). Mr. Kenney then filed a written statement signed on March 3, 2015, and the same evidence he filed in support of his application to review the exceptional incapacity allowance.

[16] On March 12, 2015, on the basis of the evidence reviewed at the hearing and the information appearing in the nurse's evaluation dated October 29, 2013, the Review Panel found that the grade granted (Grade 5) was still adequate. The Review Panel therefore upheld the department's decision granting Mr. Kenney a Grade 5 attendance allowance as of December 5, 2013.

[17] Mr. Kenney appealed this decision to the Review Panel of the same Board pursuant to section 26 of the Appeal Board Act and requested that the grade of attendance allowance be increased to Grade 2 starting from the date of his initial application on December 5, 2013.

[18] He then submitted that the evidence clearly demonstrated that he qualified for at least Grade 2. He detailed the evidence in his file in light of each element of the daily activities listed above, following the elements proposed in Table 4 of Chapter 5 of the Veterans Affairs Canada Table of Disabilities, and identified the evidence that supports his claim.

[19] Mr. Kenney filed as additional evidence, in a bundle, his assessment of the evaluation of his attendance allowance and additional evidence, including the fact that the governments of Canada and Quebec recognize his state and condition by granting him a tax credit. He then stated that this evidence did not reflect a new situation, but clearly confirmed his detailed arguments above, so he asked the Appeal Panel to consider it (Dr. Villeneuve, January 10, 2018 (Respondent's Record, p 81; tax credit claim); 2010 nurse's report on applications for special allowance (Respondent's Record, p 185); 2017 evaluation by Dr. Villeneuve (Respondent's Record, p 200)).

[20] On July 19, 2019, the Appeal Panel considered that Mr. Kenney's attendance allowance should be increased to Grade 4 and that its effective date should be March 3, 2015. This grade is given to those who require "minimal care" in relation to most of the six basic activities of daily living outlined above.

[21] The Appeal Panel considered each of the elements proposed in Table 4 of Chapter 5 of the Table of Disabilities, emphasized by Mr. Kenney, in light of the evidence in the file and Mr. Kenney's submissions. The Appeal Panel then drew the following conclusions:

- **Feeding:** In order to meet Grade 2 "Significant", Mr. Kenney must be constantly assisted (must not be able to feed self independently with or without special equipment) or supervised while eating. The evidence in the file, including the 2013 nurse's evaluation and Mr. Kenney's statement dated March 3, 2015, shows that he sometimes needs help cutting his food, his wife always has to prepare his meals, and he needs motivation to feed himself, which is more in line with Grade 5 "Occasional". The Panel noted that the fact that his wife must always prepare his meals, as Mr. Kenney submits, is not a factor to be considered under Table 4.

- **Bathing:** While Mr. Kenney's statement dated March 3, 2015, shows that he does not bathe because of a lack of flexibility and that he needs someone to be with him when he takes a shower because he could lose his balance, the nurse stated in her 2013 evaluation report that Mr. Kenney showers alone. The Appeal Panel noted that there is a fairly significant discrepancy between Mr. Kenney's 2015 statement and the 2013 nurse's evaluation on this aspect and concluded that it is not established by the evidence that Mr. Kenney requires constant assistance or supervision while showering. However, the Review Panel gave him the benefit of the doubt and concluded that Mr. Kenney meets the criterion of needing some assistance or supervision when he bathes for Grade 4 "Minimal", considering that his spouse must wash some parts of his body and that he must keep the door open when he takes a shower.

- **Dressing:** While the Appeal Panel agreed that Mr. Kenney needs motivation to dress, his spouse needs to put his clothes out and help him put on his socks, and her support for his knee and sometimes his stockings is required, this is more in line with the criteria set out in Grade 4 "Minimal" or, "requires some assistance and/or supervision while dressing (e.g., help with socks, zippers and/or buttons, cuing or motivation; etc.)" and not Grade 2 "Significant", which states that Mr. Kenney must "must be constantly assisted and/or supervised by and other [*sic*] individual while dressing."

- **Toileting:** The Appeal Panel noted that the nurse's report states that Mr. Kenney can use the toilet independently. The evidence shows that although Mr. Kenney keeps the door open when he uses the toilet and does not require assistance or supervision, which corresponds to Grade 5 "Occasional", which provides that a person occasionally needs assistance and/or supervision while toileting.

- **Medication administration:** Mr. Kenney reported using dosetts, but he must be reminded to take his medication every day, and his wife must separate the dosetts every day and detach the doses for morning, noon, supper, and bedtime. The nurse's report states that Mr. Kenney has a dosett with an illustration of all his medication and an indication of when to take it, and that he takes care of his dosett himself and has good discipline. The Appeal Panel noted that to meet the criteria in Grade 2 "Significant", Mr. Kenney would need the medication to be administered to him to ensure proper use. The Appeal Panel stated that the evidence did not show that this was the case for Mr. Kenney, even accepting Mr. Kenney's testimony. Indeed, at Grade 4, Mr. Kenney is able to take medication independently but requires the use of blister packs or a dosett prepared by another individual and may need occasional

reminders. The evidence shows that this is consistent with Mr. Kenney's situation, and the Appeal Panel thus accepted Grade 4 "Minimal".

- **Mobility:** The Appeal Panel considered that the evidence demonstrates that Mr. Kenney has mobility issues but does not require the assistance or supervision of another individual to do so, which corresponds to Grade 5 "Occasional". The Appeal Panel noted that Table 4 provides that a person is independent with mobility if they can move on their own with or without special equipment and without the assistance or supervision of another individual (e.g. can walk, use cane, walker, scooter or wheelchair with no assistance or supervision).

[22] The Appeal Panel concluded that Mr. Kenney's care needs should be assessed at Grade 4 "Minimal" for three activities of daily living (bathing, dressing, and medication administration) and Grade 5 "Occasional" for the other three activities of daily living (toileting, feeding, and mobility). Accordingly, the Appeal Panel determined that the attendance allowance must be set at Grade 4, as per the guidelines contained in Chapter 5 of the Table of Disabilities.

[23] On August 23, 2021, dissatisfied with this decision, Mr. Kenney requested that the Appeal Panel's decision be reconsidered before the Reconsideration Panel. In this regard, he filed an application for reconsideration in which he wrote that (1) there is no new evidence; (2) there is an error of fact, but does not provide any details, referring the reader to an appended memorandum; and (3) there is an error of law, but does not provide details, referring the reader to an appended memorandum.

[24] However, in said appended memorandum, Mr. Kenney also unfortunately did not detail what the Appeal Panel's alleged error of fact or error of law would be. Instead, he reviewed each of the criteria in Table 4 of Chapter 5 (feeding, bathing, dressing, toileting, medication

administration, and mobility) with reference to the evidence, including his spouse's testimony, her March 2015 statement, 2010 R1 Appendix K1 notes, the nurse's October 2013 report, Dr. Villeneuve's report dated January 10, 2018, and the Canada Revenue Agency's disability tax credit file.

[25] In his memorandum to the Reconsideration Panel, Mr. Kenney essentially argued that the Appeal Panel did not consider all relevant elements when granting Grade 4, but did not specify what elements were supposedly omitted, and that a higher grade should be granted retroactively starting from December 5, 2013.

[26] On May 3, 2022, pursuant to subsection 32(1) of the Appeal Board Act, the Reconsideration Panel dismissed Mr. Kenney's application for reconsideration at the preliminary stage given the absence of new evidence and the absence of incorrect findings on a question of fact or law in the Appeal Panel's decision. Having dismissed the application at the preliminary stage, the Reconsideration Panel did not move on to the second stage, did not rule on the merits of the case, and upheld the Appeal Panel's decision.

[27] This application for judicial review relates to that decision.

III. Reconsideration Panel's decision

[28] In its decision, the Reconsideration Panel noted the powers conferred to it under section 32 of the Appeal Board Act, namely:

[TRANSLATION]

Section 32 of the *Veterans Review and Appeal Board Act* confers upon the Board the power to reconsider an appeal decision if there are grounds to do so based on new evidence, an error of fact or an error of law. Only one of these grounds needs to be present; however, a reconsideration may be based on all three grounds.

The reconsideration hearing involves two stages. The first is a preliminary review, during which the Board checks whether there is a ground for reconsideration. The Board determines whether the appeal decision is erroneous in fact or in law and whether the new evidence meets the four-part test (applicable to the new evidence). If there are no grounds, the application for reconsideration is denied. If the merits of one or more grounds are established, the Board moves on to the second stage (the reconsideration hearing), during which the Board reconsiders the decision under appeal.

[29] The Reconsideration Panel found that the first issue before it related to the first stage, the preliminary review. Therefore, the Reconsideration Panel considered that it had to determine whether the veteran had provided sufficient grounds to warrant a reconsideration hearing. In other words, should the appeal decision on the evaluation be reconsidered? The Reconsideration Panel defined the error in law and error of fact and noted Mr. Kenney's written and oral representations.

[30] Thus, the Reconsideration Panel noted that, in his application for reconsideration, Mr. Kenney checked the boxes confirming that there is an error of fact and error of law and then referred to an appended Memorandum to explain his reasons. However, even with reference to the attached Memorandum, the Reconsideration Panel noted that it was unable to identify the grounds raised in connection with an error of law or an error of fact and also noted that counsel had noted that [TRANSLATION] "the Appeal Panel erred".

[31] The Reconsideration Panel noted that at the hearing, Mr. Kenney, through his counsel, (1) explained that the five exhibits and the annex he submitted are not considered new evidence; (2) confirmed that the Appeal Panel misinterpreted the evidence when it only granted an increase in the attendance allowance to Grade 4 instead of granting an increase to what Mr. Kenney had requested, namely, Grade 2; and (3) did not identify anything to support the application in connection with an error of fact.

[32] The Reconsideration Panel reiterated the obligations imposed by section 39 of the Appeal Board Act.

[33] The Reconsideration Panel then again noted that Mr. Kenney's argument that the Appeal Panel should have granted a higher grade for the attendance allowance did not establish that the Appeal Panel had made an error in fact.

[34] The Reconsideration Panel noted Mr. Kenney's argument that the Appeal Panel had misinterpreted the evidence, which would be an error of law. However, the Reconsideration Panel noted that the Appeal Panel had provided a detailed explanation for the reasons that supported its conclusion and that it had analyzed the nurse's report, the wife's testimony and that of Mr. Kenney. In addition, the Reconsideration Panel noted that in instances where there were discrepancies in the nurse and witnesses' evidence, the Appeal Panel demonstrated that it had applied the provisions of sections 3 and 39 of the Appeal Board Act in its decision.

[35] The Reconsideration Panel therefore concluded that the Appeal Panel had not erred in law and that there was no need to reconsider the decision subject to the application for reconsideration.

IV. Discussion

[36] As noted above, Mr. Kenney submits that the fundamental flaw undermining the Reconsideration Panel's decision is [TRANSLATION] "the incorrect use and analysis of the evidence submitted in relation to the characteristics to be considered in order to enable it to determine in which grade the applicant should be classified for his attendance allowance". Mr. Kenney submits, on the one hand, that the Appeal Board did not review the Appeal Panel's decision by concretely assessing the weight of each item of evidence that would have enabled a change in grade, which resulted in making the decision unreasonable. He essentially reiterated the evidence before the Reconsideration Panel without explaining why the Reconsideration Panel's decision is unreasonable. Mr. Kenney also submits that the Reconsideration Panel failed to apply section 39 of the Appeal Board Act when considering the criteria for establishing the grade for which Mr. Kenney qualifies.

[37] The AGC responds that the Reconsideration Panel's decision is reasonable, as Mr. Kenney could not establish the existence of one of the grounds for reconsideration under the Appeal Board Act. He added that the Reconsideration Panel did not make any errors that could justify this Court's intervention, so the application for judicial review must be dismissed.

[38] The Court must determine whether the panel erred in dismissing Mr. Kenney's application for reconsideration at the preliminary stage.

[39] As both parties stated in their submissions, the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25, 31, 48, and 49 [*Vavilov*]; see also *Thomson v Canada (Attorney General)*, 2022 FC 606 at para 32). When applying the reasonableness standard, the reviewing court must consider whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

[40] In judicial review, the Court's role is not to reweigh the evidence or substitute the decision maker's outcome with one it prefers (*Vavilov* at para 125; *Singh v Canada (Citizenship and Immigration)*, 2019 FC 727 at para 10 citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Bhatti v Canada (Citizenship and Immigration)*, 2021 FC 1386 at para 36). The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at para 126). Thus, in the absence of exceptional circumstances, reviewing courts must refrain from "reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[41] The Board's powers to reconsider are set out in subsection 32(1) of the Appeal Board Act, reproduced in the appendix. Thus, under this provision, the Reconsideration Panel may, on request, affirm, vary, or rescind an earlier decision if the person making the application alleges

that an error was made (in the Appeal Panel's earlier decision) with respect to any finding of fact or the interpretation of any law or if new evidence is presented to it.

[42] When it deals with an application for reconsideration under subsection 31(1) of the Appeal Board Act, the Reconsideration Panel proceeds in two stages. In the first stage, it begins by checking whether there is a ground for reconsideration; if so, it commences the second stage and reconsiders the previous decision. If the Reconsideration Panel is of the view that there are no grounds, or more specifically no error of fact or law, or that no new evidence has been presented to it, it will not move it to the second stage. The threshold to be met is fairly low (*Thomson* at para 25; *Blount v Canada (Attorney General)*, 2017 FC 647 at para 26).

[43] Therefore, before the Reconsideration Panel, Mr. Kenney had the burden of establishing that one of the grounds set out in subsection 32(1) of the Appeal Board Act was met. The application for reconsideration and appended memorandum can be found on pages 127 et seq. of the AGC's response record. The Reconsideration Panel also noted in its decision the oral submissions of Mr. Kenney's counsel at the hearing. Before the Court, Mr. Kenney confirmed that the arguments raised in the Reconsideration Panel's decision do correspond to the oral arguments presented by his counsel.

[44] The submissions made by Mr. Kenney to the Reconsideration Panel in relation to each of the three grounds for reconsideration under subsection 32(1) above should be reviewed to determine whether its decision is reasonable.

[45] First, with respect to new evidence, it is not disputed that Mr. Kenney did not submit any new evidence before the Reconsideration Panel. Before the Court, Mr. Kenney does not raise any arguments challenging this finding by the Reconsideration Panel, and on the basis of the evidence, it could reasonably conclude that this ground for reconsideration was not met.

[46] Second, Mr. Kenney does not dispute before the Court that he did not raise any identifiable argument relating to a possible error of fact in his memorandum to the Reconsideration Panel. At the hearing before the Reconsideration Panel, Mr. Kenney simply added that the Appeal Panel should have granted a higher grade for the attendance allowance and did not explain any further. Thus, and having received no argument to the contrary, the Reconsideration Panel concluded that the argument did not satisfy it that the Appeal Panel had erred in fact. Before the Court, Mr. Kenney does not raise any arguments challenging this finding by the Reconsideration Panel, and on the basis of the evidence, it could reasonably conclude that this ground for reconsideration was not met.

[47] Third, in connection with a possible error of law, Mr. Kenney submitted to the Reconsideration Panel that the Appeal Panel had misinterpreted the evidence. The Reconsideration Panel carefully read the Appeal Panel's decision and concluded that it had not erred in its interpretation of the law. Before the Court, Mr. Kenney does not raise any arguments challenging this finding and, on the basis of the evidence, the Reconsideration Panel could reasonably conclude that this ground for reconsideration was not met because no error of law was alleged.

[48] Although the Reconsideration Panel made a decision only at the first stage, that of the preliminary review (*Thompson*), Mr. Kenney's submissions before the Court relate entirely and exclusively to the merits of his application, that is, the second stage. Indeed, before the Court, Mr. Kenney does not state how the Reconsideration Panel erred in considering the grounds for reconsideration under subsection 32(1) of the Appeal Board Act.

[49] In his memorandum, Mr. Kenney overlooks the Reconsideration Panel's role and instead asks the Court to reconsider the evidence and conclude that a higher grade for the attendance allowance should have been recognized, which it cannot do. The arguments put forward by Mr. Kenney are more akin to a request for a new hearing on the merits of his application for an attendance allowance rather than an application for judicial review of the Reconsideration Panel's decision, a decision limited to the first stage of subsection 32(1) of the Appeal Board Act.

[50] Furthermore, and in any event, Mr. Kenney has not satisfied me that the Reconsideration Panel erred in [TRANSLATION] "the incorrect use and analysis of the evidence submitted in relation to the characteristics to be considered in order to enable it to determine in which grade the applicant should be classified for his attendance allowance" (Applicant's Memorandum at para 4) in such a way as to make the decision unreasonable. Mr. Kenney has not satisfied me that the Reconsideration Panel "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126) or that the Reconsideration Panel unreasonably concluded that the Appeal Panel had properly applied section 39 of the Appeal Board Act in its decision.

[51] As noted by the Reconsideration Panel, the Appeal Panel (1) considered, among other things, the nurse's evaluation dated October 11, 2013, and the testimony of Mr. Kenney and that of his wife; (2) demonstrated that it had considered this evidence in the best light possible for the applicant and decided any uncertainty in his favour pursuant to section 39 of the Appeal Board Act; and (3) provided detailed reasons for its conclusion. A reading of the Appeal Panel's decision in relation to the evidence on the record does demonstrate that the Appeal Panel conducted a comprehensive analysis of the evidence on the record and the arguments submitted by Mr. Kenney in relation to the six elements to be considered in determining the grade level.

V. Conclusion

[52] The Reconsideration Panel's decision is transparent, intelligible, and justified in relation to the relevant factual and legal constraints that bound the Board (*Vavilov* at para 99). In view of the applicant's laconic representations before the Reconsideration Panel in relation to subsection 32(1) of the Appeal Board Act, the decision is entirely reasonable, and there is no justification for the Court's intervention.

[53] The AGC does not seek costs, and none will be awarded.

JUDGMENT in T-1135-22

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. No costs are awarded.

“Martine St-Louis”

Judge

Certified true translation
Michael Palles

<i>Veterans Review and Appeal Board Act, SC 1995, c 18)</i>	<i>Loi sur le Tribunal des anciens combattants (révision et appel), LC 1995, c 18)</i>
Construction	Principe général
3. The provisions of this Act and of any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants may be fulfilled.	3. Les dispositions de la présente loi et de toute autre loi fédérale, ainsi que de leurs règlements, qui établissent la compétence du Tribunal ou lui confèrent des pouvoirs et fonctions doivent s'interpréter de façon large, compte tenu des obligations que le peuple et le gouvernement du Canada reconnaissent avoir à l'égard de ceux qui ont si bien servi leur pays et des personnes à leur charge.
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'appellant, 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;	a) il tire des circonstances et des éléments de preuve qui lui sont présentés les conclusions les plus favorables possible à celui-ci;
(b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and	b) il accepte tout élément de preuve non contredit que lui présente celui-ci et qui lui semble vraisemblable en l'occurrence;
(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.	c) il tranche en sa faveur toute incertitude quant au bien-fondé de la demande.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1135-22

STYLE OF CAUSE: FERNAND KENNEY v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 27, 2023

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: JULY 13, 2023

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