

Federal Court



Cour fédérale

Date: 20110923

Docket: T-238-11

Citation: 2011 FC 1092

Ottawa, Ontario, September 23, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

ANN CARROLL

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Ann Carroll has endured chronic pain in her back, hip and pelvis for the past four years. Her pain is the result of an injury she suffered while working as a room attendant at a hotel in Richmond, BC. She has not worked full-time since her injury.

[2] In 2008, Ms. Carroll applied for a disability pension under the *Canada Pension Plan*, RSC 1985, c C-8 [CPP]. The Minister of Human Resources and Skills Development turned her down. She asked the Minister to reconsider, but the Minister dismissed her application again.

[3] Ms. Carroll then appealed to a Review Tribunal (RT), which accepted that she experiences chronic pain, but concluded that her condition did not meet the definition of a disability under the CPP. The CPP states that a disability must be both severe and prolonged before benefits can be awarded. The evidence showed that Ms. Carroll's injury did not meet that test.

[4] Ms. Carroll sought leave to appeal the RT's decision to the Pension Appeal Board (PAB). The PAB granted her permission to appeal in December 2010.

[5] However, the Minister submits that the PAB's decision granting leave to appeal was faulty. In particular, the Minister maintains that the PAB committed an error by:

- (i) failing to issue a formal decision on Ms. Carroll's application for leave to appeal;
- (ii) failing to provide reasons for its decision granting leave;
- (iii) failing to apply the proper test in deciding whether to grant leave to appeal – that is, whether Ms. Carroll had presented an arguable case that the RT had wrongly denied her benefits; and

(iv) failing to make a reasonable decision.

[6] The Minister asks me to overturn the PAB's decision giving Ms. Carroll leave to appeal, and order it to reconsider that decision. I agree with the Minister that the PAB's decision should be overturned. I must, therefore, allow this application for judicial review and order the PAB to reconsider whether it should give Ms. Carroll leave to appeal.

[7] In my view, the PAB made an error by not recording, or issuing any written reasons for, its decision granting leave to appeal. As such, it is impossible to tell whether it applied the correct test. It is unnecessary to consider whether the PAB's decision was unreasonable.

II. The PAB's Duties

[8] Benefits claimants cannot automatically appeal a decision of the RT. They must apply to the PAB for permission to appeal. The PAB must then decide whether there are sufficient grounds to grant leave to appeal.

[9] The PAB has a duty to record, in writing, a decision granting leave to appeal (*Canada (Attorney General) v Montesano*, 2011 FC 398, paras 7-8).

[10] When the PAB denies leave to appeal, it has a duty to provide written reasons for its decision (s 83(3) of the CPP – see Annex for enactments cited). Where, as here, the PAB grants

leave to appeal, it may or may not have to provide written reasons depending on what the applicant has included in her request for leave.

[11] When an applicant gives sufficient grounds for her request for leave to appeal, the PAB does not necessarily have to provide written reasons for granting leave; the applicant's request becomes the reasons for the PAB's decision (*Mrak v Canada (Minister of Human Resources and Social Development)*, 2007 FC 672).

[12] On the other hand, when an applicant does not give adequate grounds for a request for leave to appeal, the PAB must provide written reasons for granting leave (*Montesano*, above, para 6, 8, 10; *Canada (Minister of Human Resources Development v Roy*, 2005 FC 1456).

[13] In that case, the PAB's reasons must satisfy the various purposes for which written reasons are required (*Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158, para 16). They must be understandable, sufficiently detailed, and provide a logical basis for the decision.

[14] The PAB also has a duty to apply the correct test for granting leave to appeal. The test is whether the applicant requesting leave has raised an arguable case (*Callihoo v Canada (Attorney General)*, [2000] FCJ No 612 (TD)). An applicant will raise an arguable case if she puts forward new or additional evidence (not already considered by the RT), raises an issue not considered by the RT, or can point to an error in the RT's decision.

III. Did the PAB Fulfill its Duties?

[15] The PAB informed Ms. Carroll that she had been given permission to appeal the Review Tribunal's decision. However, that decision is not recorded anywhere. The decision-maker's identity is unknown.

[16] Further, Ms. Carroll's request for leave to appeal did not meet the requirements of Rule 4 of the *Pension Appeals Board Rules of Procedure (Benefits)*, CRC 1978, c 390 (see Annex). It did not say why the request for leave to appeal should be granted, and did not put forward any allegations of fact or documentary evidence on which she intended to rely in the appeal. As a result, the Minister did not know how he should respond on the appeal. In her letters to the PAB, Ms. Carroll simply stated that she disagreed with the RT's decision. This was not sufficient.

[17] Accordingly, since Ms. Carroll did not say why her request for leave to appeal should be granted, the PAB had a duty to provide written reasons for granting leave. It provided none.

[18] Finally, without reasons, it is impossible to know whether the PAB applied the correct test in granting leave to appeal, or whether it applied any test at all.

[19] In the circumstances, I must conclude that the PAB's decision granting Ms. Carroll leave to appeal should be overturned because the PAB did not meet its legal responsibilities. It did not record its decision in writing, did not provide any reasons, and did not say what test it applied in granting leave to appeal.

IV. Conclusion and Disposition

[20] The PAB did not record its decision, provide any reasons for granting Ms. Carroll leave to appeal the Review Tribunal's decision, or indicate what, if any, test it applied in granting leave. I must, therefore, allow this application for judicial review and order the PAB to reconsider whether it should give Ms. Carroll permission to appeal the RT's decision.

[21] When the PAB reconsiders her request for leave to appeal, Ms. Carroll should be given an opportunity to say why she disagrees with the RT's decision, and to put forward any new or additional evidence (not already considered by the RT) on which she intends to rely at the appeal.

[22] There is no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and the Pension Appeal Board is asked to reconsider whether to grant Ms. Carroll leave to appeal the Review Tribunal's decision.
2. No order as to costs.

“James W. O’Reilly”

Judge

Annex

Canada Pension Plan, RSC 1985, c C-8

Régime de pensions du Canada, LRC, 1985, ch C-8

Where leave refused

Permission refuse

83(3) Where leave to appeal is refused, written reasons must be given by the person who refused the leave.

83(3) La personne qui refuse l'autorisation d'interjeter appel en donne par écrit les motifs.

Pension Appeals Board Rules of Procedure (Benefits), CRC 1978, c 390

Règles de procédure de la Commission d'appel des pensions (prestations), CRC 1978, ch 390

Application for leave to appeal

Demande d'autorisation d'interjeter appel

4. An appeal from a decision of a Review Tribunal shall be commenced by serving on the Chairman or Vice-Chairman an application for leave to appeal, which shall be substantially in the form set out in Schedule I and shall contain

4. L'appel de la décision d'un tribunal de révision est interjeté par la signification au président ou au vice président d'une demande d'autorisation d'interjeter appel, conforme en substance à l'annexe I, qui indique :

(a) the date of the decision of the Review Tribunal, the name of the place at which the decision was rendered and the date on which the decision was communicated to the appellant;

a) la date de la décision du tribunal de révision, le nom de l'endroit où cette décision a été rendue et la date à laquelle la décision a été transmise à l'appelant;

(b) the full name and postal address of the appellant;

b) les nom et prénoms ainsi que l'adresse postale complète de l'appelant;

(c) the name of an agent or representative, if any, on whom service of documents may be made, and his full postal address;

c) le cas échéant, le nom et l'adresse postale complète d'un mandataire ou d'un représentant auquel des documents peuvent être signifiés;

(d) the grounds upon which the appellant relies to obtain leave to appeal; and

d) les motifs invoqués pour obtenir l'autorisation d'interjeter appel; et

(e) a statement of the allegations of fact, including any reference to the statutory provisions and constitutional provisions, reasons the appellant intends to submit and documentary evidence the

e) un exposé des faits allégués, y compris tout renvoi aux dispositions législatives et constitutionnelles, les motifs que l'appelant entend invoquer ainsi que les preuves documentaires qu'il entend présenter à l'appui de l'appel.

appellant intends to rely on in support of the appeal.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-238-11

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA
v
ANN CARROLL

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 21, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 23, 2011

APPEARANCES:

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Ann Carroll FOR THE RESPONDENT
ON HER OWN BEHALF

SOLICITORS OF RECORD:

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ON HER OWN BEHALF