

Federal Court



Cour fédérale

Date: 20140331

Docket: T-946-13

Citation: 2014 FC 305

Ottawa, Ontario, March 31, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

FRED HAWRYLUK

Applicant

and

**ATTORNEY GENERAL OF CANADA AND
VETERAN AFFAIRS AND APPEAL BOARD**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Fred Hawryluk maintains that he began serving in the Canadian Merchant Navy in 1946 and, accordingly, that he is eligible to receive a disability pension for hearing loss that, he says, was caused by his service. Official records show that Mr Hawryluk began his service in August 1947, too late to be entitled to benefits. However, he states that the government's records are unreliable and that he should be given the benefit of the doubt.

[2] To receive benefits, Mr Hawryluk had to establish that he served before April 1, 1947. Veterans Affairs Canada found that there was no evidence showing that he was on board a vessel prior to August 15, 1947. On reconsideration, a representative of the Minister of Veterans Affairs confirmed the original decision. That decision was upheld by the Entitlement Review Panel, the Entitlement Appeal Panel, and the Veteran's Review and Appeal Board (VRAB).

[3] A key issue in the proceedings was whether there was an error in documents recording when Mr Hawryluk began his service. The VRAB found that the documentary evidence showed that Mr Hawryluk commenced his service too late to be entitled to benefits.

[4] The sole issue is whether the VRAB's decision was unreasonable.

[5] I have reviewed all of the evidence before the VRAB and have found that there are, indeed, some errors in the government's documents. However, even so, I can find nothing that would render the VRAB's decision unreasonable. There is simply nothing in the documentary record that supports Mr Hawryluk's claim that he began his service in 1946.

II. The Evidence before the VRAB

[6] Mr Hawryluk tendered evidence before the VRAB that showed that he served on two different ships soon after the end of World War II, but those documents did not indicate the year of service. He suggested that he served on one ship during 1946 and on the other during 1947.

[7] By contrast, government records show that Mr Hawryluk served on both ships in 1947, having begun his service on August 15, 1947. Mr Hawryluk points to errors in other records and maintains that, as a whole, they cannot be relied on.

[8] I have reviewed the records Mr Hawryluk says are unreliable and acknowledge that some contain obvious errors. For example, the record indicates that the ship Grand Hermine was delivered to Lunenburg in January 1950 but was received there in January 1949. Obviously, one of these dates is incorrect. Elsewhere, the documentation states that the ship commenced its voyage in Montreal in August 1949 and ended it in January 1950, so it is likely that the reference to January 1949 is wrong.

[9] Another document indicates that Mr Hawryluk served on the Simcoe from November 12, 1947 until December 15, 1945. The latter date is obviously incorrect; the correct date is December 15, 1947, according to the original documentation.

[10] One document has the Federal Mariner leaving St John, New Brunswick on January 22, 1949, while another shows the date of departure as being January 27, 1949.

III. Was the VRAB's decision unreasonable?

[11] Mr Hawryluk rightly points out that the government's records are clearly fallible. Errors were made.

[12] However, I am not convinced that the records are so unreliable that the VRAB was unreasonable in its reliance on them. The critical question was the start date of Mr Hawryluk's period of service. The documentary evidence on that question is clear. He began in August 1947. Errors relating to other periods of time and other ships seemed obviously to be clerical in nature.

[13] But I can find no comparable, obvious error in the documentation showing when Mr Hawryluk commenced his service. In particular, the official log book for the Liscomb Park shows

that it was delivered to Sydney, Nova Scotia on December 13, 1947. Similarly, the log book for the SS Simcoe shows that it was delivered to Windsor, Ontario on December 15, 1947. Both identify Mr Hawryluk as a crew member. In the latter case, the crew list also indicates that he last served on the Liscomb Park. There is no simply no documentary evidence showing that Mr Hawryluk served prior to August 1947.

[14] Therefore, I cannot conclude that the VRAB's finding that Mr Hawryluk was ineligible for benefits was unreasonable in the circumstances.

IV. Conclusion and Disposition

[15] The VRAB's conclusion that Mr Hawryluk had not established that he served during a period of time that would have qualified him to receive benefits for his hearing loss was not unreasonable on the evidence.

[16] I must, therefore, dismiss this application for judicial review. There is no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No order as to costs.

“James W. O’Reilly”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-946-13

STYLE OF CAUSE: FRED HAWRYLUK v ATTORNEY GENERAL OF
CANADA AND VETERAN AFFAIRS AND APPEAL
BOARD

PLACE OF HEARING: SYDNEY, NOVA SCOTIA

DATE OF HEARING: DECEMBER 12, 2013

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

DATED: MARCH 31, 2014

APPEARANCES:

Fred Hawryluk FOR THE APPLICANT – SELF-REPRESENTED

Kelly Peck FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Fred Hawryluk FOR THE APPLICANT – SELF-REPRESENTED
84 Green Rd
Sydney, Nova Scotia

William F. Pentney FOR THE RESPONDENTS
Deputy Attorney General of Canada
Sydney, Nova Scotia