

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180125

Docket: A-198-17

Citation: 2018 FCA 25

**CORAM: WEBB J.A.
BOIVIN J.A.
WOODS J.A.**

BETWEEN:

LIEUTENANT-COMMANDER HENRICK OUELLET

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 24, 2018.

Judgment delivered at Ottawa, Ontario, on January 25, 2018.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**WEBB J.A.
WOODS J.A.**

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] The Appellant, Lieutenant-Commander Henrick Ouellet, appeals from a judgment of Fothergill J. of the Federal Court dated June 15, 2017 (2017 FC 586). Fothergill J. dismissed the Appellant's application for judicial review of a second decision of the Entitlement Appeal Panel of the Veterans Review and Appeal Board of Canada (Appeal Panel) dated September 14, 2016.

[2] On November 16, 2015, ten months prior to that decision, a first Appeal Panel had rendered a decision finding that the Appellant was not entitled to a disability benefit pursuant to section 45 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21 (the Compensation Act). That first Appeal Panel decision affirmed the Entitlement Review Panel's decision dated October 21, 2011, which in turn had affirmed the Veterans Affairs Official decision dated October 19, 2007.

[3] All of these decisions were related to the Appellant's claim, filed August 16, 2007, for a disability benefit in respect of sarcoidosis which he developed in 2002. He joined the Canadian Armed Forces in 1989 with a clean bill of health, and claimed that his military service caused or aggravated his sarcoidosis.

[4] The Appellant sought judicial review of the first Appeal Panel's decision dated November 16, 2015 before Strickland J. of the Federal Court. In granting the Appellant's judicial review application on May 31, 2016, Strickland J. found that the first Appeal Panel's decision was unreasonable in that it dismissed the Appellant's appeal on the basis that the cause of sarcoidosis was unknown, and failed to give effect to the statutory presumptions in the Appellant's favour, namely the presumptions outlined in section 39 of the *Veterans Review and Appeal Board Act*, S.C. 1995, c. 18. Therefore, she remitted the matter for reconsideration to a differently constituted Appeal Panel taking into consideration the reasons in her decision.

[5] Following Strickland J.'s judgment, a second Appeal Panel considered the matter *de novo* and rendered the September 14, 2016 decision which is the subject of this proceeding before our

Court. In that decision, the second Appeal Panel also found that the Appellant was not entitled to a disability benefit pursuant to section 45 of the Compensation Act.

[6] The Appellant sought judicial review of the second Appeal Panel decision on the sole basis that the second Appeal Panel did not follow instructions provided by Strickland J. in her judgment of May 31, 2016. Fothergill J. dismissed the Appellant's application, and the Appellant now makes this same argument before our Court.

[7] This argument is without merit. This Court's decision in *Canada (Citizenship and Immigration) v. Yansane*, 2017 FCA 48, [2017] F.C.J. No. 264 (QL) [*Yansane*] clearly confirms that, in applications for judicial review, only instructions explicitly stated in the judgment bind the subsequent decision-maker (para. 19). The decision-maker is advised to consider the comments and recommendations of the reviewing Court in its reasons, but is not required to follow them (*Ibid*).

[8] Although the Appellant requested a directed verdict before Strickland J., she expressly declined to render one (Reasons, para. 67). As such, Strickland J.'s judgment merely states that "[t]he decision of the [first] Appeal Panel is quashed and the matter is remitted back to a differently constituted panel for redetermination taking into consideration the reasons contained in this decision" (Judgment, para. 2).

[9] Having reviewed the second Appeal Panel decision, I find that the second Appeal Panel took Strickland J.'s reasons into consideration in its analysis. It paid particular attention to the

medical evidence presented by the Appellant, namely various medical studies and opinion evidence provided by his physician, Dr. Smith. Ultimately, the second Appeal Panel concluded that the preponderance of evidence did not establish that military service was a significant causal factor in the development of the Appellant's sarcoidosis (Second Appeal Panel decision, p. 19; Appeal Book, Tab 4, p. 443). Accordingly, the second Appeal Panel also found that the Appellant was not entitled to a disability benefit under section 45 of the Compensation Act.

[10] In dismissing the Appellant's application for judicial review in respect of the second Appeal Panel decision, Fothergill J. did not err in finding that the decision was not contrary to Strickland J.'s judgment and this Court's teachings in *Yansane*.

[11] It follows that the appeal should be dismissed. As the Crown did not seek costs, none should be awarded.

“Richard Boivin”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
J. Woods J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-198-17

STYLE OF CAUSE: LIEUTENANT-COMMANDER
HENRICK OUELLET v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 24, 2018

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: WEBB J.A.
WOODS J.A.

DATED: JANUARY 25, 2018

APPEARANCES:

Joshua M. Juneau FOR THE APPELLANT

Zoe Oxaal FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Drapeau Law Office FOR THE APPELLANT
Ottawa, Ontario

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada