Federal Court of Appeal | Cour d'appel fédérale

Date: 20181123

Docket: A-393-17

Citation: 2018 FCA 216

CORAM: **PELLETIER J.A.**
DE MONTIGNY J.A.
GLEASON J.A.

BETWEEN:

RENWYCK QUIANO

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on November 7, 2018.

Judgment delivered at Ottawa, Ontario, on November 23, 2018.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

I. INTRODUCTION

[1] This is an appeal from a decision of Madam Justice Simpson of the Federal Court dismissing Mr. Quiano's application for judicial review of the decision of the delegate of the Minister of Employment and Social Development (the Minister) rejecting Mr. Quiano's claim of administrative error in the processing of his 2003 application for disability benefits. The

Minister's delegate did, however, accept Mr. Quiano's argument that there was an administrative error in the processing of his 2006 claim for disability benefits.

[2] In reasons reported as *Quiano v. Canada (Attorney General)*, 2017 FC 977, the Federal Court dismissed Mr. Quiano's application on the basis that the Minister's delegate's decision was reasonable, having regard to the contents of Mr. Quiano's file at the material time.

[3] In my view, Mr. Quiano has not succeeded in showing that it was unreasonable for the Minister's delegate to conclude that there had been no administrative error with respect to his 2003 application for disability benefits. I would therefore dismiss his appeal.

II. FACTS

[4] Mr. Quiano was born in the Philippines in 1959 and came to Canada in 1995 at the age of 36. He found employment and made contributions to the Canada Pension Plan (CPP). He was injured and became disabled as a result of a workplace accident. In 2003, he applied for CPP disability benefits. That application was dismissed because Mr. Quiano had not made sufficient contributions to establish a Minimum Qualifying Period.

[5] The application form for disability benefits was accompanied by a 4 page document titled "Canada Pension Plan Disability Benefit: Who is Eligible?" [the Guide]. It read in part as follows:

> What if I have made contributions in another country?
>
> Canada has agreements with a number of countries covering disability benefits and other social assistance programs. If you have made contributions in a country

> with which we have an agreement, we take those contributions into account when determining whether you are eligible to receive a CPP Disability benefit.

[6] The Federal Court found that Mr. Quiano had the Guide when he completed his application for benefits. Mr. Quiano challenges this conclusion but, as will be seen, nothing turns on it in the end.

[7] The application form itself contained the following question (Question 6): Have you ever worked in another country? Mr. Quiano answered "No" to question 6. As a result, his application for benefits was assessed on the basis of his contributions to the CPP which, as noted, were insufficient to establish a claim for benefits.

[8] Mr. Quiano did not challenge the decision dismissing his application for benefit.

[9] In 2006, Mr. Quiano made another claim for disability benefits. It appears that this application was made as a result of a demand by a private disability insurer from whom Mr. Quiano was receiving benefits that he do so. Mr. Quiano once again answered Question 6 in the negative and, once again, his claim for benefits was dismissed. As before, Mr. Quiano did not challenge the dismissal of his application.

[10] Mr. Quiano alleges that at various times in the processing of his 2003 and 2006 applications, he spoke to representatives of Service Canada and told them that he had in fact worked in the Philippines. Except as noted below, there is no reference to these conversations in Mr. Quiano's file.

[11] Mr. Quiano says that in 2011 he became aware of the existence of a social security agreement between Canada and the Philippines. As a result, he submitted a third application, claiming benefits under the Agreement on Social Security between Canada and the Republic of the Philippines. In the course of processing this application, an official noted a possible "clerical error" with respect to the 2006 application.

[12] Subsection 66(4) of the *Canada Pension Plan*, R.S.C., 1985, c. C-8 (the Plan) which deals with administrative error, provides as follows:

(4) Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied	(4) Dans le cas où le ministre est convaincu qu'un avis erroné ou une erreur administrative survenus dans le cadre de l'application de la présente loi a eu pour résultat que soit refusé à cette personne, selon le cas :
(a) a benefit, or portion thereof, to which that person would have been entitled under this Act,	a) en tout ou en partie, une prestation à laquelle elle aurait eu droit en vertu de la présente loi,
…	…
the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.	le ministre prend les mesures correctives qu'il estime indiquées pour placer la personne en question dans la situation où cette dernière se retrouverait sous l'autorité de la présente loi s'il n'y avait pas eu avis erroné ou erreur administrative.

[13] In March 2013, Mr. Quiano's 2011 application for benefits was approved with an effective date of July 2010. Mr. Quiano undertook a series of measures seeking to have his earlier applications reviewed on the basis of administrative error. Eventually, the Minister

concluded that there had been an administrative error with respect to the 2006 application, but denied that there had been administrative error with respect to the 2003 application.

[14] The decision dismissing Mr. Quiano's claim of administrative error with respect to his 2003 application is very brief. It reads as follows:

> Our department determined that the information on your file does not support a claim that an administrative error occurred in the administration of your 2003 Canada Pension Plan Disability Application.
>
> After further review, it has been determined that your 2003 application was adjudicated based on domestic contributions and denied because you did not meet the contributory requirements. On the application, you stated that you had never worked in another country.
>
> Our decision to deny your 2003 application was correct based on the information available at the time. You did not request a reconsideration of this decision within the 90 day time limit.

[15] However, the record contains a document entitled Erroneous Advice/Administrative Error Submission (EA/AE form) in which the official who prepared the Submission recorded, at Section E of the document, that:

> After a thorough review of the file, the information supports a claim that an [illegible] administrative error occurred in the administration of the 2006 Canada Pension Plan (CPP) Disability application.
>
> …
>
> A file summary review by the department dated October 3, 2011, revealed that a clerical error was identified when the client's 2nd disability application submitted on February 13, 2006, was processed and that the 2006 application should have been forwarded to International Operations for a review under the Canada/Philippines agreement on social security.
>
> Upon further investigation, it is noted in the Call record dated June 15, 2006, the Department contacted Mr. Quiano the same day to discuss decision letter to deny his CPP Disability application. Mr. Quiano believed he was contributing while receiving LTD [from a private insurer]. However on October 3, 2011, upon

> review of the 2006 application, question #6 noted in black cursive writing and circled is the word Philippines (misspelled). The handwriting may have been that of the call record summary dated June 15, 2006 by the Departments SDA1/2.
>
> It is reasonable to assume that the conversation may have touched on the subject of Mr. Quiano's foreign work in the Philippines, and the agent added this additional information to Mr. Quiano's file. At that time, if foreign work activity was discussed the file should have been forwarded to International Operations for a review under the Canada/Philippines Agreement.
>
> > Policy
> >
> > Mail Processing Centres are responsible for transferring file to International Operations in the following situations:
> >
> > …
> >
> > -when an applicant does not qualify under domestic legislation alone and indicates residence and/or contributions in a country which Canada has an agreement in force which contains benefit provisions […]
>
> It is recommended that Subsection 66(4) of the Canada Pension Plan be invoked in order to place Mr. Quiano in the position that he would have been in had the administrative error not occurred.
>
> Note:
>
> After further review it has been determined that the 2003 CPP Disability application was adjudicated based on domestic contributions and denied because Mr. Quiano did not meet contributory requirements. The CPP Disability application specifically asks for information that may assist in determining the best possible MQP for the client, however Mr. Quiano answered "no" if he had worked in another country in the 2003 application.

[16] These comments throw some light on the basis for the decision with respect to the 2003 application.

[17] Mr. Quiano's application for judicial review addressed the Minister's decision that there had been no administrative error with respect to the 2003 application.

III. THE FEDERAL COURT DECISION

[18] In the course of setting out the facts, the Federal Court noted inconsistencies in Mr. Quiano's evidence as to his employment in the Philippines: see Federal Court Reasons (Reasons) at paragraphs 10-12. The Federal Court noted that the Minister's reasons were laconic but that, following the Supreme Court's decision in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, it was entitled to look at the record to see if it disclosed reasons which could then be used to supplement the reasons given with a view to determining if it was reasonable. The Federal Court found that the record disclosed no call record or documentation to show that Mr. Quiano advised the Minister's officials of his work in the Philippines in relation to his 2003 application. The Court also found that Mr. Quiano's various accounts of his dealings with the Minister's official were inconsistent. The Federal Court commented that Mr. Quiano's reason for answering "No" to Question 6 were unreasonable, given that he had the Guide before him when completing the application.

[19] Finally, the Federal Court did not take into account a policy which would have required the Minister's officials to refer the application to officials in the Philippines upon learning that Mr. Quiano had resided and/or worked in the Philippines because the document which was put before the Court was incomplete and undated.

[20] As a result, the Federal Court found that the Minister's delegate's decision was reasonable and dismissed the application for judicial review.

IV. ANALYSIS

[21] The parties agreed that the standard of review of the Minister's delegate's decision was reasonableness. Counsel for the Attorney General pointed out that it was necessary for us to consider whether the Federal Court had properly applied that standard. The result, in the end, is that this Court steps into the shoes of the Federal Court: see *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-46, [2013] 2 S.C.R. 559. I agree with these submissions.

[22] Mr. Quiano argues that the Minister's delegate's brief reasons are unintelligible because they fail to explain why the 2003 and 2006 applications were treated differently since, in both cases, Mr. Quiano answered "No" to Question 6 and did not request a reconsideration of the refusal of his application.

[23] As the Federal Court noted, we are entitled to read the decision in light of the entire record to see if it is reasonable.

[24] When the EA/AE form is read together with the decision itself, it is clear that the discovery of the "Philippines" notation opposite Question 6 in the 2006 application was significant. That notation suggested that "it was reasonable to assume" that a conversation between Mr. Quiano and an official "may have touched on the subject of Mr. Quiano's foreign work in the Philippines." Furthermore, "if foreign work activity was discussed", then the application should have been forwarded to International Operations for further processing. These observations, it will be noted, are all very tentative but nonetheless they led to the

recommendation that subsection 66(4) of the Act be invoked to grant Mr. Quiano relief with respect to his 2006 application.

[25] In the case of the 2003 application, there was no evidence that the Minister's officials were aware of Mr. Quiano's work history in the Philippines at the time that application was processed. Processing of the application was therefore consistent with the information on hand at the time.

[26] As a result, I see no merit in the argument that the decision is unintelligible.

[27] Mr. Quiano argues further that the Minister's official erred in following an unreasonable internal policy to the effect that unsupported evidence cannot be accepted as the only means of determining if erroneous evidence was provided or an administrative error was made. The policy requires that allegations of erroneous advice or administrative error require supporting evidence.

[28] Applications for benefits are made in writing and not orally. The practice of requiring written applications for benefits is almost certainly universal among Canada's administrative agencies. Written applications permit a systematic gathering of relevant information and provide a record of the information provided. If the information in an application form is to be modified, common sense suggests that it would be prudent that the modification be recorded in writing.

[29] Mr. Quiano's argument with respect to the credit to be given to unsupported allegations of administrative error, if applied in this case, would require administrative officers to give

greater credence to post-decision allegations of fact than to those contained in the original written application. This is contrary to the rationale for requiring written applications in the first place. While too much can be made of written applications and mistaken answers, there are sound reasons for administrative agencies to rely on the written applications which are submitted to them by applicants for benefits. In this case, the Minister's delegate exercised his discretion rather generously with respect to the 2006 application as a result of an unexplained notation in the file. There was no equivalent factor in relation to the 2003 application.

[30] I find nothing unreasonable in the Minister's delegate's application of the policy as to unsupported verbal allegations of administrative error.

[31] Following the hearing before the Federal Court, counsel for the Attorney General advised counsel for Mr. Quiano that the policy with respect to forwarding applications to International Operations which was before the Federal Court was in effect in 2003. The relevant portion of the policy is reproduced above as part of the EA/AE form.

[32] Mr. Quiano argued that the failure to follow this policy with respect to the 2003 application was an administrative error because officials were aware, at the time of the 2003 application that Mr. Quiano had resided in the Philippines. Since the policy requires files to be forwarded to International Operations when an application indicates residence **and/or** contributions (my emphasis), the failure to forward Mr. Quiano's application was an administrative error.

[33] Counsel for the Minister argued that "and/or" does not indicate alternative possibilities, an argument which, grammatically speaking, is difficult to make. However, the underlying thrust of counsel's argument is that files need only be referred to International Operations when there is an indication of foreign contributions, a situation which does not arise when an applicant denies having worked in a foreign jurisdiction.

[34] In this case, the administrative error which was identified with respect to the 2006 application depended upon an inference that a conversation between Mr. Quiano and an official "may have touched on the subject of Mr. Quiano's foreign work in the Philippines." Furthermore, it was only "if foreign work activity was discussed" that Mr. Quiano's application should have been forwarded to International Operations.

[35] It is clear from this that it was the possibility of foreign work experience which was the trigger for the referral to International Operations, not the fact that Mr. Quiano had resided in the Philippines.

[36] It is not unreasonable for the Minister's officials to conclude that residence in the Philippines coupled with an explicit statement that no work had been performed in that country did not require referral to International Operations. It may be that residence alone without any statement as to work in a foreign jurisdiction would require a referral to International Operations just as work alone without any indication of residence might also justify such a referral. Neither of those options were present here: Mr. Quiano denied having worked in the Philippines. To the extent that Mr. Quiano advocates for a strict grammatical reading of the policy, it would apply

where there were indications of residence and work, or indications of residence or work, but not to the case of indications of residence and denial of work.

[37] For these reasons, I would dismiss the appeal but without costs.

"J.D. Denis Pelletier"
J.A.

"I agree
Yves de Montigny J.A."

"I agree
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-393-17
(APPEAL FROM OF A JUDGMENT OF THE HONOURABLE MADAM JUSTICE SIMPSON OF THE FEDERAL COURT DATED NOVEMBER 1, 2017, DOCKET NO. T-84-17)	
STYLE OF CAUSE:	RENWYCK QUIANO v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 7, 2018
REASONS FOR JUDGMENT BY:	PELLETIER J.A.
CONCURRED IN BY:	DE MONTIGNY J.A. GLEASON J.A.
DATED:	NOVEMBER 23, 2018

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