

Date: 20071211

Docket: A-507-06

Citation: 2007 FCA 395

**CORAM: NADON J.A.
SEXTON J.A.
PELLETIER J.A.**

BETWEEN:

MINISTER OF HUMAN RESOURCES DEVELOPMENT CANADA

Appellant

and

DALE MARSDEN

Respondent

Heard at Toronto, Ontario, on December 11, 2007.

Judgment delivered from the Bench at Toronto, Ontario, on December 11, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

SEXTON J.A.

Date: 20071211

Docket: A-507-06

Citation: 2007 FCA 395

**CORAM: NADON J.A.
SEXTON J.A.
PELLETIER J.A.**

BETWEEN:

MINISTER OF HUMAN RESOURCES DEVELOPMENT CANADA

Appellant

and

DALE MARSDEN

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 11, 2007)

SEXTON J.A.

[1] This appeal is from the decision by Justice Kelen dated October 18, 2006 in which he found that the appellant misinterpreted and misapplied the provisions of the *Canada Student Financial Assistance Act* (“Act”) resulting in the denial of an application by the respondent for a Permanent Disability Benefit (“PDB”).

[2] The respondent is legally blind and has Stargardt's disease. The clinical onset of the disability is unknown because of the slow deterioration of the disease. According to medical opinion, the respondent has been experiencing the effects of this condition since 1998.

[3] As a result of disability-related needs and restrictions, the respondent cannot pursue full-time studies. He requires a reduced course load and disability-related support from McMaster's Centre for Student Development, as well as adaptive equipment.

[4] The respondent applied for Permanent Disability Benefits. The application was denied by letter dated March 23, 2005. His application was refused on two grounds, the first being that he was a part-time student and was not "prevented" from pursuing studies or employment by reason of his disability. The second ground was that the respondent did not meet the requirements of section 11(2) of the *Act*.

[5] The respondent challenged the Decision in Federal Court. The Court found that the test applied by the decision-maker was erroneous because it differed from the test that is set out in the applicable legislative scheme. The court held that the appellant incorrectly interpreted the definition of "permanent disability" by replacing the term "restrict" with the more stringent standard of "prevent". The Applications Judge determined that the definition of "permanent disability":

...requires only that the permanent disability "restrict" the ability of the person to participate in studies at a post-secondary level. In fact, the Act contemplates in other sections that a person with a permanent disability can be a "full-time student".

The Court ordered that the respondent's application be remitted to a different program officer for reconsideration so as to apply the facts using the correct interpretation of section 11.

[6] We agree with the Applications Judge on this issue.

[7] The Applications Judge did not consider whether the respondent had properly met the requirements of section 11(2).

[8] It seems to us, that in the result, the matter should be remitted to a different medical officer for re-determination taking into account both the correct definition of "permanent disability" and the application of section 11(2) of the *Act*.

[9] The appeal will be dismissed with costs.

"J. Edgar Sexton"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-507-06

(AN APPEAL FROM AN ORDER OF JUSTICE KELEN OF THE FEDERAL COURT DATED OCTOBER 16, 2006, FILE T-1451-05).

STYLE OF CAUSE: MINISTER OF HUMAN
RESOURCES DEVELOPMENT
CANADA
Appellant
and
DALE MARSDEN
Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 11, 2007

**REASONS FOR JUDGMENT
OF THE COURT BY:** (NADON, SEXTON, PELLETIER J.J.A.)

DELIVERED FROM THE BENCH BY: SEXTON J.A.

APPEARANCES:

Derek Edwards FOR THE APPELLANT/
APPLICANT

Debra McAllister FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE APPELLANT/
APPLICANT

ARCH Disability Law Centre,
Toronto, Ontario FOR THE RESPONDENT