

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110509

Docket: A-71-10

Citation: 2011 FCA 158

**CORAM: SEXTON J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

ELEANOR DENISE BAINES

Applicant

and

**MINISTER OF HUMAN RESOURCES AND
SKILLS DEVELOPMENT**

Respondent

Heard at Toronto, Ontario, on May 9, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on May 9, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on May 9, 2011)

DAWSON J.A.

[1] Eleanor Denise Baines, the applicant, first applied for disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (Plan) in October, 2000. Her application was denied by the responsible Minister on January 31, 2001, on the ground she had not demonstrated a severe and prolonged disability. This decision was upheld on reconsideration on February 4, 2002. Ms. Baines did not appeal the reconsideration decision.

[2] Ms. Baines reapplied for benefits in January, 2007. Her application was approved, retroactive to October, 2005. This was the maximum period of retroactivity permitted under the Plan. Necessarily implicit in this decision was that Ms. Baines was disabled on or before December, 2001 (when she last met her minimum qualifying period).

[3] Ms. Baines unsuccessfully requested that her disability be dated from October, 2000. She then applied to the Review Tribunal requesting that:

[...] the Review Tribunal reopen my file from the date of my 1st application, which would be October, 2000 as I was then and still today incapable of regularly pursuing any, substantially gainful occupation. {Please see quotes from CPP cases, Attachment (4)}

I would like the Tribunal to review my first application for CPP benefits in October 2000 and decide whether I should have been accepted then for CPP benefits, as I maintain that my disability was severe enough at that time.

[4] The Review Tribunal upheld the decision of Human Resources Development Canada (HRDC) (as Human Resources and Skills Development was then called) that, under the late applicant provision, Ms. Baines' disability benefit could be backdated only to October 15, 2005, 15 months from when she was granted disability benefits in January 2008. The Pension Appeals Board (Board) dismissed Ms. Baines' appeal from that decision.

[5] On this application for judicial review of that decision, Ms. Baines says that the Board erred in law in upholding the Review Tribunal's decision. She argues that she is entitled to have her benefits backdated to 2000, when she was involved in a car accident. The injuries to her head and body that she sustained in that accident are the source of the medical problems that led HRDC to

conclude in 2007 that she was entitled to receive benefits because she was suffering from a severe and prolonged disability that prevented her from working.

[6] In affirming the Review Tribunal's decision, the Board stated that the Review Tribunal correctly held that it only had jurisdiction to review the 2007 reconsideration, and that the Board could only consider issues within the Review Tribunal's jurisdiction (Plan, subsection 83(11)). Nor could the Board extend the 90-day limitation period for appealing the rejection of Ms. Baines' first application for benefits in 2000. Such an extension could only be granted by the Commissioner of Review Tribunals (Plan, section 82).

[7] The Board also dismissed Ms. Baines' argument that the Plan, subsection 60(9), permitted her benefits to be backdated more than 15 months by virtue of her incapacity. It held that subsection 60(9) applies only to applications for benefits, not to appeals from the rejection of applications. Moreover, incapacity in this context has been held to mean an incapacity to form an intention to apply, a standard that, despite her undoubted difficulties, Ms. Baines did not meet.

[8] In her oral and written submissions in support of the application for judicial review, Ms. Baines attacked the rejection of her first application for benefits. However, as the Review Tribunal and the Board pointed out, on an appeal against the 2007 reconsideration, they have no jurisdiction over the rejection in 2002 of the 2000 application.

[9] In our view, for the reasons given by it, the Board committed no error warranting the intervention of the Court.

[10] The respondent does not seek costs. We shall dismiss the application for judicial review without costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-71-10

(APPEAL FROM A DECISION OF THE HONOURABLE MR. JUSTICE J.D. CUNNINGHAM, DATED DECEMBER 7, 2009, DOCKET NO. CP26400)

STYLE OF CAUSE: ELEANOR DENISE BAINES v.
MINISTER OF HUMAN
RESOURCES AND SKILLS
DEVELOPMENT

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 9, 2011

**REASONS FOR JUDGMENT
OF THE COURT BY:** (SEXTON, DAWSON & STRATAS
J.J.A.)

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

Eleanor D. Baines FOR THE APPLICANT

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