

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120309

Docket: A-228-11

Citation: 2012 FCA 83

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

BETWEEN:

DARLENE TAKER

Appellant

and

ATTORNEY GENERAL OF CANADA


Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 9, 2012.

REASONS FOR ORDER BY:

THE COURT

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REASONS FOR ORDER BY THE COURT

THE COURT

[1] Rule 397 of the *Federal Courts Rules* SOR/98-106 allows this Court to reconsider its own order when one of two conditions exists:

- a) the order does not accord with the reasons given for it; or
- b) a matter that should have been dealt with has been overlooked or accidentally omitted.

[2] Ms. Taker has filed a motion, out of time, asking this Court to reconsider its judgment dismissing her appeal from the decision of a designated member of the Pension Appeal Board refusing leave to appeal the decision of the Review Tribunal.

[3] Ms. Taker’s memorandum of fact and law seeks to re-argue the merits of her appeal, referring to the medical evidence and the conclusions which she urged us to draw from that evidence when we heard her appeal.

[4] Ms. Taker does not identify any discrepancy between this Court’s decision and the reasons which it gave for that decision. Nor does she identify a matter which ought to have been dealt with but which was overlooked or omitted. It is important to note that Rule 397 cannot be used to reverse what has already been ordered: *Yukon Forest Corporation v. Canada*, 2006 FCA 34.

[5] Having heard and decided Ms Taker’s appeal, this Court is *functus officio*, a latin phrase which simply means that the Court has exercised its jurisdiction and is powerless to revisit its decision, except in the very narrow circumstances identified in Rule 397.

[6] We are unable to grant Ms. Taker the remedy which she seeks. The motion for reconsideration will be dismissed.

“J.D. Denis Pelletier”

J.A.

“Eleanor R. Dawson”

J.A.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-228-11

STYLE OF CAUSE:

DARLENE TAKER and
ATTORNEY GENERAL OF
CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY THE COURT:

PELLETIER, DAWSON, STRATAS
JJ.A.

DATED:

March 9, 2012

WRITTEN REPRESENTATIONS BY:

Ms Darlene Taker
Self-represented
Mr. Martin Kreuser

FOR THE APPELLANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ms Darlene Taker
Self-represented
Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE APPELLANT

FOR THE RESPONDENT