

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191107

Docket: A-108-18

Citation: 2019 FCA 277

**CORAM: WEBB J.A.
NEAR J.A.
LASKIN J.A.**

BETWEEN:

RANDY MACLEAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on October 29, 2019.

Judgment delivered at Ottawa, Ontario, on November 7, 2019.

REASONS FOR JUDGMENT OF THE COURT BY:

THE COURT

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REASONS FOR JUDGMENT OF THE COURT

I. Overview

[1] The applicant, Mr. Randy MacLean, seeks judicial review of a decision of the Appeal Division of the Social Security Tribunal, dated October 30, 2017, refusing his application to rescind or amend one or both of two Pension Appeals Board decisions on the basis that the application was made beyond the one-year limitation period established by subsection 66(2) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34 (the Act).

II. Background

[2] In December 2001, the applicant applied for a *Canada Pension Plan*, R.S.C., 1985, c. C-8 (CPP) disability benefit. The Minister of Social Development denied his application on the basis that he had not established that he had a severe and prolonged disability within the meaning of the CPP by the end of his minimum qualifying period in December 2003. The applicant appealed this decision to the Review Tribunal, which issued a decision dismissing his appeal in 2003. The applicant appealed the Review Tribunal's decision to the Pension Appeals Board, which dismissed the appeal on June 9, 2004 on the ground that the applicant had not established his disability was severe and prolonged.

[3] The applicant subsequently sought to reopen the Board's decision based on new medical reports, as permitted by the former subsection 84(2) of the CPP. The Board dismissed the applicant's application on May 21, 2010, holding that the applicant had not established the reports constituted new facts because they were either discoverable at the time of the hearing, or would not have affected the result. On August 28, 2017, the applicant filed an application with the Social Security Tribunal (which replaced the Pension Appeals Board in 2013) to rescind or amend one or both of the 2004 and 2010 Pension Appeals Board decisions based on two medical reports which he argued constituted new facts under subsection 66(1) of the Act.

III. Decision of the Appeal Division

[4] The Appeal Division noted that the application to rescind or amend was made approximately seven years after the 2010 decision, and 13 years after the 2004 decision.

Both decisions were mailed to the applicant and would have been received within approximately 10 days of their issuance. The Appeal Division held that subsection 66(2) of the Act is clear that an application to rescind or amend a decision must be made within one year of the decision being communicated to the appellant, and that the Social Security Tribunal did not have discretion to ignore or vary this requirement. The Appeal Division accordingly refused the application to rescind or amend the decision(s) on the basis that it was made outside of the one-year limitation period.

IV. Issue

[5] The issue before this Court is whether the Appeal Division's decision was reasonable.

V. Analysis

[6] In our view, the Appeal Division's decision was reasonable and did not give rise to a reviewable error. The application to rescind or amend was made long after the one-year limitation period established by subsection 66(2) of the Act and the statute provides no discretion to waive or amend the limitation period.

VI. Conclusion

[7] The application for judicial review is dismissed without costs.

"Wyman W. Webb"

J.A.

"D. G. Near"

J.A.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A DECISION OF THE APPEAL DIVISION OF THE
SOCIAL SECURITY TRIBUNAL OF CANADA DATED OCTOBER 30, 2017,
TRIBUNAL FILE NO. AD-17-541**

DOCKET: A-108-18

STYLE OF CAUSE: RANDY MACLEAN v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: OCTOBER 29, 2019

REASONS FOR JUDGMENT OF THE COURT BY: WEBB J.A.
NEAR J.A.
LASKIN J.A.

DATED: NOVEMBER 7, 2019

APPEARANCES:

Randy MacLean ON HIS OWN BEHALF

Penny Brady FOR THE RESPONDENT

SOLICITORS OF RECORD:

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