

Federal Court of Appeal		Cour d'appel fédérale
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Date: 20090608

Docket: A-6-08

Citation: 2009 FCA 220

**CORAM: SHARLOW J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

GUILLERMO KOBEK

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Edmonton, Alberta, on June 8, 2009.

Judgment delivered from the Bench at Edmonton, Alberta, on June 8, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on June 8, 2009)

TRUDEL J.A.

[1] A designated member of the Pension Appeals Board (PAB) denied Mr. Kobek's application for leave to appeal to the Pension Appeals Board (PAB) the decision of the Review Tribunal that unanimously dismissed his motion to reopen his claim for a disability pension, which had previously been dismissed by it.

[2] Wanting to challenge this decision, but being outside the time limit for doing so, the appellant made a motion to the Federal Court seeking an extension of time to apply for judicial review. The Order of August 14, 2007 (07-T-17), rendered by Martineau J. (the Motion Judge) dismissed the appellant's motion in the following terms:

The applicant has not established to the satisfaction of the Court a continuing intention to pursue an application for judicial review, that he has an arguable case and that the reasons for a delay of 11 months are sufficient in the circumstances (appeal book at page III(1)).

[3] Unsatisfied with this Order, the appellant, once again outside the deadline for doing so, made a motion to the Federal Court for reconsideration pursuant to Rule 397 of the *Federal Courts Rules*. The appellant's grounds for reconsideration were a direct reply to the Order of August 14, 2008.

[4] The Motion Judge dismissed the reconsideration motion reasserting the reasons for which the appellant's first motion for an extension of time to apply for judicial review had been dismissed. Moreover, the Motion Judge added that it was "apparent that the conditions set out in Rule 397 [had not been] met in this case" (Order of December 4, 2007, appeal book, page 11(1)). Hence, the within appeal of the reconsideration Order.

[5] We see no error in this Order warranting the intervention of our Court. The drafting of the impugned Order shows that the Motion Judge considered and weighed the appropriate factors in

deciding whether or not to grant an extension of time (see *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883, at paragraph 9).

[6] As for Rule 397, it allows for reconsideration of an Order on the grounds that, *inter alia*, a matter that should have been dealt with has been overlooked or accidentally omitted. This is intended to permit the correction of inadvertent mistakes or omissions. It is not intended to permit a challenge to an Order on the basis that evidence has been disregarded or misunderstood. These matters are required to be dealt with in an appeal rather than a motion for reconsideration.

[7] For these reasons, this appeal will be dismissed without costs, as the respondent is not seeking costs.

“Johanne Trudel”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-6-08

STYLE OF CAUSE: Guillermo Kobek v.
Attorney General of Canada

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: June 8, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (SHARLOW, RYER, TRUDEL
J.J.A.)

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

APPEARANCES:

Guillermo Kobek SELF-REPRESENTED LITIGANT

Sandra Gruescu FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada