

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110228

Docket: A-337-10

Citation: 2011 FCA 75

**CORAM: EVANS J.A.
DAWSON J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

PAUL ANDREWS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on February 28, 2011.

Judgment delivered from the Bench at Vancouver, British Columbia, on February 28, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on February 28, 2011)

LAYDEN-STEVENSON J.A.

[1] Mr. Andrews seeks judicial review of a decision of the Pension Appeals Board (PAB) dated August 26, 2010. We are of the view that his application must be dismissed.

[2] Mr. Andrews has a lengthy history in relation to his claim for disability benefits under section 42 of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the Act). He initially applied for benefits in April, 1997. After a number of hearings and appeals, on October 3, 2003, a third Review

Tribunal granted him disability benefits. In accordance with the provisions of the Act, the date of his deemed disability was January, 1996. Mr. Andrews did not appeal that decision. However, he did dispute the calculation of his benefits.

[3] Upon the request of Mr. Andrews, the Minister reconsidered the quantification and concluded that the pension was properly calculated. Mr. Andrews unsuccessfully appealed the Minister's reconsideration to a Review Tribunal. On March 1, 2006, the PAB dismissed an appeal from the Review Tribunal's decision. In so doing, the PAB determined: (1) the late application provision under subsection 44(1) did not apply to Mr. Andrews; (2) the deduction provisions of sections 48 and 56 did not apply to him; and (3) the incapacity provisions contained in section 60 did not apply to him either. On December 15, 2006, this Court dismissed an application for judicial review of the PAB decision. The Supreme Court denied leave to appeal on February 9, 2007.

[4] Mr. Andrews continued to forward correspondence, which can be described benevolently as confusing, to the PAB. Eventually, a hearing before the PAB was held on December 10, 2009. In a decision dated August 26, 2010, the PAB identified three issues that appeared to arise from Mr. Andrews' various communications: (1) a constitutional issue; (2) a request for discovery; and (3) a request to re-open the matter based on new facts. The PAB dismissed all of the "applications". It is this PAB decision that is the subject of the application for judicial review before us.

[5] It is evident that Mr. Andrews continues to be dissatisfied with the amount of his disability benefits and believes that his payments should be retroactive to 1979 (the time of his first injury), or

at least to 1993, when he last worked. In our view, his most recent “application” to the PAB is but another attempt to revisit the quantum of his benefit. As previously noted, all avenues of appeal with respect to that issue have been exhausted.

[6] The PAB concluded that the nature of the proposed constitutional issue was not specified and remained unclear, even at the hearing. In any event, Mr. Andrews conceded that he had not served a notice of constitutional question under rule 10.2(1) of the Rules of Procedure of the Pension Appeals Board (the Rules) and section 57 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Consequently, the PAB declined to address the constitutional “application”. It did not err in so doing.

[7] Regarding the issue of new facts, subsection 84(2) of the Act permits an applicant to apply to re-open a previous decision based on new facts. Mr. Andrews did not allege in his written submissions that the PAB erred in dismissing his new facts application. It would be difficult for him to do so since he admitted at the hearing before the PAB that he did not have any new facts to present. Although he suggested on the hearing of this application that two documents did constitute new evidence, those documents do not meet the threshold of new facts as the concept is understood in law.

[8] Finally, with respect to his application for discovery under rule 15 of the Rules, the PAB found that the request appeared to be based on the hope that Mr. Andrews could “find someone in the Ministry that would say that he was disabled before the date of his deemed disability.” The PAB

went on to explain that even if he were to be given such a right, he would not be able to find anyone with the requisite statutory authority to conclude that he was disabled before the date determined by the Review Tribunal. In the end, the PAB denied the request describing it as a “fishing expedition in a pond containing no fish.” We agree with that observation.

[9] For these reasons, the application for judicial review will be dismissed.

“Carolyn Layden-Stevenson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-337-10

STYLE OF CAUSE: PAUL ANDREWS v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: February 28, 2011

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DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

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