

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130311**

**Docket: 13-A-11**

**Citation: 2013 FCA 76**

**Present: PELLETIER J.A.**

**BETWEEN:**

**GARRY BIGAM**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 11, 2013.

**REASONS FOR ORDER BY:**

**PELLETIER J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130311

Docket: 13-A-11

Citation: 2013 FCA 76

Present: PELLETIER J.A.

BETWEEN:

GARRY BIGAM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] Mr. Bigam has brought a motion for an extension of time to file an application for judicial review of a decision of the Pension Appeal Board refusing his application for pension benefits. While Mr. Bigam does not agree with the way the Registry has calculated the relevant time period, he is constrained by Registry's refusal to accept his motion for filing to apply for an extension of time.

[2] As I understand the affidavit filed by Mr. Bigam's wife, and the representations made on his behalf by counsel, the reason for the delay is Mr. Bigam's weakened condition as a result of a

recently diagnosed cancer which, it appears, may have been responsible for Mr. Bigam's condition for quite some time.

Paragraph 7 of Mr. Bigam's written representations reads as follows:

The plaintiff's recent diagnosis as having an extremely rare form of cancer which has likely been long term and led to his disability is new evidence that should be considered with respect to his disability claim. Furthermore, the plaintiff will provide evidence from his doctor which was not available for the Appeal Board which demonstrates the long term nature of his disability.

[3] Accepting to be the case, Mr. Bigam has misconstrued his remedy. This Court is not the proper form in which to submit new evidence which was not before the Pension Appeal Board.

Section 84 of the *Canada Pension Plan* R.S.C. 1985 c. C-8 (the *Plan*) provides:

84 (1) A Review Tribunal and the Pension Appeals Board have authority to determine any question of law or fact as to

(a) whether any benefit is payable to a person,

...

and the decision of a Review Tribunal, except as provided in this Act, or the decision of the Pension Appeals Board, except for judicial review under the [Federal Courts Act](#), as the case may be, is final and binding for all purposes of this Act.

(2) The Minister, a Review Tribunal or the Pension Appeals Board may, notwithstanding subsection (1), on new facts, rescind or amend a decision under this Act given by him, the Tribunal or the Board, as the case may be.

[4] Mr. Bigam's remedy is to apply to the Pension Appeal Board for reconsideration of its decision on the basis of new facts, as provided in subsection 84(2) of the *Plan*.

[5] As a result, I will dismiss without costs Mr. Bigam's application for an extension of time to file his application for judicial review on the basis that his remedy lies with the Pension Appeal Board. Any application to this Court now, on the basis proposed in paragraph 7 quoted above, is doomed to failure.

"J.D. Denis Pelletier"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 13-A-11

**STYLE OF CAUSE:** GARRY BIGAM and ATTORNEY  
GENERAL OF CANADA

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** PELLETIER J.A.

**DATED:** March 11, 2013

**WRITTEN REPRESENTATIONS BY:**

Christopher K. Wendell

FOR THE APPLICANT

Daniel K. Willis

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Porter Ramsay LLP- Kelowna, B.C.

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of Canada

FOR THE RESPONDENT