

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20131022**

**Docket: 13-A-31**

**Citation: 2013 FCA 249**

**Present: WEBB J.A.**

**BETWEEN:**

**KIMBERLY NEWMAN**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 21, 2013.

**REASONS FOR ORDER BY:**

**WEBB J.A.**

Federal Court of Appeal



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**REASONS FOR ORDER**

**WEBB J.A.**

[1] This is a motion by the applicant to extend the time within which she may appeal the judgment of Justice O'Reilly dated April 9, 2013 (the Federal Court decision). The respondent submitted a letter indicating that the respondent does not take any position in relation to this motion and would not be filing a respondent's motion record.

[2] The applicant applied for a disability award under section 45 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*. Her application was initially

rejected but upon appeal to an appeal panel of the Veterans Review and Appeal Board she was granted a one-fifth disability pension. The applicant asked the appeal panel to reconsider this decision but the appeal panel rejected this request. The applicant then sought judicial review of the decision of the appeal panel rejecting her request for reconsideration. Her application for judicial review was dismissed on April 9, 2013 for the reasons as set out in the Federal Court decision. The applicant has now requested that the time within which she may appeal the Federal Court decision be extended.

[3] In *La-Z-Boy Canada Ltd. v. Allan Morgan and Sons Ltd.*, 2004 FCA 368, Justice Rothstein stated that:

9 In *Sim v. Canada* (1996), 67 C.P.R. (3d) 334, Hargrave P. succinctly summarized the considerations on an application to extend time:

1. Whether the appeal itself has merit; there must be arguable issues to put before the Court of Appeal;
2. The special circumstances showing or explaining why the appeal was not brought within the required time;
3. The intention of the plaintiff to appeal existed before the time for appeal ran out;
4. Whether the delay has been excessive;
5. Whether the Crown will be prejudiced by an extension of time within which to appeal; and
6. Whether it is in the interests of justice to grant the time extension.

[4] With respect to the first consideration, Justice Desjardins in *Assoc. des crevettiers acadiens du Golfe Inc. v. Canada (Attorney General)*, 2009 FCA 229, noted that

7 There is no need for the appellants to show that they will succeed on appeal. However, they must show that they have an arguable case (question valable ou défendable) to put before the Court of Appeal. This is a low threshold to meet.

[5] The applicant in this case raises the issue of the application of the presumption found in section 51 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Regulations* as well as other issues. As noted above, it is not necessary for the applicant to establish that she will succeed on appeal and the threshold is low. I am satisfied that the applicant has met the low threshold of establishing that she has an arguable case.

[6] The applicant has submitted an affidavit to explain that she did not appeal within the 30 day time limit because she encountered personal problems. Since the respondent has not taken any position in relation to this motion, it is not necessary to recite the personal problems that the applicant encountered. I am satisfied that the applicant had the intention to appeal the decision before the appeal period had expired, that the delay was not excessive and that her personal problems prevented her from appealing.

[7] I am also satisfied that the respondent will not be prejudiced if the applicant is granted an extension of time to file her appeal and that it is in the interests of justice to grant the extension of time.

[8] As a result, the motion of the applicant for an extension of time to appeal the Federal Court decision is granted and the time within which the applicant may appeal the Federal Court decision is extended to November 15, 2013.

“Wyman W. Webb”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 13-A-31

**STYLE OF CAUSE:** KIMBERLY NEWMAN v. THE  
ATTORNEY GENERAL OF  
CANADA

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

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

**DATED:** OCTOBER 22, 2013

**WRITTEN REPRESENTATIONS BY:**

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FOR THE RESPONDENT

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