

Federal Court



Cour fédérale

Date: 20160616

Docket: T-359-15

Citation: 2016 FC 675

Ottawa, Ontario, June 16, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**HUGH VINCENT LUNN, CORPORAL
RETIRED, CANADIAN ARMED FORCES**

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
THE HONOURABLE PETER MACKAY**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Hugh Vincent Lunn was a member of the Canadian Armed Forces from 1976 to 1995. On January 21, 2014, the Minister of Veterans Affairs [Minister] denied Mr. Lunn's claim for a disability award for post-traumatic stress disorder [PTSD] and paranoid schizophrenia. The Veterans Review and Appeal Board [Board] upheld the Minister's decision, and refused to

establish a panel to review Mr. Lunn's eligibility for an award. Mr. Lunn, who is self-represented, seeks judicial review of the Board's decision.

[1] For the following reasons, I have concluded that Mr. Lunn has not yet exhausted the administrative remedies that are available to him. He may seek reconsideration of his entitlement to an award for his claimed condition of paranoid schizophrenia based on new evidence or on compassionate grounds. The application for judicial review is therefore dismissed on the ground that it is premature.

II. Background

[2] Mr. Lunn began his military career in the Regular Forces in April 1976. Following a brief hiatus, he re-enlisted in September 1977. Mr. Lunn was diagnosed with paranoid personality disorder in 1984. He was discharged in March 1994 on the ground that his disorder rendered him unable to fully function as a member of the Canadian Armed Forces.

[1] In December 1994, Mr. Lunn applied to the Minister for a pension award under s 21(2) of the *Pension Act*, RSC, 1985, c P-6 [*Pension Act*]. Under this provision, members of the armed forces who served during peace time are entitled to a pension if they suffer from an injury or disease that "arose out of, or was directly connected with" their military service.

[2] On April 1, 1996, the Minister denied Mr. Lunn's application on the ground that there was no causal connection between his condition and his military service. Mr. Lunn appealed the Minister's decision to the Board.

[3] In a decision dated August 7, 1996, the Entitlement Review Panel of the Board [Review Panel] upheld the Minister's denial of Mr. Lunn's claim. The Review Panel held at page 6:

[E]ven assuming that the Applicant's condition has deteriorated during his service, the Panel can find no evidence whatsoever that would indicate that the Canadian Forces in any fashion, no matter how small, was responsible for any such aggravation of the claimed condition which, as submitted by the Advocate at the commencement of the hearing, does not appear to [have] had its origins in military service as such.

[4] Mr. Lunn appealed the Panel's decision to an Entitlement Appeal Panel [Appeal Panel] of the Board. In a decision dated March 18, 1997, the Appeal Panel agreed that Mr. Lunn's military service played no role in the development or aggravation of his paranoid personality disorder.

[5] In December 2012, Mr. Lunn made an application to the Minister for a disability award under s 45(1) of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21 [the *Compensation Act*], claiming that he suffered from PTSD. In addition, in November 2013, Mr. Lunn applied for a disability award for paranoid schizophrenia. His application included a letter from his physician, Dr. Duncan A. Scott, who expressed the view that Mr. Lunn did not meet the criteria for a diagnosis of PTSD, but did suffer from paranoid schizophrenia. Dr. Scott concluded that Mr. Lunn had a genetic vulnerability to a major mental illness, and offered the following observation:

It appears that the stress of being in the Armed Forces precipitated the schizophrenia and this developed from sensitivity issues to vigilant issues to hyper-vigilant issues and eventually into a full blown psychotic state. He is now in the chronic debilitating phase of this illness and requires daily monitoring [...]

[6] On January 21, 2014, the Minister rejected Mr. Lunn's claim for a disability award. The Minister concluded that the new application based on paranoid schizophrenia was inseparable from the 1996 application based on paranoid personality disorder:

Pursuant to subsection 85(1) of the *Pension Act*, the Minister may not consider an Application for an award that had already been the subject of a determination by the Board. As the Veterans Review and Appeal Board has already considered your psychiatric disability, and has effectively determined that your psychiatric disability did not arise out of or was not directly connected with your Regular Force service, the Department does not have jurisdiction to rule on your current [application] for Paranoid Schizophrenia.

[7] Mr. Lunn appealed the Minister's decision to the Board.

III. Decision under Review

[8] In a letter dated January 16, 2015, the Board affirmed the Minister's denial of Mr. Lunn's claim for disability benefits. The Board found that Mr. Lunn's medical file did not disclose a diagnosis of PTSD, and agreed that the condition of paranoid schizophrenia had been previously adjudicated by the Board in 1997. The Board had the benefit of a medical opinion obtained on behalf of the Minister which concluded: "[i]t would appear that the signs and symptoms of psychiatric illness previously ruled on under Paranoid Personality Disorder would be included under Paranoid Schizophrenia". The Board concluded as follows:

Following a review of all of the evidence on file, the Board concludes the paranoid personality disorder condition, adjudicated in 1997, is substantially the same as the paranoid schizophrenia condition being claimed. The factual basis of your claim for the schizophrenia condition is substantially the same as the factual basis for the paranoid personality disorder.

Therefore, the Board concludes that the March 1997 Appeal Panel's conclusions, that there was no evidence of a relationship between your military activities and the rigours of your military service and the development of your claimed psychological condition, still apply [...]

You have the right to seek reconsideration of the Entitlement Appeal Panel decision dated 18 March 1997, which denied entitlement for your claimed condition of paranoid personality disorder.

[9] The Board refused to establish a panel to review Mr. Lunn's claim. Relying on s 19(2) of the *Veterans Review and Appeal Board Act*, SC 1995, c 18 [*Appeal Board Act*], the Board concluded that no reasonable review panel could dispose of the appeal in a manner favourable to Mr. Lunn.

[10] Mr. Lunn applied for judicial review of the Board's decision on February 17, 2015.

IV. Issues

[11] The Attorney General of Canada [Attorney General] has raised two preliminary issues:

- A. Should Veterans Affairs Canada be removed as a Respondent?
- B. Is Mr. Lunn's application for judicial review premature?

V. Analysis

- A. *Should Veterans Affairs Canada be removed as a respondent?*

[12] The Attorney General asks that the style of cause be amended to remove Veterans Affairs Canada as a Respondent. Pursuant to s 23(1) of the *Crown Liability and Proceedings Act*, RSC, 1985, c C-50, proceedings against the Crown may be taken in the name of the Attorney General. The style of cause is amended accordingly.

B. *Is Mr. Lunn's application for judicial review premature?*

[13] A court may decline to hear an application for judicial review if it is premature. Absent exceptional circumstances, courts should not interfere with ongoing administrative processes until available, effective remedies have been exhausted (*Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at para 31; *Canada (Border Services Agency) v C.B. Powell Ltd.*, 2010 FCA 61 [*Powell*]).

[14] In the decision under review, the Board noted that Mr. Lunn has “the right to seek reconsideration of the Entitlement Appeal Panel decision dated 18 March 1997, which denied entitlement for [the] claimed condition of paranoid personality disorder”.

[15] Neither the *Pension Act* nor the *Appeal Board Act* places any restriction or time limitation on filing an application for review or reconsideration with the Board. The Board therefore has jurisdiction to hear an application regardless of when the facts arose or when the most recent decision was made (*Boisvert v Canada (Attorney General)*, 2009 FC 735 at para 29).

[16] Subsection 32(1) of the *Appeal Board Act* provides that an appeal panel may reconsider a decision, either on its own motion or on application, based on new evidence. This might include

Dr. Scott's 2013 diagnosis of paranoid schizophrenia, and his opinion that the stress of being in the Armed Forces "precipitated" Mr. Lunn's schizophrenia. This might also include a second letter from Dr. Scott that Mr. Lunn included in his application for judicial review, which is addressed to the Bureau of Pension Advocates and dated February 24, 2014. It does not appear that the second letter was before the Board when it rendered the decision under review.

[17] At the hearing of his application for judicial review, Mr. Lunn presented the Court with a letter from Pierre Leichner, who states that he practised psychiatry for 34 years prior to 2010. The letter, which is not dated, addresses the evolution of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Mr. Leichner offered the opinion that paranoid schizophrenia and paranoid personality disorder are distinct and separate diagnoses. This could also be considered by the Board as new evidence.

[18] In addition, s 34(1) of the *Appeal Board Act* provides that a person who has been refused an award under the *Pension Act*, or a disability award under the *Compensation Act*, and who has exhausted all procedures for review and appeal, may apply to the Board for a compassionate award.

[19] The Attorney General does not dispute that Mr. Lunn may avail himself of ss 32(1) and 34(1) of the *Appeal Board Act*. I agree with the Attorney General that an application to the Board for reconsideration provides Mr. Lunn with a more promising avenue for obtaining the remedies he seeks than the present application for judicial review.

VI. Conclusion

[20] Mr. Lunn's application for judicial review is premature, and there are no exceptional circumstances that would justify early recourse to this Court (*Powell* at para 33). The application is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-359-15

STYLE OF CAUSE: HUGH VINCENT LUNN, CORPORAL RETIRED,
CANADIAN ARMED FORCES v THE ATTORNEY
GENERAL OF CANADA THE HONOURABLE PETER
MACKAY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 17, 2016

**REASONS FOR JUDGMENT
AND JUDGMENT:** FOTHERGILL J.

DATED: JUNE 16, 2016

APPEARANCES:

Hugh Vincent Lunn
On his own behalf

FOR THE APPLICANT

Jyll Hansen

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT