Date: 20070917

Docket: T-255-07

Citation: 2007 FC 924

Ottawa, Ontario, September 17, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SUNIL HANDA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Handa had until 14 June, 2001 to seek leave from the Pension Appeals Board to appeal a decision of the Review Tribunal which held he was not disabled within the meaning of the Canada Pension Plan. Almost four full years passed before Mr. Handa's representative wrote in April 2005 to say he that he was seeking leave.

[2] This request was improperly handled at the outset by the Appeals Board which gave him leave to appeal in November 2005. The Attorney General took exception to that decision on the

grounds that the Appeals Board could not simply grant leave to appeal; it first had to determine whether Mr. Handa should be granted an extension of time in which to file his application. The Attorney General came to this Court for judicial review of that decision. Mr. Justice O'Keefe put the matter straight in September 2006. He set aside the decision granting Mr. Handa leave to appeal and remitted the matter for redetermination before a different designated member. He held that if Mr. Handa wished to pursue the matter he must submit a request for an extension of time. (*Attorney General of Canada v. Sunil Handa,* 2006 FC 1148, [2006] F.C.J. No. 1552).

[3] Mr. Handa did indeed seek an extension of time. However, the Appeals Board held that he had not met the standards required to excuse the delay, and dismissed his application. This is a judicial review of that decision.

BACKGROUND

[4] Mr. Handa has been plagued with back problems since the 1990's. He has not worked since then, and claims that he is physically incapable of working. He has sought financial assistance on a number of fronts, including under the Canada Pension Plan to which he contributed while he was employed.

[5] One of the benefits conferred by the Plan is a disability pension, which differs from Workers' Compensation or Employment Insurance. The disability does not have to arise from a work-related incident.

[6] In 2000, the Minister of Human Resources Development Canada held that he was not disabled within the meaning of the Plan and his appeal to the Review Tribunal was not successful.

[7] The next step in the process was an appeal to the Pension Appeals Board pursuant to section 83 of the *Act*. The appeal is not of right. Leave must be obtained. The application must be made within 90 days or such longer period as may be allowed.

[8] He filed his application for leave to appeal and notice of appeal within time in April 2001. The application was on a printed form which gave him space to state the grounds on which he wished to appeal, and as well to provide the Appeals Board with a statement of allegations of fact, the statutory provisions and the reasons which he intended to submit.

[9] The way Mr. Handa filled in the blanks was most unsatisfactory. As to his grounds for appeal he simply said "I am not agree on these decision". He gave no statement of allegations of fact, statutory provisions or reasons but did say "need more information. please write me thank you."

[10] The Appeals Board did write to Mr. Handa. In its letter of 3 May, 2001, it said his application could not be accepted due to lack of stated grounds. A more detailed application or a separate letter outlining his reasons had to be submitted. He was given until 14 June. If nothing was received the Appeals Board would consider that he had abandoned his appeal.

[11] No letter in reply was received and as mentioned above nothing more was heard until 2005.

ISSUES

[12] The issue is whether the Pension Appeals Board properly exercised its discretion in refusing to give Mr. Handa an extension of time in which to pursue his application for leave to appeal. The Respondent basing himself on the decision of the Federal Court of Appeal in *Osborne v. Canada (Attorney General),* 2005 FCA 412, [2005] F.C.J. No. 2043, submits that the decision should not be reviewed unless patently unreasonable. However, in that case Mr. Justice Nadon applied the patent unreasonableness standard in regard to decisions determining disability. That is not the situation here. The standard is either reasonableness *simpliciter* or patent unreasonableness (*Canada (Minister of Human Resources Development) v. Gattellaro,* 2005 FC 883, [2005] F.C.J. No. 1106). In the result, I need not decide which is applicable.

DISCUSSION

[13] The discretion Parliament has given the Pension Appeals Board to extend the delays in which to seek leave to appeal cannot be exercised on whim and fancy. A disciplined approach is required.

[14] As stated by Mr. Justice Létourneau speaking for the Federal Court of Appeal in *Canada (Minister of Human Resources Development) v. Hogervorst,* 2007 FCA 41, [2007] F.C.J. No. 37,

which dealt with a decision of the Pension Appeals Boards to grant an extension of time and leave to appeal:

> [24] In the *Berhad* case, *supra*, at paragraph 60, this Court reiterated the principle that a time-limit for the commencement of challenges to administrative decisions is not whimsical. “It exists in the public interest, in order to bring finality to administrative decisions so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance with it, often at considerable expense”.

[15] The reference to *Berhad* is a reference to another decision of the Federal Court of Appeal in *Budisukma Puncak Sendirian Berhad v. Canada,* 338 N.R. 75, [2005] F.C.J. No. 1302 (F.C.A.).

[16] In *Gattellaro*, above, Madam Justice Snider repeated the criteria which must be considered.

> [9] Jurisprudence relied on by the Minister (*Grewal* v. *Canada* (*Minister of Employment and Immigration*), [1985] 2 F.C. 263 (F.C.A.); *Baksa* v. *Neis* (*c.o.b. Brookside Transport*), [2002] F.C.J. No. 832) has established that the following criteria must be considered and weighed:
>
> 1. A continuing intention to pursue the application or appeal;
> 2. The matter discloses an arguable case;
> 3. There is a reasonable explanation for the delay; and
> 4. There is no prejudice to the other party in allowing the extension.

[17] The Appeals Board applied the *Gattellaro* case to the facts and found nothing in the material that indicated Mr. Handa had a continuing intention to appeal, or had a reasonable explanation for his delay.

[18] The Board was also of the view that it was questionable that he established a reasonably arguable case on the merits, and also held that the Minister would be prejudiced by the passage of time.

[19] As all four criteria must be met, I leave aside the latter two. Even on the reasonable *simpliciter* standard of review, which is the most favourable standard to Mr. Handa on discretionary decisions, I am not persuaded that the Appeals Board made a reviewable error.

[20] Mr. Handa, who was self-represented before me, says his consultant got it wrong when he had submitted to the Appeals Board that he had not understood the technical language in the Appeals Board letter to him in May 2001. Rather, he says he never received the letter until after he sought leave to appeal in 2005. Apart from the inconsistency, this version of the events does Mr. Handa no good. After all, he had said at the outset if you "need more information. please write me thank you". Silence on Mr. Handa's part for four years is absolutely inconsistent with a continuing intention to pursue the matter.

[21] Rather he pursued other avenues. He finally succeeded in establishing before the Alberta Workers' Compensation Board that his injuries were work-related. He is receiving a pension, but says it is not enough. Although the Canada Pension Plan takes into account other compensation, counsel for the Respondent had no information as to whether the Workers' Compensation pension eliminated his financial recourse under the Canada Pension Plan.

[22] Mr. Handa, whose story is somewhat elusive, also applied under an Alberta program of Assured Income for the Severely Handicapped ("AISH"). Apparently, somebody along the line said he should be applying to the Canada Pension Plan, to which he had contributed. The fact that Mr. Handa was pursuing other avenues does not excuse his inattention to this matter, and does not constitute a reasonable explanation for the delay.

[23] The application will be dismissed. The Respondent did not seek costs and none shall be awarded.

ORDER

THIS COURT ORDERS that: the application for judicial review of the decision of the Pension Appeals Board dated 3 January, 2007 is dismissed, without costs.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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Mr. Markus Davies	FOR THE RESPONDENT

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