

Federal Court



Cour fédérale

Date: 20100907

Docket: T-1732-09

Citation: 2010 FC 877

Ottawa, Ontario, September 7, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

ANGELIKI PANOPOULOS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Minister of Human Resources and Skills Development Canada (the Minister), dated September 23, 2009, in which the Minister refused to reconsider an earlier decision because the request for reconsideration came outside of the 90 day time period established by the *Canada Pension Plan*, R.S., 1985, c. C-8 (the *Plan*) for such requests.

[2] For the reasons set out below the application is dismissed.

I. Background

[3] The Applicant was injured in two car accidents, in 1996 and 2000. Following these accidents, the Applicant suffered physical and psychological injuries and was treated by both physicians and psychiatrists. After the 2000 accident, the Applicant made an unsuccessful application for disability benefits. The Applicant applied for retirement benefits under the *Plan* and began to receive benefits in November 2006.

[4] In September 2008, the Applicant applied to have her retirement benefits converted to a disability benefit. This was denied in a letter dated October 20, 2008. The reason for the denial was that a person cannot apply for a Canadian Pension Plan disability benefit 15 months or more after receiving a Canadian Pension Plan retirement pension and that the Applicant was outside of the 15 month window. Following this, the letter stated (emphasis in the original):

If you disagree with our decision

You may ask us to reconsider our decision if you notify us in writing **within 90 days**. The 90 period begins on the date that you receive this letter.

If you have any questions

If you have any questions, you may call us free of charge from Canada or the United States. You may also write to us. Our address and telephone numbers are shown below.

[5] Included with the letter was a two page pamphlet entitled “Canada Pension Plan (CPP) Disability, How to Ask CPP to Reconsider its Decision”.

[6] On July 29, 2009, the Applicant retained counsel who then asked for a reconsideration of the October 20, 2008 decision. In making the request, the Applicant's Counsel wrote:

Please be advised the writer has just been retained by the above-noted.

Ms. Panopoulos has advised the writer that a decision was rendered on October 20th, 2008 denying her Application for Canada Pension Plan Disability Benefits.

We fully acknowledge that we are out of time with respect to the 90 days pursuant to the said decision. Notwithstanding same we are forwarding this letter to request if a reconsideration could be made at this time.

[7] On September 23, 2009, the Applicant was informed by letter that her request for reconsideration was not accepted as the date the request was received was more than the 90 day time period permitted. The letter also states that should the Applicant wish to be considered for a Canada Pension Plan disability benefit in the future, she will need to complete a new application.

II. The Statutory Framework

[8] The Ministerial discretion to grant an extension of time is set out in section 81(1) of the *Plan*. Under section 81(1), an applicant who is dissatisfied with the Minister's initial decision has 90 days from the date they receive notice of the decision to request the Minister to reconsider. The

Minister may allow for a longer period to make a request for reconsideration. The relevant portion of section 81(1) is set out as such:

Appeal to Minister

81. (1) Where

[...]

the dissatisfied party or, subject to the regulations, any person on behalf thereof may, within ninety days after the day on which the dissatisfied party was notified in the prescribed manner of the decision or determination, or within such longer period as the Minister may either before or after the expiration of those ninety days allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or determination.

Appel au ministre

81. (1) Dans les cas où :

[...]

ceux-ci peuvent, ou, sous réserve des règlements, quiconque de leur part, peut, dans les quatre-vingt-dix jours suivant le jour où ils sont, de la manière prescrite, avisés de la décision ou de l'arrêt, ou dans tel délai plus long qu'autorise le ministre avant ou après l'expiration de ces quatre-vingt-dix jours, demander par écrit à celui-ci, selon les modalités prescrites, de réviser la décision ou l'arrêt.

III. Issues

[9] The Applicant states that the Respondent erred by not granting her the reconsideration and breached the rules of natural justice.

IV. Standard of Review

[10] The issue in this case is one of mixed fact and law and will be reviewed on a standard of reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9; [2008] 1 S.C.R. 190, and *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339). I come to this conclusion after considering the fact that decisions with regard to extensions of time are final and binding, except for judicial review; that the statutory scheme provides that the Minister's ability to grant an extension of time is discretionary; that this is an issue of, primarily, mixed fact and law, and that a similar provision under section 82 of the *Plan* was determined to be reviewable under the standard of reasonableness (see *Canada (Attorney General) v. Schneider*, 2008 FC 764; [2008] F.C.J. No. 1176 and *Canada (Attorney General) v. Blondahl*, [2009] F.C.J. No. 178; 2009 FC 118).

[11] As set out in *Dunsmuir* and *Khosa*, reasonableness requires the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

[12] Any breach of natural justice is considered under the standard of correctness.

V. Discussion

A. *The Decision*

[13] The Applicant alleges that the Respondent erred in not reconsidering the original decision dated October 20, 2008. The Applicant states that had she been aware of the provision that she could apply for Canada Pension disability benefits if she was disabled prior to her application for retirement benefits, the Applicant would have retained a solicitor to make an application for the October 20, 2008 decision and request the solicitor to request a reconsideration of that decision.

[14] Therefore, she states that she ought to have been informed by Human Resources Development Canada on October 20, 2008 that she could still apply for disability benefits on the basis that she was disabled prior to her application for retirement benefits.

[15] However, the Decision at issue in this matter is the refusal to extend the 90 day period in which the Applicant could have made a request for reconsideration. The reason for the refusal was that the request for reconsideration was made, by admission, outside of the 90 day period. The Applicant was expressly informed of this 90 day period in the October 20, 2008 letter.

[16] The Decision was reasonable.

B. *Natural Justice*

[17] The Applicant stated that by refusing to grant her the reconsideration requested in the July 29, 2009 letter, the Respondent offended the rules of natural justice. The Applicant did not provide further argument on this issue.

[18] In cases involving natural justice, the underlying question to be asked and answered is: did the tribunal on the facts of the particular case act fairly toward the person claiming to be aggrieved (*Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307; 2000 SCC 44 at paragraph 105). Therefore, I must determine if Human Resources Development Canada acted fairly toward the Applicant. The answer is yes.

[19] In this case, the Applicant had been diagnosed with a psychological condition that could affect her ability to deal with pressing issues such as a specific period of time. According to her evidence, she also has a low level of education and limited English.

[20] The Applicant did not have assistance with her September 9, 2008 application for disability benefits or the October 20, 2008 rejection letter until she retained current counsel. However, the Applicant had engaged in several Canada Pension Plan disability benefits applications and appeals prior to September 2008. The Applicant had been assisted on several of these applications and/or appeals by a consultant, a family member, or other counsel. While the Applicant may not have been

happy with the services provided to her by these people, their engagement demonstrates that the Applicant felt she required assistance with the processes.

[21] The Applicant had her September 9, 2008 application considered and was informed of the negative decision in the October 20, 2008 letter. The letter clearly set out that she could ask for reconsideration within 90 days, and attached a pamphlet on how to do so. The Applicant, despite having had assistance with other applications and appeals in the past, did not seek assistance with this letter until approximately 10 months later.

[22] The Applicant's request for reconsideration was made outside of the 90 day period expressly stated. In the letter to request reconsideration, the Applicant's solicitor agreed that they were outside of the 90 day window, but did not state any reason for the late request beyond the fact that the solicitor had just been retained.

[23] The fact that in the October 20, 2008 letter, Human Resources Development Canada did not inform her that she could still apply for disability benefits on the basis that she was disabled prior to her application for retirement benefits does not render the September 23, 2009 decision unfair.

[24] As I have found that the Decision was reasonable and there was no violation of the principles of natural justice it is not necessary to consider the remedies sought by the Applicant.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application is dismissed without costs.

“ D. G. Near ”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1732-09

STYLE OF CAUSE: ANGELIKI PANOPOULOS v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO

DATE OF HEARING: AUGUST 25, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: SEPTEMBER 7, 2010

APPEARANCES:

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