Federal Court  Cour fédérale

Date: 20140731

Docket: T-1294-13

Citation: 2014 FC 764

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 31, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

RAYMOND LANDRY

Applicant

and

ATTORNEY GENERAL OF CANADA
CORRECTIONAL SERVICE CANADA
HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA,
FEDERAL WORKERS' COMPENSATION SERVICE
(COMPENSATION HRSDC-LABOUR QUEBEC REGION)

Respondents

JUDGMENT AND REASONS

[1] This is an application for judicial review by the applicant, Raymond Landry, of a decision by the delegate of the Minister of Public Safety and Emergency Preparedness, dated

June 27, 2013, who refused to extend a time limit set out in the *Corrections and Conditional Release Regulations*, SOR/92-620 (Regulations), thus excluding him from a compensation program. This application for judicial review is made pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[2] The question that arises is the following: can the applicant have the refusal to extend a time limit reversed by way of judicial review in this case? For the following reasons, the Court responds in the negative.

I. Facts

[3] Mr. Landry was an inmate in a federal correctional institution in October 2007. He started to serve his sentence on January 15, 2007. He worked there as a day cleaner. On October 2, 2007, he fell down some stairs. The report written by Mr. Landry's supervisor on October 24, 2007, states that he missed a step while going up the stairs. According to a witness to the incident, Mr. Landry lost his footing and fell down one or two steps. To reiterate the term used, he [TRANSLATION] "did not tumble down". To try to break his fall, he used his left arm and complained of pain as of that moment. In fact, the discomfort persisted in the weeks that followed.

[4] The applicant attributes a partial tear in the rotator cuff of his left shoulder to his October 2 fall. There seems to be no doubt as to the existence of an injury because subsequent examinations have confirmed it. The record also shows earlier problems with that left shoulder: Mr. Landry apparently dislocated his left shoulder in 2001 and in February and March 2007, the

institutional medical record already contained a mention of the [TRANSLATION] "start of calcific tendinitis of the left shoulder" and [TRANSLATION] "left shoulder pain". It is not necessary to determine whether there is a causal link between the fall in October 2007 and the injury to his shoulder as claimed by the applicant because the only issue to determine is whether the time limit extension was unreasonably refused.

[5] The applicant's statutory release began on September 12, 2008, pursuant to the *Corrections and Conditional Release Act*, SC 1992, c 20, sections 127 *et seq.* (Act).

[6] On December 18, 2008, the Quebec Commission de la santé et de la sécurité du travail (CSST) informed the applicant that his claim, which was received by the CSST on November 27, 2008, and was signed on October 25, 2008, could not be accepted because inmates in federal institutions are not workers under the provincial legislation.

[7] It was then that Mr. Landry filed an "Inmate's Application for Compensation". That application, which was signed on February 11, 2009, was formally received on February 16, 2009. The applicant did not have to wait long for a response. On February 18, Mr. Landry was informed that his application for compensation was outside the time limit and that he was therefore not eligible for the compensation program. In fact, the Regulations set out that such a claim must be submitted before the inmate benefits from statutory release. The application filed on February 11, 2009, was about five months after Mr. Landry's statutory release. The applicant was also informed in the decision dated February 18, 2009, that he could argue that [TRANSLATION] "the delay is due to exceptional circumstances."

[8] Such an attempt was made and was rejected on June 2, 2009. The applicant, who was then represented by counsel who is not counsel on this case, argued that he had requested information regarding compensation when he was an inmate and that he was misled by [TRANSLATION] "authority figures".

[9] It is apparent in the record that a closer examination was done regarding the allegation that Mr. Landry was misinformed by the institution's staff. The three Correctional Service of Canada employees who the applicant claims misinformed him denied being consulted by the applicant. Furthermore, the institutional casework records were examined and there was no noted request for information by Mr. Landry. Instead, the response on June 2, 2009, states that it was not until January 2009, that is, after his statutory release, that such a request was made. The response also notes that Mr. Landry signed the "Report of Inmate Injury" dated May 23, 2008, regarding his fall on October 2, 2007, and that he noted the following: [TRANSLATION] "I am making this statement voluntarily, and I acknowledge my responsibilities with respect to workers' compensation for inmates."

[10] It was only four years later, on March 5, 2013, that the applicant availed himself of section 142 of the Regulations to obtain a review of the decisions dated February 18, and June 2, 2009. The arguments on appeal were similar to those made in 2009. Mr. Landry was apparently misinformed. He also blames the institution's physician for failing to provide him with the documents required to fill out his application for compensation. Finally, the applicant also alleges that there was a delay in obtaining the legal aid sought.

II. Decision and standard of review

[11] The decision under review simply reiterates that the applicant was outside the time limit. The inquiries made in the case show the Minister's delegate that the Correctional Service of Canada employees deny being consulted. If misinformation was provided, it came from fellow inmates, and the Correctional Service states that it is not liable for information from people other than its employees. Moreover, there are no documents required to produce the "Inmate's Application for Compensation" form. The allegation that a physician at the institution failed, or simply refused, to provide information that the applicant says was essential is irrelevant because such information is not only not essential, but it was not even necessary. Consequently, the appeal cannot be allowed.

[12] The applicant did try to argue that the application for judicial review pursuant to section 18.1 of the *Federal Courts Act* can be the subject of a judicial review without the need to refer to anything other than subsection 18.1(4), thus avoiding the reasonableness standard. The applicant is relying on the reasons for judgment of Justice Rothstein in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339. Justice Deschamps agreed with Justice Rothstein. But much to the applicant's chagrin, they were in the minority, and the six other judges who rendered judgment disagreed. That is unequivocal.

[13] Speaking for the majority, Justice Binnie wrote the following:

> [25] I do not share Rothstein J.'s view that absent statutory direction, explicit or by necessary implication, no deference is owed to administrative decision-makers in matters that relate to their special role, function and expertise. *Dunsmuir* recognized that with or without a privative clause, a measure of deference has

> come to be accepted as appropriate where a particular decision had been allocated to an administrative decision-maker rather than to the courts. This deference extended not only to facts and policy but to a tribunal's interpretation of its constitutive statute and related enactments because "there might be multiple valid interpretations of a statutory provision or answers to a legal dispute and that courts ought not to interfere where the tribunal's decision is rationally supported" (*Dunsmuir*, at para. 41). A policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime" (*Dunsmuir*, at para. 49, quoting Professor David J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 *C.J.A.L.P.* 59, at p. 93). Moreover, "[d]eference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context" (*Dunsmuir*, at para. 54).
>
> [26] *Dunsmuir* stands against the idea that in the absence of express statutory language or necessary implication, a reviewing court is "to apply a correctness standard as it does in the regular appellate context" (Rothstein J., at para. 117). *Pezim* has been cited and applied in numerous cases over the last 15 years. Its teaching is reflected in *Dunsmuir*. With respect, I would reject my colleague's effort to roll back the *Dunsmuir* clock to an era where some courts asserted a level of skill and knowledge in administrative matters which further experience showed they did not possess.

[14] In my view, the decision in this case should be reviewed on a standard of reasonableness. As stated by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" (paragraph 54). In *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, the Court even created a presumption as follows:

> [34] The direction that the category of true questions of jurisdiction should be interpreted narrowly takes on particular

> importance when the tribunal is interpreting its home statute. In one sense, anything a tribunal does that involves the interpretation of its home statute involves the determination of whether it has the authority or jurisdiction to do what is being challenged on judicial review. However, since *Dunsmuir*, this Court has departed from that definition of jurisdiction. Indeed, in view of recent jurisprudence, it may be that the time has come to reconsider whether, for purposes of judicial review, the category of true questions of jurisdiction exists and is necessary to identifying the appropriate standard of review. However, in the absence of argument on the point in this case, it is sufficient in these reasons to say that, unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of "its own statute or statutes closely connected to its function, with which it will have particular familiarity" should be presumed to be a question of statutory interpretation subject to deference on judicial review.

That decision is also of particular interest to the case at bar because the question that arose involved extending time limits. It was the standard of reasonableness that was accepted by the Supreme Court of Canada.

[15] That standard certainly implies deference. While not deferring to the administrative decision-maker, the reviewing Court also cannot impose its own views. The role of the Court is that which was described in *Dunsmuir*:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision

> falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

III. Analysis

[16] Section 22 of the Act allows the Minister to pay compensation in the event of disability:

Minister may pay compensation 22. The Minister or a person authorized by the Minister may, subject to and in accordance with the regulations, pay compensation in respect of the death or disability of (a) an inmate, or (b) a person on day parole that is attributable to the participation of that inmate or person in an approved program.	**Indemnisation en cas de décès ou d'invalidité** 22. Le ministre ou son délégué peut, conformément aux règlements, verser une indemnité au titre du décès ou de l'invalidité d'un détenu ou d'une personne en semi-liberté résultant de sa participation à un programme agréé.

[17] Sections 121 to 144 of the Regulations govern the payment of compensation in the event of disability. In this case, section 125 of the Regulations is the subject of the dispute:

125. (1) Subject to subsection (2), the Minister or authorized person shall not pay compensation unless a claim for compensation is submitted (a) in the case of the death of an inmate or a person on day parole, within three months after the death; and (b) in the case of a disability, before the date on which, after the incident giving rise to the claim, the inmate or person on day parole is first released on	125. (1) Sous réserve du paragraphe (2), le ministre ou son délégué refuse de verser une indemnité si la demande d'indemnité n'a pas été présentée : a) en ce qui concerne le décès du détenu ou de la personne en semi-liberté, dans les trois mois suivant le décès; b) en ce qui concerne une invalidité, avant la date, postérieure à l'incident à l'origine de la demande, où le détenu ou la personne en semi-

full parole, on statutory release or on the expiration of the inmate's or person's sentence.	liberté est initialement mis en liberté en raison d'une libération conditionnelle totale, d'une libération d'office ou de l'expiration de sa peine.
(2) The Service may extend a period referred to in subsection (1) for a period of not more than two years after the death or the occurrence of the incident giving rise to the claim where the delay is due to circumstances beyond the claimant's control and will not impede the Service's ability to investigate the claim.	(2) Le Service peut proroger le délai visé au paragraphe (1) pour un maximum de deux ans après le décès ou l'incident lorsque le retard à présenter la demande est attribuable à des circonstances indépendantes de la volonté du demandeur et que ce retard ne nuira pas à l'enquête du Service.

Thus, the Regulations create an obligation on the Minister (*Interpretation Act*, RSC (1985), c I-21, section 11; the use of "shall" makes the point with no ambiguity) to refuse to pay compensation unless a claim is submitted within the relevant periods. Paragraph 125(1)(*b*) sets out that a claim must be made before statutory release, that is, before September 12, 2008.

[18] There is thus no doubt that the applicant was outside of the time limit. The Minister, or his delegate, must refuse to pay compensation. The only means available to the applicant is to satisfy the decision-maker of the existence of "circumstances beyond the claimant's control". The French version of the Regulations uses the following wording: "*circonstances indépendantes de la volonté du demandeur*".

[19] The parties did not try to define the type of circumstances that could be beyond a person's control. Instead, they made arguments as to whether the circumstances had occurred.

[20] In the hope of being able to avail himself of that otherwise rather narrow exemption, the applicant claims that the decision-maker erred by accepting that the three employees from the Correctional Service who the applicant claims provided him with incorrect information never said such things. Apart from stating that the decision-maker should not have accepted the denials from the three employees, there is no indication, let alone a convincing indication, that those versions should not have been accepted. I see nothing that can be characterized as unreasonable. At best, the applicant is seeking to argue that some of them could have a motive for lying, but he did not establish such a motive. The weight of the evidence was such that it was reasonable for the decision-maker to find that the applicant was not misinformed by the institution's staff.

[21] The applicant also made much of alleged animosity on the part of a physician in the institution who apparently refused to provide him with essential documents for his application. However, it seems clear from a plain reading of section 126 of the Regulations that such documents are simply not required in order to make a valid claim that would have interrupted the limitation period:

Claims for Compensation	**Demandes d'indemnité**
126. Every claim for compensation shall be in writing, signed by the claimant or a person legally authorized to act on behalf of the claimant, and set out the following information:	126. Toute demande d'indemnité doit être faite par écrit, porter la signature du demandeur ou de son mandataire et contenir les renseignements suivants :
(a) the name of the inmate or person on day parole in respect of whom the claim is made;	a) le nom du détenu ou de la personne en semi-liberté à l'égard de qui la demande est faite;
(b) in the case of a claim for a disability,	b) en ce qui concerne une demande d'indemnité d'invalidité :
(i) the date of the incident	(i) la date de l'incident à

giving rise to the claim, and (ii) the nature and location of any medical care provided to the inmate or person on day parole; and (c) in the case of a claim in respect of the death of an inmate or a person on day parole, the names and addresses of all known dependants.	l'origine de la demande, (ii) la nature des soins médicaux qui ont été fournis au détenu ou à la personne en semi-liberté et le lieu où ils l'ont été; c) en ce qui concerne une demande d'indemnité relative au décès du détenu ou de la personne en semi-liberté, les nom et adresse de toutes ses personnes à charge connues.

In fact, it can be seen that the required information is rudimentary.

[22] The applicant did not stop there. He now claims that the decision-maker erred by not accepting that the documents were required at the halfway house to help with filling out the compensation application. As we have just seen, that was not required by law. Furthermore, the applicant states that he wanted those documents to demonstrate the physician's failure to cooperate and difficulties that would thus result in exceptional circumstances. Not only are there no exceptional circumstances because the documents that are claimed to be missing were not required or necessary, but the burden on the applicant is not to claim exceptional circumstances: it is to satisfy the decision-maker that circumstances beyond his control explain the delay. A disregard for the law does not seem to be such a circumstance and the applicant did not invoke his own wrongdoing.

[23] Generally, the applicant argued that he acted in good faith and was diligent. Moreover, he relied on section 5 of the Act, which gives the Correctional Service of Canada the mandate to

provide "programs that contribute to the rehabilitation of offenders and to their successful reintegration into the community".

[24] I would not readily deny that section 5 of the Act can be useful in interpreting the Regulations. However, that section does not make it possible to override the plain language of section 125 of the Regulations: a claimant who does not submit a claim within the time limit shall be refused compensation unless the claimant demonstrates that the delay was due to circumstances beyond the claimant's control. The applicant's good faith is irrelevant. His diligence is doubtful because this was more akin to ignorance of the law, a shortcoming that genuine diligence should have easily overcome between the date of the fall, October 2, 2007, and the date of the statutory release, September 12, 2008.

[25] It was for the applicant to demonstrate not only that there were circumstances beyond his control that explained why he missed the mandatory date, but also that the decision-maker acted in an unreasonable manner by not accepting his explanations. Reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process. There is nothing to be criticized in this case. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[26] Thus, the Court finds, without determining whether the alleged circumstances could satisfy the criterion of subsection 125(2) of the Regulations, that the decision-maker rendered a reasonable decision by rejecting the allegations made. It was unnecessary to determine whether those allegations could also be among the circumstances beyond the applicant's control.

[27] It follows that the application for judicial review is dismissed. The parties agreed that costs in the amount of $500 could be imposed. The Court grants this joint suggestion and orders that the applicant pay costs in the amount of $500.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed and orders that the applicant pay costs in the amount of $500.

"Yvan Roy"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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