Federal Court  Cour fédérale

Date:20141125

Docket: T-1613-13

Citation: 2014 FC 1130

Ottawa, Ontario, November 25, 2014

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

FRANCIS STEVENSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Veterans Review and Appeal Board's (the Board) reconsideration panel upheld the appeal panel's decision which refused to reconsider its earlier decision to reject the applicant's claim for a disability pension. The applica`nt now applies for judicial review pursuant to subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7.

[2] The applicant asks the Court to set aside the Board's decision and refer the matter back for redetermination by a different panel. The applicant also seeks costs.

I. Background

[3] The applicant was a member of the Royal Canadian Mounted Police [RCMP] from 1972 to 2009.

[4] He was diagnosed with hypertension in 1998 and with coronary artery disease (a type of arteriosclerotic heart disease) in 2000. He believes stress from his work was partially responsible for both conditions.

[5] Therefore, he applied in 2001 for a disability pension in accordance with subsection 32(1) of the *Royal Canadian Mounted Police Superannuation Act*, RSC 1985, R-11 [RCMP Superannuation Act] and subsection 21(2) of the *Pension Act*, RSC 1985, c P-6. On September 17, 2001, the applicant's request was denied because no service connection was established, though he was awarded a modest amount for other unrelated injuries.

[6] In May 2009, the applicant requested a departmental review of that decision pursuant to subsection 82(1) of the *Pension Act*. On September 14, 2009, it too was rejected for the same reasons.

[7] He next sought review from the Board pursuant to section 84 of the *Pension Act* and section 18 of the *Veterans Review and Appeal Board Act*, SC 1995, c 18. An entitlement review panel confirmed the Minister's decision.

II. Appeal Panel Decision

[8] The applicant appealed to another panel of the Board, but was again rejected by a decision dated April 20, 2011.

[9] The panel began by acknowledging that the applicant had claimed that the administrative position he took in 1995 had caused him a lot of stress and led to an unhealthy lifestyle. The applicant's claim was supported by his family physician, Dr. Dattani, who concluded that stress contributed to his heart problems. As well, other RCMP members sent letters that emphasized how stressful the applicant's job was.

[10] However, the panel also consulted departmental guidelines, the *Merck Manual of Diagnosis and Therapy* (18th edition) [*Merck Manual*], and *Harrison's Principles of Internal Medicine* (18th edition) [*Harrison's*] on arteriosclerosis and hypertension. According to those, the most common risk factors for arteriosclerosis are hypertension, diabetes, hyperlipidemia, a family history of heart disease, age, physical inactivity, high cholesterol, male gender and cigarette smoking.

[11] With that in mind, the Board analyzed the applicant's claim. It appreciated that the applicant's work was demanding, but it did not consider his burden unusual. Indeed, the only contemporaneous evidence suggested his stress was well-managed. In periodic health assessments completed in 1995, 1997 and 1999, the applicant had reported that he considered himself in good emotional health. He said that he was happy with his job, did not feel nervous or

tense in some situations and that he had not felt angry or frustrated recently. Although the applicant now said he simply did not report his stress to avoid jeopardizing his career prospects, none of the medical professionals he visited during that time had recorded that chronic stress was a risk factor. This left the Board without any objective evidence from which it could infer the applicant had suffered prolonged and exceptional stress.

[12] Even if that were not the case, the Board found there was no medical relationship between stress and coronary artery disease. Moreover, the applicant possessed many of the other risk factors. He had been diagnosed with hyperlipidimia in 1991. He also had high blood pressure when he visited his doctor in 1994 for chest pain. At that time, Dr. Dattani also recorded a cardiac family history and a chest spasm. By the time he was diagnosed with coronary artery disease in 2000, his cardiologist, Dr. Zimmermann, reported that the applicant's risk factors were hypertension, hypercholesterolemia and a positive family history of cardiac disease. He was also male and obese: his body mass index (BMI) was 31.5 in 1995 and 1997 and had increased to 33.6 by 1999.

[13] Although Dr. Dattani declared that stress did affect the applicant's medical problems and supported that with a few studies, the Board found that his opinion was not sufficiently credible. Specifically, it preferred the contemporaneous medical records about the applicant's lack of stress to the retrospective opinion of Dr. Dattani. It also noted that Dr. Dattani was not a specialist and that his opinion was contradicted by authoritative textbooks like the *Merck Manual* and *Harrison's*. It considered those to be better evidence of the current medical consensus than

the small selection of articles submitted by Dr. Dattani. The studies showing a link did not use an acceptable methodology and concerned people with different characteristics than the applicant.

[14] The Board also distinguished this case from *Rivard v Canada (Attorney General)*, 2001 FCT 704, 209 FTR 43 [*Rivard*]. In that case, a decision was set aside because the Board had rejected uncontradicted medical evidence that an applicant's coronary disease was connected to a chronic anxiety disorder for which he had already been pensioned. However, the Board said it did not apply for two reasons: (1) the applicant does not have chronic anxiety disorder; and (2) there is contradicting medical evidence in this case from the textbooks.

[15] As for hypertension, risk factors did include prolonged and exceptional stress, along with obesity, alcohol dependency, salt intake, smoking and inactivity. For this, however, the lack of any contemporaneous evidence documenting the applicant's stress was fatal and the Board rejected the non-expert evidence that opined that the applicant was stressed.

[16] As a result, the applicant had not produced any reliable evidence that could leave the Board with any doubt it could resolve in the applicant's favour.

III. Reconsideration Decision

[17] The applicant thereafter asked the Board to reconsider its decision pursuant to subsection 32(1) of the *Veterans Review and Appeal Board Act*. In his view, the Board had erred in law by applying the wrong test and by failing to accept Dr. Dattani's evidence and his own uncontradicted testimony about why he did not report his stress. As well, Dr. Dattani had

recently received an award for a study about controlling high blood pressure and the applicant wished to submit an article about that as new evidence.

[18] On August 22, 2013, the Board refused to reconsider its decision for four reasons.

[19] First, the Board decided not to admit the new evidence by applying the four-part test from *Palmer v The Queen* (1979), [1980] 1 SCR 759 at 775, 106 DLR (3d) 212 [*Palmer*]. The study for which Dr. Dattani was honoured was completed in 2003 and evidence of it was submitted to the entitlement review panel. It could have been submitted on appeal as well. The fact that Dr. Dattani had assisted with the administration and information-gathering phase of some drug studies for pharmaceutical companies treating people with hypertension, did not make him an expert in cardiovascular conditions. As such, the Board held that the evidence was neither truly new nor relevant and could not affect the outcome of the appeal.

[20] Second, the Board did not think it applied the wrong test. Rather, it applied the test in subsection 21(2) of the *Pension Act*, which requires a causal connection between the applicant's service and his disease. However stressful the applicant's work was, there was no contemporaneous evidence that it affected his health and his cardiologist did not consider it a risk factor.

[21] Third, the Board said it had considered Dr. Dattani's evidence carefully and gave clear reasons for its credibility findings.

[22] Fourth, the Board considered again the applicant's explanation for not reporting his stress and still preferred the contemporaneous evidence to his post-service recollections. Besides, the RCMP holds periodic medical examinations precisely so it can catch problems and treat them as soon as possible. That could not happen if the applicant actually had refused to divulge health issues of which he was aware. The applicant did not report stress to Dr. Dattani or any other physician outside the RCMP either.

[23] As such, the Board confirmed that there was no credible evidence from which it could draw any reasonable inference in the applicant's favour.

[24] The applicant now asks this Court to review that decision.

IV. Issues

[25] The applicant raises three issues:

1. What is the appropriate standard of review?
2. Did the Appeal Panel err in finding that the applicant's hypertension and arteriosclerosis did not arise out of or were directly connected with the applicant's service in the RCMP?
3. Did the Board assess the evidence as required pursuant to section 39 of the *Veterans Review and Appeal Board Act*?

[26] The respondent combines the second and third issue into one: "[w]hether the [Board's] decision not to reopen the Appeal Panel's decision was reasonable?"

[27] I prefer to divide the issues as follows:

1. What is the standard of review?
2. Did the Board err by rejecting Dr. Dattani's opinion?
3. Did the Board err by rejecting the applicant's evidence about his stress?

V. Applicant's Written Submissions

[28] The applicant submits that reasonableness is the standard of review. Nevertheless, he emphasizes that section 39 of the *Veterans Review and Appeal Board Act* requires the Board to accept any credible, uncontradicted evidence that favours his case.

[29] In his view, the Board's approach to the evidence of causation violated that section. He points out that he had a very demanding workload starting in 1995 and explained that he did not mention the stress it caused because he did not want to be seen as a complainer (citing *Powell v Canada (Attorney General)*, 2005 FC 433 at paragraph 33, 271 FTR 306). Further, his nurse sent a letter saying that he was visibly strained when working there and two other members of the RCMP commented that the work environment was characterized by overwork and staff shortages. Indeed, an independent study by Dr. Linda Duxbury confirmed that this was common in the RCMP. The applicant says that the Board never gave any real reasons for rejecting that evidence.

[30] As well, the applicant feels the Board did not properly consider Dr. Dattani's opinions. He was the treating physician and his evidence should have been considered carefully (see *Leroux v Canad*a, 2012 FC 869 at paragraphs 59 and 60, 415 FTR 121). Further, the applicant

says his new evidence showed that Dr. Dattani had received recognition for his knowledge about hypertension and cardiac disease. Still, the Board rejected it, even though it has no medical expertise. The applicant says the Board did this for no legitimate reason, instead relying on guidelines to the exclusion of all other evidence. If it had concerns, the applicant says it was required to commission an independent medical opinion pursuant to section 38 of the *Veterans Review and Appeal Board Act*; it could not rely on its own research.

VI. Respondent's Written Submissions

[31] The respondent agrees with the applicant that reasonableness is the standard of review. The respondent also observes that although this is technically a review of a reconsideration decision pursuant to subsection 32(1), which is a discretionary power and the decision can only be assessed with reference to the original appeal decision.

[32] The respondent also argues that the applicant ultimately must prove the causal link on a balance of probabilities (see *Lunn v Canada (Veteran Affairs)*, 2010 FC 1229 at paragraph 46, 379 FTR 59; *Wannamaker v Canada (Attorney General)*, 2007 FCA 126 at paragraphs 5 and 6, 361 NR 266 [*Wannamaker*]). Section 39 of the *Veterans Review and Appeal Board Act*, though relevant, does not relieve the applicant of the burden to supply credible evidence to support his claim. The respondent says that the Board understood that and applied the correct tests appropriately.

[33] Moreover, the respondent says the Board can reject medical evidence without commissioning its own. It has a great deal of expertise in assessing claims like this and its

credibility findings are entitled to deference. Although the Board did not question Dr. Dattani's ability to treat his patients, his opinion was contrary to both the contemporaneous medical records, the medical consensus and its own precedents. The respondent says that was reasonable and it left the applicant without any evidence to engage section 39.

[34] Finally, the respondent argues that the Board's refusal to consider new evidence was reasonable, as it did not meet the requirements of diligence.

VII. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[35] Where the jurisprudence has satisfactorily resolved the standard of review, that analysis need not be repeated (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 62, [2008] 1 SCR 190 [*Dunsmuir*]). I agree with both parties that the law has settled on reasonableness for the Board's decisions about causation (see *Wannamaker* at paragraph 12; *Werring v Canada (Attorney General)*, 2013 FC 240 at paragraph 11, [2013] FCJ No 300). The same standard also applies to the application of section 39 of the *Veterans Review and Appeal Board Act* (see *Wannamaker* at paragraph 13).

[36] This means that I should not intervene if the decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (see *Dunsmuir* at paragraph 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59, [2009] 1 SCR 339 [*Khosa*]). Put another way, I will set aside the Board's decision only if its reasons, read in the

context of the record, fail to intelligibly explain why it reached its conclusions or how the facts and applicable law support the outcome (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708). As the Supreme Court held in *Khosa* at paragraphs 59 and 61, I cannot substitute my own view of a preferable outcome, nor can I reweigh the evidence.

B. *Issue 2 - Did the Board err by rejecting Dr. Dattani's opinion?*

[37] Pursuant to section 32 of the RCMP Superannuation Act, a pension in accordance with the *Pension Act* can be awarded to a member of the RCMP who suffers an injury or disease that "arose out of, or was directly connected with, the person's service in the Force". That is analagous to subsection 21(2) of the *Pension Act*, which uses similar language to require a causal connection between the disease and service. However, "while it is not enough that the person was serving in the armed forces at the time, the causal nexus that a claimant must show between the death or injury and military service need be neither direct nor immediate." (see *Frye v Canada (Attorney General)*, 2005 FCA 264 at paragraph 29, 338 NR 382 (emphasis added)).

[38] Here, Dr. Dattani provided evidence that chronic stress from the applicant's position could have contributed to the applicant's coronary artery disease and his hypertension. The applicant complains that the Board was wrong to reject that evidence.

[39] However, it seems to me that it does not matter whether the Board's assessment of Dr. Dattani's letters was reasonable or not. Although it rejected his opinion that stress was a risk factor for coronary artery disease, it accepted that chronic stress could contribute to hypertension

and that hypertension was a risk factor for coronary artery disease. Ultimately, therefore, the reasonableness of the Board's decision hinges on its finding that the applicant did not experience chronic stress. If that was reasonable, then it does not matter what it could have caused since the applicant never had it.

[40] In any event, the Board's decision not to admit the article about Dr. Dattani's award was reasonable. With some qualifications about the due diligence requirement, this Court has previously endorsed the use of the four-part test from *Palmer* by the Board (see *Chief Pensions Advocate v Canada (Attorney General)*, 2006 FC 1317 at paragraphs 6, 42 and 43, 302 FTR 201, aff'd 2007 FCA 298 at paragraph 1). In this case, evidence about the 2003 study that was the subject of the article could have been presented earlier and, in fact, had been to the entitlement review panel. The Board was aware that Dr. Dattani had participated in the information gathering phase of such studies, but that did not prove he was a specialist. As such, the evidence was neither truly new nor relevant and I cannot find any fault with the Board's analysis in this regard.

[41] Further, I disagree with the applicant's contention that the Board needs to commission independent medical evidence before it can reject a physician's opinion. As the Board correctly explained, *Rivard* stands only for the proposition that the Board cannot reject a medical opinion by invoking medical knowledge that is not disclosed by the evidence (*Rivard* at paragraph 42), and Mr. Justice Marc Nadon expressly observed that the record in that case did not include "any medical literature or medical book that contradicted the applicant's evidence" (*Rivard* at paragraph 36). Other cases have allowed the Board to consult other sources so long as they are disclosed to the claimant and he or she is given an opportunity to respond (see *Deschênes v*

Canada (Attorney General), 2011 FC 449 at paragraph 14 [2011] FCJ No 623; *Hynes v Canada (Attorney General)*, 2012 FC 207 at paragraph 28, 405 FTR 238). As the applicant raised no allegation of procedural unfairness, I detect no error here.

[42] As such, the Board was left with authoritative textbooks saying that stress was not a risk factor for coronary artery disease versus one opinion from a non-specialist and a couple of studies saying that it could be. The Board had to choose between them. In making that choice, it was relevant that Dr. Dattani did not address any of the other risk factors for coronary artery disease that the applicant had. On the other hand, the physician who actually treated the applicant for his coronary artery disease did list risk factors in his reporting letter dated April 10, 2000:

> Risk factors are negative for smoking and diabetes. He has hypertension, hypercholesterolemia, and a positive family history of coronary disease.

Stress was not among them. In light of that and the textbooks contradicting Dr. Dattani's opinion, the Board reasonably decided that his evidence on this point was not reliable. I would not disturb that finding.

C. *Issue 3 - Did the Board err by rejecting the applicant's evidence about his stress?*

[43] Section 39 of the *Veterans Review and Appeal Board Act* says the following:

39. In all proceedings under this Act, the Board shall	39. Le Tribunal applique, à l'égard du demandeur ou de l'appelant, les règles suivantes en matière de preuve :
(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in	a) il tire des circonstances et des éléments de preuve qui lui sont présentés les conclusions les plus favorables possible à

favour of the applicant or appellant;	celui-ci;
(b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and	b) il accepte tout élément de preuve non contredit que lui présente celui-ci et qui lui semble vraisemblable en l'occurrence;
(c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.	c) il tranche en sa faveur toute incertitude quant au bien-fondé de la demande.

[44] In *Wannamaker* at paragraphs 5 and 6, the Federal Court of Appeal made the following observations:

> [5] Section 39 ensures that the evidence in support of a pension application is considered in the best light possible. However, section 39 does not relieve the pension applicant of the burden of proving on a balance of probabilities the facts required to establish entitlement to a pension: […].
>
> [6] Nor does section 39 require the Board to accept all evidence presented by the applicant. The Board is not obliged to accept evidence presented by the applicant if the Board finds that evidence not to be credible, even if the evidence is not contradicted, although the Board may be obliged to explain why it finds evidence not to be credible: […]. Evidence is credible if it is plausible, reliable and logically capable of proving the fact it is intended to prove.
>
> [Citations omitted; emphasis added]

[45] With that in mind, I am of the view that the Board did not err by rejecting the applicant's evidence about his stress.

[46] Many of the applicant's arguments to the contrary are premised on the idea that the Board ignored how demanding his work was. It did not. To the contrary, the Board expressly acknowledged that "the Appellant's employment in the RCMP was demanding, and would have created stress for the Appellant" (see entitlement appeal decision at page 11). Indeed, it recognized that RCMP service could "normally involve exposure to severe emotional and physical stress" (see reconsideration decision at page 6). As such, the applicant's argument that the Board rejected the evidence of the other RCMP members and Dr. Luxbury's report to that effect is unfounded.

[47] Rather, the Board simply concluded that there was not enough evidence that it was chronic enough to affect his health. It gave several reasons for this conclusion: (1) the applicant reported that he was in good emotional health and happy with his job throughout the relevant period; (2) the applicant did not report stress to Dr. Dattani at the time; (3) his contemporaneous medical records from every other physician are equally devoid of any reference to stress; and (4) there was no evidence that he ever complained about stress or his workload to anyone. Indeed, it was only after the applicant started suffering from his heart conditions that he blamed them on stress and the earliest documentary evidence of it was an email exchange in 2002 between him and Iris Carroll, a nurse. That was after he had first claimed his disability pension. The Board explained to the applicant that it "preferred the contemporary evidence during your RCMP service to your recollections after service." (see reconsideration decision at page 7).

[48] The applicant takes issue with that, saying that he did not report his stress because he wanted to preserve his career prospects. The applicant submits that the Board had to believe him

because of section 39. However, that is not the case, as the Board only has to accept evidence that it finds credible (*Wannamaker* at paragraph 6). Here, the Board rejected the applicant's statement because that could only have explained why he did not report his stress during his periodic reviews or to his colleagues. It would not really explain why he would keep it secret from the physicians he saw outside of the RCMP, like Dr. Dattani. Although that could potentially be explained by his alleged desire not to be seen as a complainer, it would be a very dangerous secret to keep given his alleged belief that it was contributing to his heart problems. I cannot say the Board acted unreasonably by dismissing his evidence on this issue as unreliable.

[49] Finally, the Board also said it considered carefully the non-expert opinions saying that they thought the applicant was stressed. However, it ultimately preferred the medical reports to those as well. I might not have done the same, but I think it was reasonable for the Board to consider such retrospective opinions unreliable because they were contradicted by the contemporaneous medical reports.

[50] Consequently, the Board had before it significant evidence that the applicant possessed a number of non-work-related risk factors for the health problems he eventually had. On the other hand, it had no reliable evidence that the applicant experienced the type of chronic stress at his job that could contribute to hypertension and significant contemporaneous evidence to the contrary. Since there was no credible evidence which could have raised any doubt or from which it could have drawn a favourable inference, section 39 was not engaged.

[51] Therefore, the Board's conclusion that the applicant had not proven that work-related stress was responsible for his heart conditions is defensible in respect of the facts and the law and I understand how the Board reached it.

[52] I would therefore dismiss this application for judicial review. The respondent shall have its costs of the application.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs to the respondent.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Royal Canadian Mounted Police Superannuation Act*, RSC 1985, c R-11**

3. (1) In this Act,	3. (1) Les définitions qui suivent s'appliquent à la présente loi.
…	…
"contributor" means a person who is required by section 5 to contribute to the Royal Canadian Mounted Police Pension Fund, and includes, unless the context otherwise requires,	« contributeur » Personne tenue par l'article 5 de contribuer à la Caisse de retraite de la Gendarmerie royale du Canada, y compris, sauf indication contraire du contexte :
(a) a person who has ceased to be required by this Act to contribute to the Superannuation Account or the Royal Canadian Mounted Police Pension Fund, and	a) une personne qui a cessé d'être tenue par la présente loi de contribuer au compte de pension de retraite ou à la Caisse de retraite de la Gendarmerie royale du Canada;
(b) for the purposes of sections 15 to 19 and 22, a contributor under Part V of the former Act who has been granted a pension or annual allowance under that Act or has died;	b) pour l'application des articles 15 à 19 et 22, un contributeur selon la partie V de l'ancienne loi, auquel a été accordée une pension ou une allocation annuelle sous le régime de cette loi, ou qui est décédé.
…	…
32. Subject to this Part and the regulations, an award in accordance with the *Pension Act* shall be granted to or in respect of the following persons if the injury or disease — or the aggravation of the injury or disease — resulting in the disability or death in	32. Sous réserve des autres dispositions de la présente partie et des règlements, une compensation conforme à la *Loi sur les pensions* doit être accordée, chaque fois que la blessure ou la maladie — ou son aggravation — ayant causé l'invalidité ou le décès sur

respect of which the application for the award is made arose out of, or was directly connected with, the person's service in the Force:	lequel porte la demande de compensation était consécutive ou se rattachait directement au service dans la Gendarmerie, à toute personne, ou à l'égard de toute personne :
(a) any person to whom Part VI of the former Act applied at any time before April 1, 1960 who, either before or after that time, has suffered a disability or has died; and	a) visée à la partie VI de l'ancienne loi à tout moment avant le 1er avril 1960, qui, avant ou après cette date, a subi une invalidité ou est décédée;
(b) any person who served in the Force at any time after March 31, 1960 as a contributor under Part I of this Act and who has suffered a disability, either before or after that time, or has died.	b) ayant servi dans la Gendarmerie à tout moment après le 31 mars 1960 comme contributeur selon la partie I de la présente loi, et qui a subi une invalidité avant ou après cette date, ou est décédée.

***Pension Act*, RSC 1985, c P-6**

2. The provisions of this Act shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to provide compensation to those members of the forces who have been disabled or have died as a result of military service, and to their dependants, may be fulfilled.	2. Les dispositions de la présente loi s'interprètent d'une façon libérale afin de donner effet à l'obligation reconnue du peuple canadien et du gouvernement du Canada d'indemniser les membres des forces qui sont devenus invalides ou sont décédés par suite de leur service militaire, ainsi que les personnes à leur charge.
…	…
21. (2) In respect of military service rendered in the non-permanent active militia or in the reserve army during World War II and in respect of military service in peace time,	21. (2) En ce qui concerne le service militaire accompli dans la milice active non permanente ou dans l'armée de réserve pendant la Seconde Guerre mondiale ou le service militaire en temps de paix :

(a) where a member of the forces suffers disability resulting from an injury or disease or an aggravation thereof that arose out of or was directly connected with such military service, a pension shall, on application, be awarded to or in respect of the member in accordance with the rates for basic and additional pension set out in Schedule I;

a) des pensions sont, sur demande, accordées aux membres des forces ou à leur égard, conformément aux taux prévus à l'annexe I pour les pensions de base ou supplémentaires, en cas d'invalidité causée par une blessure ou maladie — ou son aggravation — consécutive ou rattachée directement au service militaire;

…

…

(2.1) Where a pension is awarded in respect of a disability resulting from the aggravation of an injury or disease, only that fraction of the total disability, measured in fifths, that represents the extent to which the injury or disease was aggravated is pensionable.

(2.1) En cas d'invalidité résultant de l'aggravation d'une blessure ou maladie, seule la fraction — calculée en cinquièmes — du degré total d'invalidité qui représente l'aggravation peut donner droit à une pension.

…

…

82. (1) Subject to subsection (2), the Minister may, on the Minister's own motion, review a decision made by the Minister or the Commission and may either confirm the decision or amend or rescind the decision if the Minister determines that there was an error with respect to any finding of fact or the interpretation of any law, or may do so on application if new evidence is presented to the Minister.

82. (1) Le ministre peut, de son propre chef, réexaminer sa décision ou une décision de la Commission et soit la confirmer, soit l'annuler ou la modifier, s'il constate que les conclusions sur les faits ou l'interprétation du droit étaient erronées; il peut aussi le faire sur demande si de nouveaux éléments de preuve lui sont présentés.

…

…

84. An applicant who is dissatisfied with a decision

84. Le demandeur qui n'est pas satisfait d'une décision du

made by the Minister under this Act, except under section 83, or under subsection 34(5) of the *Veterans Review and Appeal Board Act*, may apply to the Veterans Review and Appeal Board for a review of the decision.

ministre prise sous le régime de la présente loi, mais non sous celui de l'article 83, ou du paragraphe 34(5) de la *Loi sur le Tribunal des anciens combattants (révision et appel)* peut la faire réviser par le Tribunal.

***Veterans Review and Appeal Board Act*, SC 1995, c 18**

3. The provisions of this Act and of any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants may be fulfilled.

3. Les dispositions de la présente loi et de toute autre loi fédérale, ainsi que de leurs règlements, qui établissent la compétence du Tribunal ou lui confèrent des pouvoirs et fonctions doivent s'interpréter de façon large, compte tenu des obligations que le peuple et le gouvernement du Canada reconnaissent avoir à l'égard de ceux qui ont si bien servi leur pays et des personnes à leur charge.

…

…

18. The Board has full and exclusive juris-diction to hear, determine and deal with all applications for review that may be made to the Board under the *Pension Act* or the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, and all matters related to those applications.

18. Le Tribunal a compétence exclusive pour réviser toute décision rendue en vertu de la *Loi sur les pensions* ou prise en vertu de la *Loi sur les mesures de réinsertion et d'indemnisation des militaires et vétérans des Forces canadiennes* et pour statuer sur toute question liée à la demande de révision.

…

…

25. An applicant who is dissatisfied with a decision made under section 21 or 23

25. Le demandeur qui n'est pas satisfait de la décision rendue en vertu des articles 21 ou 23

may appeal the decision to the Board.

peut en appeler au Tribunal.

26. The Board has full and exclusive jurisdiction to hear, determine and deal with all appeals that may be made to the Board under section 25 or under the *War Veterans Allowance Act* or any other Act of Parliament, and all matters related to those appeals.

26. Le Tribunal a compétence exclusive pour statuer sur tout appel interjeté en vertu de l'article 25, ou sous le régime de la *Loi sur les allocations aux anciens combattants* ou de toute autre loi fédérale, ainsi que sur toute question connexe.

…

…

31. A decision of the majority of members of an appeal panel is a decision of the Board and is final and binding.

31. La décision de la majorité des membres du comité d'appel vaut décision du Tribunal; elle est définitive et exécutoire.

32. (1) Notwithstanding section 31, an appeal panel may, on its own motion, reconsider a decision made by it under subsection 29(1) or this section and may either confirm the decision or amend or rescind the decision if it determines that an error was made with respect to any finding of fact or the interpretation of any law, or may do so on application if the person making the application alleges that an error was made with respect to any finding of fact or the interpretation of any law or if new evidence is presented to the appeal panel.

32. (1) Par dérogation à l'article 31, le comité d'appel peut, de son propre chef, réexaminer une décision rendue en vertu du paragraphe 29(1) ou du présent article et soit la confirmer, soit l'annuler ou la modifier s'il constate que les conclusions sur les faits ou l'interprétation du droit étaient erronées; il peut aussi le faire sur demande si l'auteur de la demande allègue que les conclusions sur les faits ou l'interprétation du droit étaient erronées ou si de nouveaux éléments de preuve lui sont présentés.

…

…

38. (1) The Board may obtain independent medical advice for the purposes of any proceeding under this Act and may require

38. (1) Pour toute demande de révision ou tout appel interjeté devant lui, le Tribunal peut requérir l'avis d'un expert

an applicant or appellant to undergo any medical examination that the Board may direct.	médical indépendant et soumettre le demandeur ou l'appelant à des examens médicaux spécifiques.
…	…
39. In all proceedings under this Act, the Board shall	39. Le Tribunal applique, à l'égard du demandeur ou de l'appelant, les règles suivantes en matière de preuve :
(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;	a) il tire des circonstances et des éléments de preuve qui lui sont présentés les conclusions les plus favorables possible à celui-ci;
(b) accept any uncontradicted evidence presented to it by the applicant or appellant that it considers to be credible in the circumstances; and	b) il accepte tout élément de preuve non contredit que lui présente celui-ci et qui lui semble vraisemblable en l'occurrence;
(c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.	c) il tranche en sa faveur toute incertitude quant au bien-fondé de la demande.

FEDERAL COURT

SOLICITORS OF RECORD

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