

Date: 20080304

Docket: A-399-07

Citation: 2008 FCA 86

**CORAM: DESJARDINS J.A.
DÉCARY J.A.
PELLETIER J.A.**

BETWEEN:

GEORGE SEDRAK

Applicant

and

MINISTER OF SOCIAL DEVELOPMENT

Respondent

Heard at Ottawa, Ontario, on March 4, 2008.

Judgment delivered from the Bench at Ottawa, Ontario, on March 4, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT
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PELLETIER J.A.

[1] We are of the view that the application should be dismissed.

[2] The applicant argued that the evidence established that he lacked the capacity to form an intention to apply for benefits prior to 2004 and thus ought to receive the benefit of the extended period of retroactivity provided in subsection 60(9) of the Plan.

[3] The capacity to form the intention to apply for benefits is not different in kind from the capacity to form an intention with respect to other choices which present themselves to an applicant. The fact that a particular choice may not suggest itself to an applicant because of his world view does not indicate a lack of capacity.

[4] Subsections 60(8) and (9) taken together allow for persons who lack the capacity to apply for benefits to either have an application made on their behalf, or to make the application themselves when they reacquire the capacity to do so. Nothing in this scheme requires us to give to the word "capacity" a meaning other than its ordinary meaning.

[5] The applicant's second argument is that the Board's reasons are so deficient that they amount to a denial of natural justice. We do not agree. We find the Board's conclusion in the last sentence of its decision "... It would seem that despite the Appellant's mental condition, his lack of knowledge of entitlement rather than his lack of capacity to form an intent resulted in the delay of his application." This is consistent with its earlier comment that "...When he did learn that he might be entitled to a disability pension under the *Canada Pension Plan*, he was able to complete and file the required forms without undue delay." The Board's reliance upon Dr. Robertson's opinion was, in our view, directed to establishing that the applicant had the capacity to form an intention in various circumstances so that, in the Board's view, the failure to apply for benefits was the result of lack of information as opposed to a lack of capacity.

[6] For these reasons, the application will be dismissed.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-399-07

STYLE OF CAUSE: *George Sedrak and Minister of Social
Development*

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 4, 2008

REASONS FOR JUDGMENT OF THE COURT BY: DESJARDINS, DÉCARY,
PELLETIER J.J.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

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