

**Date: 20080625**

**Docket: A-467-07**

**Citation: 2008 FCA 223**

**CORAM: NOËL J.A.  
BLAIS J.A.  
EVANS J.A.**

**BETWEEN:**

**SUNIL HANDA**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Edmonton, Alberta, on June 23, 2008.

Judgment delivered at Calgary Alberta, on June 25, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

CONCURRED IN BY:

NOËL J.A.  
BLAIS J.A.

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**REASONS FOR JUDGMENT OF THE COURT**

**EVANS J.A.**

[1] This is an appeal by Sunil Handa from a decision of the Federal Court (2007 FC 924) in which Justice Harrington dismissed Mr Handa's application for judicial review of a decision by a designated member of the Pension Appeals Board ("PAB"), dated December 20, 2006. In that decision, the Board refused to extend the time to permit Mr Handa to apply for leave to appeal a decision of the Review Tribunal upholding the Minister's dismissal of Mr Handa's application for long term disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 ("CPP").

[2] The Review Tribunal concluded on the basis of the material before it that Mr Handa had not established that his disability was “prolonged” and ”severe” within the meaning of CPP, subsection 42(2).

[3] A party wishing to appeal a decision of the Review Tribunal to the PAB must seek leave to appeal within 90 days of being notified of the decision of the Review Tribunal, or whatever longer time the PAB’s Chair, Vice-Chair, or a member designated by them, permits: CPP, subsection 83(1). More than four years elapsed between the time that the Review Tribunal’s decision was communicated to Mr Handa in January 2001, and the application for leave to appeal made in April 2005 by Mr Handa’s representative.

[4] In considering Mr Handa’s subsequent request for an extension of time in September 2006, the designated member applied the factors set out in *Canada (Minister of Human Resources Development), v. Gattallero*, 2005 FC 883, which structure the exercise of the PAB’s discretion under subsection 83(1).

[5] On the basis of the material before him, the designated member was not satisfied that Mr Handa had a continuing intention to appeal, or that there was a reasonable explanation for his lengthy delay. In addition, the designated member concluded that it would prejudice the Minister to allow the appeal to be heard, because of the difficulty of preparing an appeal after so long a time, and because “the memory of witnesses would be diminished and their power of recollection would be decreased.”

[6] Accordingly, Mr Handa's request was denied.

[7] The only issue before Justice Harrington was whether the designated member had committed a reviewable error in the exercise of the broad discretion under subsection 83(1) to permit a party to appeal a Review Tribunal decision outside the normal 90 day limitation period. Applying a pragmatic and functional analysis, the Applications Judge held that the standard of review was patent unreasonableness. After carefully reviewing the designated member's reasons and decision, he found no reviewable error. Indeed, he concluded that the decision would also pass the somewhat searching examination called for by the unreasonableness *simpliciter* standard.

[8] Justice Harrington even considered a new explanation for Mr Handa's failure to appeal in time, which had not been put to the designated member, and was therefore not strictly admissible in the judicial review proceeding. Mr Handa's original request to appeal was made in January 2001, but, in a letter dated May 3, 2001, was not accepted by the PAB, because it did not state any grounds of appeal. In written representations to the designated member, Mr Handa's representative said that Mr Handa had not replied to this letter because he had not understood what was meant by "grounds".

[9] However, before Justice Harrington, Mr Handa said that his representative's explanation was wrong, and that he had not submitted another application for leave to appeal because he had not received the PAB's letters, even though they were correctly addressed to him. Justice Harrington

concluded that this new allegation did not assist Mr Handa because it was not a reasonable explanation of the delay of more than four years.

[10] After Justice Harrington rendered his decision, the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, tweaked the standard of review analysis. Of relevance to the present case is that the Court collapsed the two reasonableness standards of review into one, “reasonableness” (at para. 45), and stated that this is normally the standard to be applied on a judicial review of the exercise of statutory discretion by an administrative decision-maker (at para. 53). The Court instructed reviewing courts when applying this deferential standard to consider whether a decision is unreasonable by reference to the range of acceptable choices left to the decision-maker by the legislation, to the reasons for decision, and to the decision itself: see para. 47.

[11] Examining the designated member’s decision in the light of this guidance, I have reached the same conclusion as Justice Harrington. In the absence of any express statutory limitations on the scope of the discretion delegated to the Board to grant an extension of time, it has broad decision-making latitude. In his reasons for decision, the designated member explains clearly the bases of his refusal to grant an extension of time by reference to the criteria set out in the jurisprudence and to the material before him. In short, the decision-making process does not lack “justification, transparency, and intelligibility” (*Dunsmuir*, supra, at para. 47) so as to make the decision unreasonable.

[12] Nor is the outcome (that is, the designated member's refusal to grant an extension of time) in itself unreasonable.

[13] For these reasons, I would dismiss the appeal. The respondent's request for costs was abandoned at the hearing and therefore I would award no costs.

"John M. Evans"

J.A.

"I agree  
Marc Noël J.A."

"I agree  
Pierre Blais J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-467-07

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE  
HARRINGTON DATED SEPTEMBER 17, 2007 DOCKET NO. T-255-07**

**STYLE OF CAUSE:** Sunil Handa v.  
Attorney General of Canada

**PLACE OF HEARING:** Edmonton, AB

**DATE OF HEARING:** June 23, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** JUSTICE EVANS

**CONCURRED IN BY:** JUSTICE NOËL  
JUSTICE BLAIS

**DATED:** June 25, 2008

**APPEARANCES:**

Mr. Sunil Handa ON HIS OWN BEHALF

Mr. Marcus Davies FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C. FOR THE RESPONDENT  
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