Federal Court of Appeal | Cour d'appel fédérale

Date: 20110518

Docket: A-427-10

Citation: 2011 FCA 169

CORAM: **SEXTON J.A.**
DAWSON J.A.
STRATAS J.A.

BETWEEN:

GUIDA BELO ALVES

Applicant

and

THE MINISTER OF HUMAN RESOURCES AND SOCIAL DEVELOPMENT

Respondent

Heard at Toronto, Ontario, on May 10, 2011.

Judgment delivered at Ottawa, Ontario, on May 18, 2011.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: SEXTON J.A.
DAWSON J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] This is an application for judicial review of a decision of the Pension Appeals Board dated September 16, 2010 (file no. CP 26558).

[2] Before the Board, the applicant requested that, under subsection 84(2) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8, the Board re-open and re-consider an earlier decision, dated February 25, 1999, because of the presence of alleged new facts. In its earlier decision, the Board denied the applicant disability benefits.

[3] The applicant alleged that six documents disclosed significant new facts that warranted the re-opening and re-consideration of the earlier decision. The Board found that there were no such new facts. Therefore, it declined to re-open and re-consider its earlier decision denying the applicant disability benefits.

[4] In declining to re-open and re-consider its earlier decision, the Board identified the proper legal test to be applied to "new facts" applications under subsection 84(2) of the Plan. Under this legal test, applicants must show two things:

(1) *Non-discoverability.* The information must not have been discoverable, with reasonable diligence, at the time of the earlier matter.

(2) *Materiality*. The information must be material in the sense that it could reasonably be expected to have affected the outcome of the earlier matter.

*(*See *Gaudet v. Canada (Attorney General)*, 2010 FCA 59 at paragraph 3; *Kent v. Canada (Attorney General)*, 2004 FCA 420 at paragraph 34.)

[5] In detailed reasons, the Board examined each of the six documents that the applicant said contained non-discoverable, material new facts. The Board assessed whether the facts in those documents met the requirements of non-discoverability and materiality. In each case, it found to the

contrary. In its view, the facts in the six documents could have been brought forward in the earlier matter, or could not reasonably be expected to have affected the outcome of the earlier matter, or both. Therefore, the Board declined to re-open and re-consider its earlier decision.

[6] In this Court, at the outset of the hearing, the applicant provided us with two binders of material collected from the evidentiary record. We have reviewed that, along with the entire record, and, of course, the parties' written memoranda of fact and law.

[7] In cases such as this, the Supreme Court of Canada has told us that we cannot step into the shoes of the Board and make different findings of fact. Nor can we reach different conclusions and impose our conclusions over those that the Board has made. Rather, our role is a restricted one: we have the power only to review – not redo – the Board's decision.

[8] The Supreme Court tells us that in reviewing the decision, we are to ask ourselves this question: did the Board's decision fall within a range of possible, acceptable outcomes which are defensible on the facts and the law? (See *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at paragraph 47). Specifically, in this case, we are to ask whether, based on the evidence in this case, the law in subsection 84(2) of the Plan and this Court's legal decisions, mentioned above, the Board could have made the legal findings, the factual findings, and the conclusions that it did.

[9] We conclude that the Board did make legal findings that are consistent with subsection 84(2) of the Plan and this Court's earlier decisions. It made factual findings that were open to it,

based on the evidence before it. Finally, it applied its legal findings to its factual findings and reached conclusions that were within the range of reasonable outcomes available to it. Therefore, there are no grounds to interfere with the Board's decision.

[10] We have no doubt that the applicant has suffered greatly and has experienced great misfortune. Our decision is not meant to minimize that in any way. It is just that, as explained above, our role is limited by law. We can only apply the law as written by Parliament and the earlier legal decisions that are binding on us. These do not allow us to give relief in these circumstances.

[11] Accordingly, we shall dismiss the application for judicial review. The respondent has not asked for its costs, and so none shall be awarded.

"David Stratas"
J.A.

"I agree
J. Edgar Sexton J.A."

"I agree
Eleanor R. Dawson J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-427-10
APPLICATION FOR JUDICIAL REVIEW FROM A DECISION OF THE PENSION APPEALS BOARD DATED SEPTEMBER 17, 2010	
STYLE OF CAUSE:	Guida Belo Alves v. The Minister of Human Resources and Social Development
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 10, 2011
REASONS FOR JUDGMENT BY:	Stratas J.A.
CONCURRED IN BY:	Sexton J.A. Dawson J.A.
DATED:	May 18, 2011

APPEARANCES:

Guida Belo Alves	ON HER OWN BEHALF
Linda Lafond	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT