

**Date: 20071220**

**Docket: T-1145-03**

**Citation: 2007 FC 1348**

**Ottawa, Ontario, December 20, 2007**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**JASPAL SINGH PANNU**

**Applicant**

**and**

**HUMAN RESOURCES DEVELOPMENT CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Jaspal Singh Pannu (the “Applicant”) commenced this application for judicial review on February 5, 2003. He seeks judicial review of the decision of K.C. Binks, a member of the Pension Appeals Board (the “Board”), designated under section 83(2.1) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the “Canada Pension Plan” or the “Plan”). In that decision, dated April 10, 2003, Member Binks dismissed the Applicant’s application for leave to appeal from the decision of the Review Tribunal, which decision is dated February 5, 2003.

[2] The decision of Member Binks was brief and provides as follows:

The Appellant seeks leave to appeal the decision of the Review Tribunal dated February 5, 2003.

The evidence shows that the Appellant's contributory period was from May 1983 to December 2000. In this period the records show that he contributed in only one of those years i.e. 1997. But under Section 44(1)(b) his contributions would have to be for not less than the minimum qualifying period which in his case the minimum qualifying period required contributions in a minimum of four years of the six years prior to December 2000.

In the circumstances his application for leave is dismissed.

[3] This application for judicial review was originally scheduled for hearing in Vancouver on October 14, 2003. The Applicant appeared on his own behalf. Human Resources Development Canada (the "Respondent") appeared by counsel. Concerns were expressed by counsel for the Respondent and by the Court as to the Applicant's mental capacity and ability to represent himself in light of evidence in the Tribunal Record that the Applicant suffers from a mental illness, that is paranoid schizophrenia.

[4] By Order dated October 14, 2003, the matter was adjourned in order to allow for the appointment of counsel to represent the Applicant.

[5] Efforts to obtain the appointment of counsel on a *pro bono* basis were unsuccessful. By Direction issued on February 21, 2006, the Applicant was directed to advise the Court on or before March 24, 2006, if he had appointed a lawyer to act on his behalf. By letter dated February 23,

2006, the Applicant advised that he was unable to represent himself. He did not say if he had appointed a lawyer to act for him.

[6] By further Direction issued on April 5, 2006, the Applicant was directed to advise the Court on or before April 11, 2006 if he could be represented by an adult person who is not a lawyer for the purpose of hearing this application for judicial review. The Applicant replied by letter received at the Registry of the Court at Vancouver on April 6, 2006 and advised that there was no one available to assist him.

[7] An Order issued on July 25, 2007 in the following terms:

The Applicant shall within three (3) months after receipt of this Order file a Medical Certificate saying that he is able to represent himself upon the hearing of his Application for Judicial Review or if he is unable to represent himself, he shall file an Appointment of a Solicitor.

The hearing of this Application will take place at Vancouver, British Columbia on Monday, November 26, 2007 at 9:30 a.m.

[8] By letter received at the Registry of the Court in Vancouver on August 3, 2007, the Applicant advised as follows:

1. Visited Dr. Narang's office – Aug. 01 & 02, 2007 – was refused with the documents to accept and for any appointment to justify for the hearing on Monday, November 26, 2007 at 9:30 a.m.

[9] The matter came on for hearing at Vancouver on Monday, November 26, 2007. The Applicant did not appear. The Respondent was represented by counsel and in addition to the written material filed, made a brief submission to the effect that the application should be dismissed on the grounds that the Applicant had failed to demonstrate an entitlement to a disability pension because he had not made sufficient contributions to the Canada Pension Plan. In the absence of qualifying contributions, the Applicant is simply ineligible for the award of a disability pension.

[10] This application for judicial review arises from the Applicant's application for a disability pension pursuant to the Canada Pension Plan. The Applicant initially applied for a disability pension on February 23, 2002. The application was refused by the Respondent on or about March 18, 2002, on the grounds that the Applicant did not meet the contributory requirements of the Plan. Specifically, the application was refused because upon the basis of the evidence that was submitted, the Applicant had only contributed to the Plan for 1 year.

[11] The Applicant, by letter received by the Respondent on March 25, 2002, sought reconsideration of the negative decision. In a letter dated April 18, 2002, the Respondent advised that, having considered the submissions of the Applicant, it was maintaining the original refusal because the Applicant had not made the "required amount of contributions".

[12] The Applicant appealed the decision of April 18, 2002 before the Review Tribunal, pursuant to section 82 of the Canada Pension Plan. A hearing was held at Surrey, British Columbia on December 19, 2002. The Review Tribunal dismissed the Applicant's appeal by a written decision

dated February 5, 2003, on the grounds that he had not made sufficient contributions to “satisfy the contribution requirement for a disability benefit under the CPP.”

[13] By letter dated February 8, 2003, the Applicant sought leave to appeal the decision of the Review Tribunal to the Board pursuant to subsection 83(1) of the Canada Pension Plan.

[14] The test for obtaining leave to appeal from a decision of a Review Tribunal is whether an applicant can show that an arguable case exists upon which the proposed appeal may succeed. According to the decision of this Court in *Callihoo v. Canada (Attorney General)* (2000), 190 F.T.R. 114 (T.D.), an arguable case arises if new evidence has been presented with the application for leave or the application for leave raises an issue of law or of relevant significant facts that were not appropriately considered by the Review Tribunal.

[15] The Respondent, in its written submissions, canvassed the available standards of review, according to the decision of the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 55 as follows:

The "pragmatic and functional" approach recognizes that standards of review for errors of law are appropriately seen as a spectrum, with certain decisions being entitled to more deference, and others entitled to less: *Pezim, supra*, at pp. 589-90; *Southam, supra*, at para. 30; *Pushpanathan, supra*, at para. 27. Three standards of review have been defined: patent unreasonableness, reasonableness *simpliciter*, and correctness: *Southam*, at paras. 54-56. In my opinion the standard of review of the substantive aspects of discretionary decisions is best approached within this framework, especially given the difficulty in making rigid classifications between discretionary

and non-discretionary decisions. The pragmatic and functional approach takes into account considerations such as the expertise of the tribunal, the nature of the decision being made, and the language of the provision and the surrounding legislation. It includes factors such as whether a decision is "polycentric" and the intention revealed by the statutory language. The amount of choice left by Parliament to the administrative decision-maker and the nature of the decision being made are also important considerations in the analysis. The spectrum of standards of review can incorporate the principle that, in certain cases, the legislature has demonstrated its intention to leave greater choices to decision-makers than in others, but that a court must intervene where such a decision is outside the scope of the power accorded by Parliament. Finally, I would note that this Court has already applied this framework to statutory provisions that confer significant choices on administrative bodies, for example, in reviewing the exercise of the remedial powers conferred by the statute at issue in *Southam, supra*.

[16] The Respondent submits that the Applicant is raising a question of law when he seeks review of the Board's decision to refuse his leave to appeal.

[17] I take a different view. In his Notice of Appeal presented to the Board, the Applicant says that the Review Tribunal failed to consider the evidence that he had submitted. The Notice of Appeal reads as follows:

I received the registered letter on Feb 07,2003 as notice of decision of review tribunal. Here is the objection by my representative as Mohan Singh Pannu (same address) Telephone & fax – (604) 591-6525

#### OBJECTION

1) To prove the truth as paranoid schizophrenia severe as to refer the evidence concerning page 10 of hearing case file as attached here with along with the document of page 10 of hearing case file ...

[18] The issue before the Board was whether the Applicant had raised an arguable case in his application for leave to appeal. This involved consideration of the evidence that had been presented to the Review Tribunal and any new evidence that had been submitted with the application for leave, as well as the relevant provisions of the Canada Pension Plan. In my opinion, his application for leave to appeal raises a question of mixed fact and law. Generally, a question of mixed fact and law will be reviewed on the standard of reasonableness.

[19] The scheme of the Canada Pension Plan was described by the Supreme Court of Canada in *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703 at para. 9 as follows:

The CPP was designed to provide social insurance for Canadians who experience a loss of earnings owing to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which Parliament has defined both the benefits and the terms of entitlement, including the level and duration of an applicant's financial contribution.

[20] A critical factor for the award of benefits under the Canada Pension Plan is whether an applicant has made valid contributions for the required period of time. According to the decision of the Review Tribunal, the Applicant was required to have made contributions in four of the last six years preceding his application for a disability pension. He had not done so; he had contributed to the Canada Pension Plan for only one year.

[21] The Board, in reviewing the Applicant's application for leave to appeal, referred to the evidence that was before the Review Tribunal concerning the Applicant's contributions to the Plan. No new evidence was submitted by the Applicant, with his application for leave, to show that he had contributed for more than one year.

[22] In all the circumstances and having regard to the test for obtaining leave to appeal from the decision of the Review Tribunal, I am satisfied that the Board reasonably determined that the Applicant had not raised an "arguable case". He was unable to show that he had met the statutory requirements for the award of disability benefits.

[23] In the result, this application for judicial review is dismissed. In the exercise of my discretion, pursuant to the *Federal Courts Rules*, SOR/98-106, I make no order as to costs.



**ORDER**

This application for judicial review is dismissed; in the exercise of my discretion, there will be no order as to costs.

“E. Heneghan”

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Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1145-03

**STYLE OF CAUSE:** Jaspal Singh Pannu and Human Resources Development  
Canada

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** November 26, 2007

**REASONS FOR ORDER  
AND ORDER:** HENEGHAN J.

**DATED:** December 20, 2007

**APPEARANCES:**

No appearance FOR THE APPLICANT

Mr. James Gray FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE RESPONDENT