

Federal Court



Cour fédérale

Date: 20100429

Docket: T-930-09

Citation: 2010 FC 458

Ottawa, Ontario, April 29, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

KELLY SHEARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Kelly Sheard faces mental and physical challenges every day. She experiences anxiety and depression. These conditions affect her ability to maintain her health and to perform her role as a mother to her four children, and as a wife to her husband, Doug. She has not been able to work for a number of years.

[2] In 2007, Ms. Sheard applied for disability benefits under the *Canada Pension Plan*, R.S. C. 1985, c. C-8 (CPP). The Minister of Human Resources and Skills Development dismissed her application because she had failed to show that her disability was severe and prolonged, as required by the CPP. The Minister concluded that Ms. Sheard was capable of doing some type of work, notwithstanding her limitations.

[3] Ms. Sheard appealed the Minister's decision to a Review Tribunal. The Tribunal dismissed her appeal essentially for the same reasons given by the Minister.

[4] The Tribunal's decision was dated July 8, 2008. Ms. Sheard received it the following day. Eight months later, on March 28, 2009, Ms. Sheard tried to appeal the Tribunal's decision to the Pensions Appeal Board (PAB). According to s. 83 of the CPP, an application for leave to appeal must be filed within 90 days of receiving the Tribunal's decision, unless the PAB permits an extension of time. The PAB denied Ms. Sheard leave to appeal because her application was out of time. However, it noted that she was still entitled to ask for an extension.

II. Analysis

[5] Ms. Sheard seeks judicial review of the PAB's decision because she still feels that she merits disability benefits, given her ongoing medical issues. With regret, I cannot allow her application for judicial review because the PAB correctly concluded that her appeal was out of time.

III. The Proper Remedy

[6] Ms. Sheard's remedy is not judicial review in this Court. Rather, she must ask the Chairman or Vice-Chairman of the PAB to grant her an extension of time to appeal the Tribunal's decision. In her request, she must provide the following information:

- a. the date of the Review Tribunal's decision;
- b. the date that she received it, and the place where the decision was made;
- c. her full name and mailing address;
- d. the name of her representative, if she has one, and contact information for that person;
- e. the grounds on which she is relying in seeking leave to appeal; and
- f. a summary of the facts and the evidence on which she intends to rely.

(See Rules 4 and 5 of the *Rules of Procedure of the Pension Appeals Board for Appeals Under Section 83 of the Canada Pension Plan*, C.R.C., c. 390, reproduced in the Annex to these reasons).

[7] In addition, Ms. Sheard must explain why she is seeking an extension of time. Normally, this involves showing that:

- a. she had always intended to appeal the Tribunal's decision;
- b. her appeal has some merit;
- c. she has a reasonable explanation for her delay in seeking leave to appeal; and
- d. granting the extension of time will not cause the Minister any particular difficulties.

III. Conclusion and Disposition

[8] I must dismiss Ms. Sheard's application for judicial review because the PAB did not err when it found her appeal was filed too late. There is no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There is no order as to costs.

“James W. O’Reilly”

Judge

Annex "A"

Canada Pension Plan, R.S. 1985, c. C-8

83. (1) A party or, subject to the regulations, any person on behalf thereof, or the Minister, if dissatisfied with a decision of a Review Tribunal made under section 82, other than a decision made in respect of an appeal referred to in subsection 28(1) of the *Old Age Security Act*, or under subsection 84(2), may, within ninety days after the day on which that decision was communicated to the party or Minister, or within such longer period as the Chairman or Vice-Chairman of the Pension Appeals Board may either before or after the expiration of those ninety days allow, apply in writing to the Chairman or Vice-Chairman for leave to appeal that decision to the Pension Appeals Board.

Rules of Procedure of the Pension Appeals Board for Appeals Under Section 83 of the Canada Pension Plan, C.R.C., c. 390

4. An appeal from a decision of a Review Tribunal shall be commenced by serving on the Chairman or Vice-Chairman an application for leave to appeal, which shall be substantially in the form set out in Schedule I and shall contain

- (a) the date of the decision of the Review Tribunal, the name of the place at which the decision was rendered and the date on which the decision was communicated to the appellant;
- (b) the full name and postal address of the appellant;
- (c) the name of an agent or representative, if any, on whom service of documents may be made, and his full

Régime de pensions du Canada, L.R. 1985, ch. C-8

83. (1) La personne qui se croit lésée par une décision du tribunal de révision rendue en application de l'article 82 — autre qu'une décision portant sur l'appel prévu au paragraphe 28(1) de la *Loi sur la sécurité de la vieillesse* — ou du paragraphe 84(2), ou, sous réserve des règlements, quiconque de sa part, de même que le ministre, peuvent présenter, soit dans les quatre-vingt-dix jours suivant le jour où la décision du tribunal de révision est transmise à la personne ou au ministre, soit dans tel délai plus long qu'autorise le président ou le vice-président de la Commission d'appel des pensions avant ou après l'expiration de ces quatre-vingt-dix jours, une demande écrite au président ou au vice-président de la Commission d'appel des pensions, afin d'obtenir la permission d'interjeter un appel de la décision du tribunal de révision auprès de la Commission.

Règles de procédure de la commission d'appel des pensions régissant les appels interjetés en vertu de l'article 83 du régime de pensions du Canada, C.R.C., ch. 390

4. L'appel de la décision d'un tribunal de révision est interjeté par la signification au président ou au vice-président d'une demande d'autorisation d'interjeter appel, conforme en substance à l'annexe I, qui indique :

- a) la date de la décision du tribunal de révision, le nom de l'endroit où cette décision a été rendue et la date à laquelle la décision a été transmise à l'appellant;
- b) les nom et prénoms ainsi que l'adresse postale complète de l'appellant;
- c) le cas échéant, le nom et l'adresse postale complète d'un mandataire ou

postal address;

(*d*) the grounds upon which the appellant relies to obtain leave to appeal; and

(*e*) a statement of the allegations of fact, including any reference to the statutory provisions and constitutional provisions, reasons the appellant intends to submit and documentary evidence the appellant intends to rely on in support of the appeal.

5. An application for an extension of time within which to apply for leave to appeal a decision of a Review Tribunal shall be served on the Chairman or Vice-Chairman and shall set out the information required by paragraphs 4(*a*) to (*e*) and the grounds on which the extension is sought

d'un représentant auquel des documents peuvent être signifiés;

d) les motifs invoqués pour obtenir l'autorisation d'interjeter appel; et

e) un exposé des faits allégués, y compris tout renvoi aux dispositions législatives et constitutionnelles, les motifs que l'appellant entend invoquer ainsi que les preuves documentaires qu'il entend présenter à l'appui de l'appel.

5. La demande de prorogation du délai imparti pour demander l'autorisation d'interjeter appel de la décision d'un tribunal de révision est signifiée au président ou au vice-président et contient les renseignements visés aux alinéas 4*a*) à *e*) et un exposé des motifs sur lesquels elle est fondée.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-930-09

STYLE OF CAUSE: SHEARD v. AGC

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: February 8, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 29, 2010

APPEARANCES:

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