

Docket: 2010-1850(IT)I

BETWEEN:

VAN CHINH PHAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 27 and 29, 2010 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Iris Kingston
Richard Patterson (student-at-law)

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Toronto, Ontario this 12th day of November 2010.

“J. M. Woods”

Woods J.

Citation: 2010 TCC 588
Date: 20101112
Docket: 2010-1850(IT)I

BETWEEN:

VAN CHINH PHAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The question to be decided is whether the appellant, Van Chinh Pham, is entitled to a disability tax credit pursuant to section 118.3 of the *Income Tax Act* for the 2008 taxation year.

[2] The appellant testified as to several physical and psychological problems which clearly present significant challenges in his everyday life. In particular they have led to difficulty being gainfully employed.

[3] I accept the appellant's evidence as to his medical problems and I acknowledge the severe difficulties that he faces on a day-to-day basis. Nevertheless, the appeal must be dismissed.

[4] I would first comment that the type of disability which qualifies for the tax relief is quite narrow. In general, a taxpayer must be unable to perform one of the following activities, or at least require an inordinate amount of time to do so:

(i) mental functions necessary for everyday life,

(ii) feeding oneself or dressing oneself,

(iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual,

(iv) hearing so as to understand, in a quiet setting, another person familiar with the individual,

(v) eliminating (bowel or bladder functions), or

(vi) walking.

[5] Second, I would note that the legislation does not enable a judge alone to evaluate the disability. The evaluation must be done by a medical practitioner.

[6] In this case, a certificate was prepared by the appellant's family doctor, Dr. Murray Finkelstein. The doctor's certificate (Ex. R-2) states that the appellant's hearing is "markedly restricted," and indicates that the appellant has acoustic neuroma and tinnitus.

[7] The Canada Revenue Agency sent a follow up letter seeking further information from the physician. In his reply, Dr. Finkelstein clarified his evaluation and checked the following in the form provided: "able to hear at times" and "takes more time to hear, but does not take an inordinate amount of time" (Ex. R-3).

[8] The respondent submits that the subsequent information forms part of the doctor's certificate (s. 118.3(4) of the *Act*). I accept this as a fair interpretation of this subsection.

[9] When the information provided by Dr. Finkelstein is viewed as a whole, it cannot be concluded that the certification process required by the legislation was satisfied. It is clear that Dr. Finkelstein concluded that the appellant's hearing impairment was not severe enough to satisfy the legislative criteria set out in s. 118.4 of the *Act*. This requires that the hearing loss be so significant that the taxpayer is unable to hear a familiar person in a quiet setting, or takes an inordinate amount of time to do so.

[10] Dr. Finkelstein's evaluation of the appellant's hearing impairment was further clarified on the witness stand when he was called to testify by the respondent. The doctor's testimony was of great assistance in understanding his opinion and it left no doubt that the hearing loss in the doctor's opinion was not severe enough to satisfy the legislative requirement.

[11] I would also note that the appellant had sufficient hearing capability to represent himself at the hearing of his appeal. My observations during the hearing support Dr. Finkelstein's assessment.

[12] Finally, I would comment regarding the appellant's other medical difficulties. Unfortunately for the appellant, relief cannot be granted on the basis of these other disabilities because no doctor's certificate was provided in relation to them. Dr. Finkelstein's certificate only considered the hearing impairment.

[13] In the result, although the circumstances of the appellant are sympathetic, the appeal must be dismissed.

Signed at Toronto, Ontario this 12th day of November 2010.

"J. M. Woods"

Woods J.

CITATION: 2010 TCC 588

COURT FILE NO.: 2010-1850(IT)I

STYLE OF CAUSE: VAN CHINH PHAM and HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: October 27 and 29, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: November 12, 2010

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Iris Kingston
Richard Patterson (student-at-law)

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

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