Federal Court  Cour fédérale

Date: 20160504

Docket: T-1827-15

Citation: 2016 FC 503

Ottawa, Ontario, May 4, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

ROBERT O'KEEFE

Respondent

JUDGMENT AND REASONS

[1] This is an application by the Crown for judicial review of a decision of the Social Security Tribunal-Appeal Division [SST-AD] granting the Respondent leave to appeal a decision of the SST-General Division [SST-GD] under section 58 of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*DESDA*].

I. Background

[2] Mr. Robert O'Keefe [the Respondent] began receiving *Canada Pension Plan*, RSC 1985, c C-8 [*CPP*] retirement benefits in June 2012 at the age of 60. From May until August 24 of 2012, he worked as a seasonal labourer for an auto salvage company.

[3] From September 2012 onwards, the Respondent has received regular Employment Insurance benefits.

[4] On November 13, 2012, the Respondent was admitted to hospital due to shortness of breath and swelling in his lower extremities, which had commenced approximately one week prior. He has since been diagnosed with congestive heart failure.

[5] The Respondent applied for *CPP* disability benefits, indicating that he ceased working due to congestive heart conditions. The Department of Employment and Social Development Canada denied his application initially and also upon reconsideration on the basis that under the *CPP* a person in receipt of a retirement pension can only cancel it in favour of a disability pension if the claimant is deemed to be disabled before the month in which the retirement pension became payable, referred to as the Minimum Qualifying Period [MQP] (*CPP*, sections 42(2), 44, 66.1(1.1)). "Disability" is defined as a physical or mental disability that is "severe" (i.e. incapable regularly of pursuing any substantial gainful occupation) and "prolonged" (i.e. the disability is likely to be long term and of indefinite duration or is likely to result in death) (*CPP*, subsection 42(2)(a)).

[6] Accordingly, the Respondent must have established a severe and prolonged disability prior to May 31, 2012 (the Respondent's MQP). The initial and reconsideration decisions found that the information failed to show the Respondent was prevented from doing some type of work since May 2012 due to disability: he worked until August 2012, collected regular Employment Insurance benefits, and only first developed symptoms and received treatment for congestive heart failure in November 2012.

[7] The Respondent appealed to the SST-GD. His application was initially incomplete, and upon completion, was late. On October 30, 2014, the Respondent provided written explanation as to why he should be granted an extension.

[8] On July 31, 2015, the SST-GD denied the Respondent's request for an extension of time. The SST-GD assessed the four factors to consider in granting an extension of time to file an appeal as set out in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883. Three of the four factors – intention to pursue an appeal, reasonable explanation for the delay, and no prejudice to the other party in extending the time to appeal – favoured the Respondent. Nevertheless, the SST-GD found that the determinative factor precluding any success upon appeal was the lack of an arguable case. As the Respondent's disability commenced after he began receiving his early retirement pension, the SST-GD found he is not eligible to receive a disability pension.

[9] The Respondent sought leave to appeal this decision.

[10] On September 28, 2015, the SST-AD granted the Respondent leave to appeal to the SST-AD, finding that the appeal fell within one of the grounds of appeal set out in section 58 of the *DESDA* and that it may have a reasonable chance of success.

[11] First, the SST-AD found that the Respondent's argument that the SST-GD erred in not considering his 2012 pension contributions disclosed no ground of appeal. The SST-GD did not err in not specifically addressing his contributions in 2011 or 2012, as the Respondent was in receipt of a *CPP* retirement pension when he applied for a disability pension.

[12] Second, the SST-AD concluded that the SST-GD correctly found that the Respondent's appeal was filed late. Although the Respondent filed an appeal on March 3, 2014, the application was not complete until May 29, 2014 – over 90 days following the communication of the SST-GD Decision to the Respondent on January 16, 2014.

[13] Third, the SST-AD determined that the SST-GD correctly articulated the applicable law for granting an extension of time to file the complete Notice of Appeal. In finding that the Respondent had a continuing intention to appeal, a reasonable explanation for the delay and that the opposing party would not be prejudiced if the matter were to proceed, the SST-GD made no error.

[14] However, the SST-AD held the SST-GD "may" have erred in law in concluding that the Respondent failed to present an arguable case on the basis that he did not commence treatment for his condition until after he began receiving the retirement pension, which demonstrated his

capacity to work at the relevant time. The SST-AD cites *Stanziano v Minister of Human Resources Development*, November 26, 2002, CP17926 (PAB) as standing for the principle that a disability pension claimant working after the MQP does not automatically preclude their entitlement to a disability pension.

[15] The SST-AD granted leave to appeal, concluding that "this may have been an error of law in the General Division decision", which is a ground of appeal that may have a reasonable chance of success on appeal under subsection 58(1)(b) of the *DESDA*.

II. Issues

[16] The issues are:

A. Is the judicial review premature?

B. Is the SST-AD Decision granting leave to appeal reasonable?

III. Standard of Review

[17] The applicable standard of review when reviewing the SST-AD's decision to grant or deny leave to appeal is reasonableness, with substantial deference to the SST-AD (*Canada (Attorney General) v Hines*, 2016 FC 112 at para 28 [*Hines*]; *Canada (Attorney General) v Hoffman*, 2015 FC 1348 at paras 26, 27 [*Hoffman*]; *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 17 [*Tracey*]).

IV. Analysis

[18] The relevant provisions of the governing legislation are attached as Annex A.

[19] For the reasons that follow, I am allowing this application.

A. *Is the judicial review premature?*

[20] The Respondent made no submissions with respect to this application. However, counsel for the Applicant brought the issue of prematurity to the Court's attention.

[21] The Applicant submits that this Court's review of the SST-AD's Decision is final, is not interlocutory and therefore is not premature. Should I find otherwise, the Applicant argues the Court nevertheless ought to exercise its discretion and hear the application.

[22] The issue arises from several Federal Court judgments that previously characterized decisions granting leave made by the Pension Appeals Board [PAB], the predecessor to the SST-AD, as interlocutory, or as having "the look and feel of an interlocutory decision" (see *Layden v Canada (Minister of Human Resources and Social Development)*, 2008 FC 619 at paras 24-26; *Mrak v Canada (Minister of Human Resources & Skills Development)*, 2007 FC 672 at para 36; *Canada (Attorney General) v Landry*, 2008 FC 810 at para 21; *McDonald v Canada (Minister of Human Resources and Skills Development)*, 2009 FC 1074 at para 16). In these cases the Court nonetheless typically assumed jurisdiction to judicially review decisions of a designated member of the PAB granting or refusing leave.

[23] The general rule is that "absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted" and that "very few circumstances qualify as 'exceptional' and the threshold for exceptionality is high" (*Canada (Border Services Agency) v CB Powell Ltd*, 2010 FCA 61 at paras 30-33).

[24] However, I find that a purposive and contextual analysis of the statutory scheme governing the appeal process under the *DESDA* indicates the decision granting leave in this instance is final, as it is determinative and dispositive of rights of the parties.

[25] The finality of the decision is codified in section 68 of the *DESDA*:

> [t]he decision of the Tribunal on any application made under this Act is final and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court.

[26] The *DESDA* does not give statutory authority to the SST-AD to appeal or to review its own final and binding decisions regarding leave, nor is any other appeal mechanism provided. Upon granting or refusing leave, the SST-AD is *functus officio* with respect to their decision under section 58 of the *DESDA*.

[27] Further, subsection 28(g) of the *Federal Courts Act*, RSC 1985, c F-7 [the Act], grants the Federal Court of Appeal authority over decisions made by the SST-AD, yet the Act expressly excludes decisions made under sections 57(2) (granting an extension to apply for leave) and 58 (governing grounds of appeal and the granting of leave), among others. Under subsection 18(1)(b) and section 26 of the Act, the Federal Court is granted exclusive original jurisdiction

over decisions of federal boards, commissions or tribunals, which includes those decisions of the SST-AD expressly excluded under section 28. In my view, a purposive construction of the relevant provisions mandates intervention of the Federal Court by way of judicial review.

[28] Moreover, the legislative scheme governing the SST-AD is distinguishable from the former PAB scheme and the cases decided under it which viewed such decisions as interlocutory. Under sections 55 to 58 of the *DESDA*, the test for obtaining leave to appeal and the nature of the appeal has changed. Unlike an appeal before the former PAB, which was *de novo*, an appeal to the SST-AD does not allow for new evidence and is limited to the three grounds of appeal listed in section 58. Also, under subsection 58(5), once leave is granted, the application for leave becomes the notice of appeal. Further, the SST-AD's leave decision demarcates the issues on appeal that have a reasonable chance of success (*Belo-Alves v Canada (Attorney General)*, 2014 FC 1100 at paras 71-73).

[29] The *DESDA* makes clear that Parliament intended that the SST-AD only hear appeals properly falling within a ground of appeal and that have a reasonable chance of success. The *DESDA* does not grant the SST-AD broad discretion in deciding leave, and should the SST-AD grant leave to appeal in other than the instances outlined in section 58, they have improperly stepped beyond the delegated authority provided them by their governing statute.

[30] While I understand the concern that judicial intervention in an administrative process is undesirable for a variety of reasons – including fragmentation of the administrative process,

increased cost and delay, and potential mootness because of the tribunal's ruling on another aspect of the proceedings – none of those factors are of concern in the present circumstances.

[31] Concerns over fragmentation of the process are negated by the fact that the leave to appeal requirement in sections 55 to 58 of the *DESDA* is a discernible step in the appeal process that results in a final decision.

[32] Moreover, to refuse to hear this application on the basis of non-interference would not decrease cost and delay, but would actually run contrary to principles of efficiency and judicial economy. The undisputed facts of this case, and the very fact that an extension of time and a full hearing of the merits of the appeal would not result in a different outcome, justifies the Court's intervention at this juncture. The same arguments would be heard at the SST-AD and then again upon subsequent judicial review, wasting both time and resources on an appeal that cannot succeed on these facts, as discussed below.

[33] This Court has exercised its jurisdiction to judicially review decisions of the SST-AD granting leave to appeal (*Hoffman*, above; *Hines*, above), and has also reviewed decisions denying leave in this context (*Tracey*, above; *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at paras 11, 12). Concerns over premature interference by the Court with the expertise and delegated authority of the SST-AD in making leave decisions applies equally to review of decisions denying leave, which are reviewable.

[34] Without a judicial review mechanism, any opportunity to challenge decisions granting leave would be lost, and those decisions would be immune to judicial oversight. In a case such as this one, where the appeal has no chance of success, and where the SST-AD's decision granting leave was not only unfounded in the facts before it, but unjustified according to section 58 the *DESDA*, judicial oversight is both warranted and important to serve as guidance for future leave decisions to be made in accordance with the legislation.

B. *Is the SST-AD Decision granting leave to appeal reasonable?*

[35] Though I am sympathetic to the Respondent's medical diagnosis, I agree with the Applicant that on the facts before the SST-AD, the Decision it came to is unreasonable.

[36] Leave to appeal a decision of the SST-GD may be granted only where a claimant satisfies the SST-AD that their appeal has a "reasonable chance of success" on one of the three grounds of appeal identified in subsection 58(1) of the *DESDA*: (a) a breach of natural justice; (b) an error of law; or (c) an erroneous finding of fact made in a perverse and capricious manner or without regard for the material before it. No other grounds of appeal may be considered (*Belo-Alves*, above, at paras 71-73).

[37] Subsection 58(2) provides that "leave to appeal is refused if the SST-AD is satisfied that the appeal has no reasonable chance of success."

[38] An individual in receipt of a retirement pension may only cancel it in favour of a disability pension if they are deemed disabled before their MQP (*CPP*, sections 42(2), 44,

66.1(1.1)). There is simply no evidence in the record before the SST-AD that the Respondent had a severe and prolonged mental or physical disability before the month in which he began to receive *CPP* retirement benefits that made him incapable regularly of pursuing any substantially gainful occupation. The medical reports on file demonstrate that the Respondent developed symptoms related to his medical condition in November 2012, and that he presented with symptoms of congestive heart failure in November 2013. These dates fall after his effective retirement date, and he is thus statutorily barred from receiving a disability pension in these circumstances.

[39] The Decision is also unreasonable given that the case upon which the SST-AD relied in granting leave clearly requires that the claimant be disabled prior to the MQP. Again, there is no evidence of that in this case.

[40] In determining that the Respondent's application for leave might have a reasonable chance of success, the SST-AD must correspondingly have concluded there was evidence of the Respondent's disability arising prior to expiry of his MQP. The SST-AD Decision provides no explanation as to what basis it had for believing a disability existed, nor did it identify any evidence of disability prior to the MQP in reaching its decision. The evidence shows the Respondent's medical condition first arose in November 2012, and the Respondent has not alleged otherwise.

[41] The SST-AD's Decision falls outside the range of acceptable, possible outcomes in light of the facts and the law, and its reasons for granting leave to appeal on the basis that the appeal

may have a reasonable chance of success (i.e. that there was some evidence suggesting the Respondent was disabled as defined by subsection 42(2) of the *CPP* prior to his MQP of May 31, 2012), lack the transparency, intelligibility and justification required to meet the reasonableness standard.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed, the SST-AD's decision is set aside, and the matter is referred to a different member of the SST-AD for reconsideration, having regard to the reasons of this decision.

"Michael D. Manson"
Judge

ANNEX A

Department of Employment and Social Development Act (S.C. 2005, c. 34)

Appeal Division

Appeal

55 Any decision of the General Division may be appealed to the Appeal Division by any person who is the subject of the decision and any other prescribed person.

Leave

56 (1) An appeal to the Appeal Division may only be brought if leave to appeal is granted.

Exception

(2) Despite subsection (1), no leave is necessary in the case of an appeal brought under subsection 53(3).

Appeal — time limit

57 (1) An application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within,

(a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant; and

(b) in the case of a decision made by the Income Security Section, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year

Division d'appel

Appel

55 Toute décision de la division générale peut être portée en appel devant la division d'appel par toute personne qui fait l'objet de la décision et toute autre personne visée par règlement.

Autorisation du Tribunal

56 (1) Il ne peut être interjeté d'appel à la division d'appel sans permission.

Exception

(2) Toutefois, il n'est pas nécessaire d'obtenir une permission dans le cas d'un appel interjeté au titre du paragraphe 53(3).

Modalités de présentation

57 (1) La demande de permission d'en appeler est présentée à la division d'appel selon les modalités prévues par règlement et dans le délai suivant :

a) dans le cas d'une décision rendue par la section de l'assurance-emploi, dans les trente jours suivant la date où l'appelant reçoit communication de la décision;

b) dans le cas d'une décision rendue par la section de la sécurité du revenu, dans les quatre-vingt-dix jours suivant la date où l'appelant reçoit communication de la décision.

Délai supplémentaire

(2) La division d'appel peut proroger d'au plus un an le délai pour présenter la demande

after the day on which the decision is communicated to the appellant.

Grounds of appeal

58 (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Criteria
(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Decision
(3) The Appeal Division must either grant or refuse leave to appeal.

Reasons
(4) The Appeal Division must give written reasons for its decision to grant or refuse leave and send copies to the appellant and any other party.

Leave granted
(5) If leave to appeal is granted, the application for leave to appeal becomes the notice of appeal and is deemed to have been filed on the day on which the application for leave to appeal was filed.

Decision

59 (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any

de permission d'en appeler.

Moyens d'appel

58 (1) Les seuls moyens d'appel sont les suivants :

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;
b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;
c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

Critère
(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

Décision
(3) Elle accorde ou refuse cette permission.

Motifs
(4) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et à toute autre partie.

Permission accordée
(5) Dans les cas où la permission est accordée, la demande de permission est assimilée à un avis d'appel et celui-ci est réputé avoir été déposé à la date du dépôt de la demande de permission.

Décisions

59 (1) La division d'appel peut rejeter l'appel, rendre la décision que la division générale aurait dû rendre, renvoyer l'affaire à la division générale pour réexamen conformément aux directives qu'elle juge

directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

Reasons

(2) The Appeal Division must give written reasons for its decision and send copies to the appellant and any other party.

Decision final

68 The decision of the Tribunal on any application made under this Act is final and, except for judicial review under the Federal Courts Act, is not subject to appeal to or review by any court.

indiquées, ou confirmer, infirmer ou modifier totalement ou partiellement la décision de la division générale.

Motifs

(2) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et à toute autre partie.

Décision définitive

68 La décision du Tribunal à l'égard d'une demande présentée sous le régime de la présente loi est définitive et sans appel; elle peut cependant faire l'objet d'un contrôle judiciaire aux termes de la Loi sur les Cours fédérales.

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

Pensions and Supplementary Benefits

Interpretation

Definitions

When person deemed disabled

42 (2) For the purposes of this Act,

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and

(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to

Pensions et prestations supplémentaires

Définitions et interprétation

Définitions

Personne déclarée invalide

(2) Pour l'application de la présente loi :

a) une personne n'est considérée comme invalide que si elle est déclarée, de la manière prescrite, atteinte d'une invalidité physique ou mentale grave et prolongée, et pour l'application du présent alinéa :

(i) une invalidité n'est grave que si elle rend la personne à laquelle se rapporte la déclaration régulièrement incapable de détenir une occupation véritablement rémunératrice,

(ii) une invalidité n'est prolongée que si elle est déclarée, de la manière prescrite, devoir vraisemblablement durer pendant une période longue, continue et indéfinie ou

result in death; and

(b) a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person — including a contributor referred to in subparagraph 44(1)(b)(ii) — be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

Benefits Payable

Benefits payable

44 (1) Subject to this Part,

(a) a retirement pension shall be paid to a contributor who has reached sixty years of age;

(b) a disability pension shall be paid to a contributor who has not reached sixty-five years of age, to whom no retirement pension is payable, who is disabled and who

(i) has made contributions for not less than the minimum qualifying period,

(ii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension had been received before the contributor's application for a disability pension was actually received, or

(iii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if a division of unadjusted pensionable earnings that was made under section 55 or 55.1 had not been made;

devoir entraîner vraisemblablement le décès;

b) une personne est réputée être devenue ou avoir cessé d'être invalide à la date qui est déterminée, de la manière prescrite, être celle où elle est devenue ou a cessé d'être, selon le cas, invalide, mais en aucun cas une personne — notamment le cotisant visé au sous-alinéa 44(1)b)(ii) — n'est réputée être devenue invalide à une date antérieure de plus de quinze mois à la date de la présentation d'une demande à l'égard de laquelle la détermination a été faite.

Prestations payables

Prestations payables

44 (1) Sous réserve des autres dispositions de la présente partie :

a) une pension de retraite doit être payée à un cotisant qui a atteint l'âge de soixante ans;

b) une pension d'invalidité doit être payée à un cotisant qui n'a pas atteint l'âge de soixante-cinq ans, à qui aucune pension de retraite n'est payable, qui est invalide et qui :

(i) soit a versé des cotisations pendant au moins la période minimale d'admissibilité,

(ii) soit est un cotisant à qui une pension d'invalidité aurait été payable au moment où il est réputé être devenu invalide, si une demande de pension d'invalidité avait été reçue avant le moment où elle l'a effectivement été,

(iii) soit est un cotisant à qui une pension d'invalidité aurait été payable au moment où il est réputé être devenu invalide, si un partage des gains non ajustés ouvrant droit à pension n'avait pas été effectué en application des articles 55 et 55.1;

Request to cancel benefit

66.1 (1) A beneficiary may, in prescribed manner and within the prescribed time interval after payment of a benefit has commenced, request cancellation of that benefit.

Exception

(1.1) Subsection (1) does not apply to the cancellation of a retirement pension in favour of a disability benefit where an applicant for a disability benefit under this Act or under a provincial pension plan is in receipt of a retirement pension and the applicant is deemed to have become disabled for the purposes of entitlement to the disability benefit in or after the month for which the retirement pension first became payable.

Demande de cessation de prestation

66.1 (1) Un bénéficiaire peut demander la cessation d'une prestation s'il le fait de la manière prescrite et, après que le paiement de la prestation a commencé, durant la période de temps prescrite à cet égard.

Exception

(1.1) Toutefois, le bénéficiaire d'une prestation de retraite ne peut remplacer cette prestation par une prestation d'invalidité si le requérant est réputé être devenu invalide, en vertu de la présente loi ou aux termes d'un régime provincial de pensions, au cours du mois où il a commencé à toucher sa prestation de retraite ou par la suite.

Federal Courts Act (R.S.C., 1985, c. F-7)

Extraordinary remedies, federal tribunals

18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Recours extraordinaires : offices fédéraux

18 (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

General original jurisdiction

26 The Federal Court has original jurisdiction in respect of any matter, not

Tribunal de droit commun

26 La Cour fédérale a compétence, en première instance, pour toute question

allocated specifically to the Federal Court of Appeal, in respect of which jurisdiction has been conferred by an Act of Parliament on the Federal Court of Appeal, the Federal Court, the Federal Court of Canada or the Exchequer Court of Canada.

Judicial review

28 (1) The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

(g) the Appeal Division of the Social Security Tribunal established under section 44 of the Department of Employment and Social Development Act, unless the decision is made under subsection 57(2) or section 58 of that Act or relates to an appeal brought under subsection 53(3) of that Act or an appeal respecting a decision relating to further time to make a request under subsection 52(2) of that Act, section 81 of the Canada Pension Plan, section 27.1 of the Old Age Security Act or section 112 of the Employment Insurance Act;

ressortissant aux termes d'une loi fédérale à la Cour d'appel fédérale, à la Cour fédérale, à la Cour fédérale du Canada ou à la Cour de l'Échiquier du Canada, à l'exception des questions expressément réservées à la Cour d'appel fédérale.

Contrôle judiciaire

28 (1) La Cour d'appel fédérale a compétence pour connaître des demandes de contrôle judiciaire visant les offices fédéraux suivants :

g) la division d'appel du Tribunal de la sécurité sociale, constitué par l'article 44 de la Loi sur le ministère de l'Emploi et du Développement social, sauf dans le cas d'une décision qui est rendue au titre du paragraphe 57(2) ou de l'article 58 de cette loi ou qui vise soit un appel interjeté au titre du paragraphe 53(3) de cette loi, soit un appel concernant une décision relative au délai supplémentaire visée au paragraphe 52(2) de cette loi, à l'article 81 du Régime de pensions du Canada, à l'article 27.1 de la Loi sur la sécurité de la vieillesse ou à l'article 112 de la Loi sur l'assurance-emploi;

FEDERAL COURT

SOLICITORS OF RECORD

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