Federal Court  Cour fédérale

Date: 20171101

Docket: T-84-17

Citation: 2017 FC 977

Vancouver, British Columbia, November 1, 2017

PRESENT: The Honourable Madam Justice Simpson

Docket: T-84-17

BETWEEN:

MR. RENWYCK QUIANO

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

[1] Pursuant to section 18.1 of the *Federal Courts Act*, the Applicant has applied for judicial review of a decision of a delegate of the Minister of Employment and Social Development (the Delegate) dated December 14, 2016, in which she concluded that the Applicant is not entitled to a Canada Pension Plan [CPP] disability pension from July 2003 [the Decision].

I. The Issue

[2] The issue is whether the Delegate reasonably concluded, under section 66(4) of the Canada Pension Act, R.S.C. 1985 c. C-8 [the Act], that there was no erroneous advice given or administrative error committed when the Applicant's application for CPP disability benefits was denied in 2003.

[3] Section 66(4) reads as follows:

(4) Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied	(4) Dans le cas où le ministre est convaincu qu'un avis erroné ou une erreur administrative survenus dans le cadre de l'application de la présente loi a eu pour résultat que soit refusé à cette personne, selon le cas :
(a) a benefit, or portion thereof, to which that person would have been entitled under this Act,	a) en tout ou en partie, une prestation à laquelle elle aurait eu droit en vertu de la présente loi,
(b) a division of unadjusted pensionable earnings under section 55 or 55.1, or	b) le partage des gains non ajustés ouvrant droit à pension en application de l'article 55 ou 55.1,
(c) an assignment of a retirement pension under section 65.1,	c) la cession d'une pension de retraite conformément à l'article 65.1,
the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.	le ministre prend les mesures correctives qu'il estime indiquées pour placer la personne en question dans la situation où cette dernière se retrouverait sous l'autorité de la présente loi s'il n'y avait pas eu avis erroné ou erreur administrative.

II. The Order Sought

[4] The Applicant seeks an order setting aside the Decision and remitting the matter back to a different Minister's Delegate for reconsideration. The Applicant also sought costs but has withdrawn that request.

III. The Background

[5] The Applicant is a man who was born in the Philippines in 1959 and came to Canada in June 1995. He is disabled as the result of an accident while working in Canada as a baggage handler. The Applicant has thrice applied for a CPP disability pension: in 2003, 2006 and 2011.

[6] By letter dated August 29, 2003, the Applicant was provided with a 4 page document titled "Canada Pension Plan Disability Benefit: Who is Eligible?" [the Guide]. It read in part as follows:

> What if I have made contributions in another country?
>
> Canada has agreements with a number of countries about a Disability benefit and other social assistance programs. If you have made contributions in a country with which we have an agreement, we take those contributions into account when determining whether you are eligible to receive a CPP Disability benefit.

[7] There is no issue that the Applicant had the Guide when he filled in his application for CPP disability benefits in 2003 [the 2003 Application].

[8] However, when he completed his 2003 Application, the Applicant answered “No” to question 6 which asked: “Have you ever worked in another country?”. Even though he said he had never worked in the Philippines, the Respondent was aware that he had lived there before coming to Canada because he provided his passport in the course of his application.

[9] The 2003 Application was considered based on the Applicant’s pension contributions in Canada and was denied for failure to meet the contributory requirements [the 2003 Refusal]. The Applicant did not request a reconsideration of the 2003 Refusal.

[10] The Applicant wrote two letters setting out the facts. The first was to Service Canada and was dated June 27, 2012. Therein the Applicant states that after the 2003 Refusal, he spoke to an indigenous female agent at Service Canada in Vancouver and via telephone in that office to a male Service Canada agent in Victoria. They both advised him that the 2003 Refusal was based on insufficient contributions. The agents are not named. His letter states that he told them that he was from the Philippines but he does not state that he told them that he worked there and made contributions to social security. The Respondent has no record of these conversations.

[11] In his second letter of April 11, 2016, the information provided is quite different. He states that after the 2003 Refusal, he telephoned Human Resources Development Canada and told them that he had worked and contributed in the Philippines. There is no record of this conversation.

[12] Another version of events appears in a file summary of a telephone interview with the Applicant dated September 15, 2011. The record reads in part as follows:

> He complained several times about not having been advised about the Cda/Philippines agreement before. Says that when he submitted his 1st app in 2003 they told him he didn't have enough CPP contrib; when he told them that he had worked in the country of his birth for many years he was told that only CPP contributions matter.

[13] On February 13, 2006, the Applicant made his second application for a CPP disability pension [the 2006 Application]. He again answered question 6 in the negative saying that he had never worked outside Canada. The 2006 Application was also denied for failure to meet the contributory requirements.

[14] The Applicant explains his negative answers to Question 6 in 2003 and 2006 on his failure to understand the context of the question and adds that in 2003 he also had medical issues.

[15] On June 1, 2011, the Applicant was deemed to have applied for a CPP Disability Pension for a third time when he submitted a form titled "Application for Canada Pension Plan Disability Benefits under the agreement on Social Security Benefits between Canada and the Republic of the Philippines". In this application, the Applicant indicated that he had previously worked in the Philippines.

[16] On October 3, 2011, the Respondent identified a "clerical error" on its part with respect to the 2006 Application because the 2006 Application form had the word "Philippines" handwritten and circled beside Question 6. The handwriting was the same as the handwriting on

a telephone call log dated June 15, 2006, which showed contact with the Applicant. The Respondent concluded that the Applicant had mentioned working in the Philippines and decided an administrative error had been made in that the 2006 Application should have been forwarded to International Operations for a review under the Canadian/Philippines agreement.

[17] As a result of the error, the Respondent paid the Applicant $14,296.16 in benefits based on the 2006 Application. Accordingly, the only issue now is whether additional benefits should be paid based on the 2003 Application. The Appeal Division of the Social Security Tribunal ruled that such a payment could only be authorized by the Minister under section 66(4) of the Act and suggested that the matter be considered by the Minister.

[18] The Minister accepted the suggestion and the Decision is the result of the consideration of this matter under section 66(4) of the Act.

IV. The Decision

[19] The Decision about his entitlement based on the 2003 Application reads as follows:

> Our department determined that the information on your file does not support a claim that an administrative error occurred in the administration of your 2003 Canada Pension Plan Disability Application.
>
> After further review, it has been determined that your 2003 application was adjudicated based on domestic contributions and denied because you did not meet the contributory requirements. On the application, you stated that you had never worked in another country.
>
> Our decision to deny your 2003 application was correct based on the information available at the time. You did not request a reconsideration of this decision within the 90 day time limit.

V. Discussion

[20] There is no doubt that the Decision is sparse. It simply relies on the "information on file" and the fact that he answered Question 6 in the negative and failed to ask for a reconsideration to conclude that no administrative error occurred.

[21] The Decision did not address the Applicant's allegation that he told the Respondent's agents in 2003 that he had worked in the Philippines and it did not state why the 2006 Application was allowed and the 2003 Application was refused even though they were similar. Both included incorrect answers to Question 6, both were denied for insufficient domestic contributions and neither refusal was followed by a request for a reconsideration.

[22] However, the Supreme Court of Canada has said that if a record discloses reasons, it should be used to supplement the reasons given and a decision may be accepted as reasonable on that basis: see *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 12 and 15. In my view, that is the case here. The record shows that:

(a) Unlike the 2006 Application, there is no call record or notation with respect to the 2003 Application to show that at the time of 2003 Application the Applicant contacted the Respondent and advised it of his work in the Philippines;

(b) The Applicant's correspondence, which purports to provide details, is inconsistent about whether he discussed his work history in the Philippines with

the Respondent in 2003 and the letter written closest to the events does not mention such a conversation.

(c) The Applicant's explanations for answering Question 6 in the negative are unreasonable given that he had the Guide which gave him context for the question and given that the question is short and clearly stated.

[23] The Applicant also submitted that the Respondent was required by its policy to take the initiative and send documents in to activate the Applicant's potential rights under the Agreement on Social Security between Canada and the Philippines which came into force on March 1, 1997 simply because it was aware that he had lived in the Philippines.

[24] The difficulty was that the policy which applied in 2003 was not in the record. The document to which the Applicant referred was undated, and incomplete. Applicant's counsel asked for further time to investigate the document but was refused an adjournment for that purpose. He acknowledged that he had had the incomplete document for several months.

VI. Conclusion

[25] For these reasons, it is my conclusion that the Decision is reasonable in the sense that it falls within the range of possible and acceptable outcomes that are defensible in respect of the facts and law as required by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

ORDER

UPON the Applicant's application for judicial review of a decision dated December 14, 2016;

AND UPON reading the material filed and hearing the submissions of counsel for both parties in Vancouver on October 30, 2017;

THIS COURT ORDERS that the Application is hereby dismissed.

"Sandra J. Simpson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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