

Federal Court



Cour fédérale

**Date: 20220928**

**Docket: T-66-22**

**Citation: 2022 FC 1352**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, September 28, 2022**

**PRESENT: Mr. Justice Pamel**

**BETWEEN:**

**JÉRÔME CHARTRAND**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Jérôme Chartrand, is a veteran of the Canadian Forces who was determined to be entitled to receive the Income Replacement Benefit (IRB) under subsection 18(1) of the *Veterans Well-being Act*, SC 2005, c 21 (Act), effective May 1, 2021, following a decision to that effect rendered by Veterans Affairs Canada (VAC) on May 20, 2021. Mr. Chartrand requested a review of that decision with the National First Level of Appeal

Unit (N1LA) to contest the date designated by VAC as the start of IRB payments. After N1LA confirmed the May 20, 2021 decision on September 17, 2021, Mr. Chartrand submitted a second request for review, with the National Second Level of Appeal Unit (N2LA), which also confirmed the merits of the VAC decision in a decision dated December 14, 2021.

[2] On January 10, 2022, Mr. Chartrand applied for judicial review of N2LA's December 14, 2021 decision. He argues that the start date of the benefits should be retroactive to the date of his medical release from the Canadian Forces on October 6, 2020.

[3] For the reasons set out below, I am of the opinion that the application should be dismissed.

## II. Background

[4] On September 30, 2020, Mr. Chartrand applied to VAC's Rehabilitation Services and Vocational Assistance Program (program) for veterans under section 8 of the Act and applied to receive the IRB under subsection 18(1) of the Act (initial application).

[5] On October 19, 2020, VAC rendered a decision concluding that Mr. Chartrand was entitled to medical and psycho-social rehabilitation services under section 9 of the Act. In that same decision, VAC also determined that Mr. Chartrand was not entitled to rehabilitation services under section 8 of the Act, or to the IRB under subsection 18(1) of the Act, because his health problem did not result primarily from his military service. Mr. Chartrand then submitted a request for review of the October 19, 2020 decision to N1LA and subsequently to N2LA. In their

respective decisions dated January 19, 2021 and April 15, 2021, the two review levels confirmed the VAC decision. Mr. Chartrand did not file an application for judicial review of the N2LA decision.

[6] On May 13, 2021, VAC rendered a decision on a separate application filed by Mr. Chartrand on July 31, 2019 for disability benefits for pain and suffering under section 45 of the Act. The decision confirmed Mr. Chartrand's entitlement to those benefits because of an adjustment disorder with anxiety and depressive mood, which resulted from his service in the Canadian Forces. Moreover, for the purposes of applying, in particular, subsection 18(1) of the Act—eligibility for the IRB—subsection 8(3) creates a presumption according to which a veteran's physical or mental health problem is deemed to have resulted primarily from service in the Canadian Forces if, as a result of the health problem, the veteran suffers from a disability for which pain and suffering compensation has been granted under section 45.

[7] Given the presumption in his favour, on May 18, 2021, Mr. Chartrand submitted a new application to the program under section 8 of the Act as well as a new application to receive the IRB under subsection 18(1) of the Act (second application). On May 20, 2021, VAC delivered a decision indicating that, due to an adjustment disorder with depressive anxiety resulting primarily from his military service and creating a barrier to his re-establishment in civilian life, Mr. Chartrand was eligible for the program under section 8 of the Act and that he was also entitled to IRB under section 18(1) of the Act. In terms of the designated date for the start of IRB payments, the decision provides the following explanation:

[TRANSLATION]

Given that all of the information necessary to determine eligibility for your health problem was received on 2021-05-18, your income replacement benefit is payable as of the first of that month, i.e., 2021-05-01.

[8] On May 31, 2021, Mr. Chartrand filed a request for review of the May 20, 2021 decision to contest the date designated by VAC for the start of IRB payments, arguing that it should instead be retroactive to his eligibility date, October 6, 2020, with no further details. On September 17, 2021, N1LA dismissed his request for review and confirmed the decision that the IRB was payable as of May 1, 2021, in accordance with the Act, the *Veterans Well-being Regulations*, SOR/2006-50 (Regulations), and VAC's internal policies on the rehabilitation program plan, rehabilitation and vocational assistance services and the IRB. In support of its decision, N1LA provided the following reasons:

[TRANSLATION]

A health problem is considered “resulting primarily from service” if a favourable disability benefits entitlement decision has already been made for the health problem. This includes favourable decisions when only partial entitlement has been granted, including partial entitlement for a pre-existing health problem that was aggravated by service.

The IRB is payable to a veteran who has applied to the Rehabilitation Program and has a physical or mental health problem resulting primarily from service that is creating a barrier to re-establishment in civilian life. The effective date, or the date as of which rehabilitation or vocational services may be provided, is the date on which it was determined that the applicant meets the eligibility criteria and on which the decision is entered. Moreover, the Earnings Loss Benefit may be paid as of the day on which the Minister determines a rehabilitation or vocational assistance plan is to be developed for the veteran.

We have reviewed your file. We understand that you were determined to be eligible for the Rehabilitation and Vocational Assistance Program on May 20, 2021, for the condition of

adjustment disorder with anxiety and depressed mood. We have determined that there was no error with the effective date of May 20, 2021, because that is when it was determined that you met the eligibility criteria. As a result, we are also confirming the decision that your income replacement benefit is payable as of May 1, 2021.

...

[Emphasis added.]

[9] On September 22, 2021, Mr. Chartrand filed a request for second level review of the N1LA decision. On December 14, 2021, N2LA confirmed the N1LA decision. In its decision, N2LA reiterated N1LA's arguments, in addition to clarifying that the IRB is to be paid as of the later of the following dates:

- a) the first day of the month in which it was determined that in his application, the veteran provided the Minister with all of the necessary information; or
- b) the day that is one year before the first day of the month in which the Minister determines that the veteran is entitled to the benefit.

[10] N2LA also explained that Mr. Chartrand's initial application dated September 30, 2020, did not contain enough evidence to determine that his health problem resulted primarily from his service, which resulted in the determination of his eligibility for the program under section 9 and his ineligibility for the one under section 8 and for the IRB. N2LA clarified that following the May 13, 2021 decision, which confirmed that Mr. Chartrand was entitled to the disability benefit for pain and suffering stipulated in section 45 of the Act, he was admitted to the Rehabilitation Services and Vocational Assistance Program under section 8 of the Act as of May 18, 2021, entitling him to the IRB as of May 1, 2021.

[11] On January 10, 2022, Mr. Chartrand filed this application for judicial review of the N2LA decision.

### III. Legislative framework

[12] *Veterans Well-being Act*, SC 2005, c 21

#### **Rehabilitation Services and Vocational Assistance**

##### **Eligibility—rehabilitation need**

8(1) The Minister may, on application, provide rehabilitation services to a veteran who has a physical or a mental health problem resulting primarily from service in the Canadian Forces that is creating a barrier to re-establishment in civilian life.

##### **Factors Minister may consider**

(2) For the purposes of subsections (1) and 18(1), in deciding whether a veteran has a physical or a mental health problem that is creating a barrier to re-establishment in civilian life, and whether that health problem resulted primarily from service in the Canadian Forces, the Minister may consider any factors that the Minister considers relevant, including

- (a) medical reports or records that document the veteran's physical or mental health problem;
- (b) documentation that indicates the nature of the

#### **Service de réadaptation et assistance professionnelle**

##### **Admissibilité : besoins en matière de réadaptation**

8(1) Le ministre peut, sur demande, fournir des services de réadaptation au vétéran si celui-ci présente un problème de santé physique ou mentale qui découle principalement de son service dans les Forces canadiennes et entrave sa réinsertion dans la vie civile.

##### **Facteurs à considérer**

(2) Pour établir, d'une part, si le problème de santé physique ou mentale du vétéran découle principalement de son service dans les Forces canadiennes et, d'autre part, s'il entrave sa réinsertion dans la vie civile, le ministre tient compte, pour l'application des paragraphes (1) et 18(1), de tout facteur qu'il juge pertinent, notamment :

- a) tout dossier ou bilan médical concernant le problème de santé;
- b) tout document concernant le service militaire du vétéran;

veteran's service in the Canadian Forces;

(c) documentation provided by the veteran as to the circumstances of their health problem; and

(d) research that establishes the prevalence of specific health problems in military populations.

### **Presumption**

(3) For the purposes of subsections (1) and 18(1), a veteran's physical or mental health problem is deemed to have resulted primarily from service in the Canadian Forces if, as a result of the health problem, the veteran suffers from a disability for which a disability award has been granted, pain and suffering compensation has been granted under section 45 or a pension has been granted under the *Pension Act*.

### **Eligibility—medical release**

9(1) The Minister may, on application, provide services related to medical rehabilitation or psycho-social rehabilitation to a veteran who has been released on medical grounds in accordance with chapter 15 of the Queen's Regulations and Orders for the Canadian Forces if the physical or mental health problem for which the veteran was released did not result primarily from service in the Canadian Forces.

...

c) tout document fourni par celui-ci concernant son problème de santé;

d) toute recherche établissant l'existence de problèmes de santé propres aux militaires.

### **Présomption**

(3) Pour l'application des paragraphes (1) et 18(1), le problème de santé physique ou mentale pour lequel l'indemnité d'invalidité ou l'indemnité pour douleur et souffrance prévue à l'article 45 a été accordée au vétéran ou pour lequel une pension lui a été accordée au titre de la *Loi sur les pensions* est réputé découler principalement de son service dans les Forces canadiennes.

### **Admissibilité : libération pour des raisons de santé**

9(1) Le ministre peut, sur demande, fournir des services visant la réadaptation médicale ou psychosociale au vétéran qui a été libéré pour des raisons de santé au titre du chapitre 15 des Ordonnances et règlements royaux applicables aux Forces canadiennes, si le problème de santé physique ou mentale qui a mené à la libération de ce dernier ne découle pas principalement de son service dans les Forces canadiennes.

...

## **Income Replacement Benefit**

## **Prestation de remplacement du revenu**

...

...

### **Eligibility**

### **Admissibilité**

18(1) The Minister may, on application, pay, in accordance with section 19 or 19.1, an income replacement benefit to a veteran who makes an application under section 8 and who has a physical or a mental health problem resulting primarily from service in the Canadian Forces that is creating a barrier to re-establishment in civilian life.

18(1) Le ministre peut, sur demande, verser au vétéran, en conformité avec les articles 19 ou 19.1, une prestation de remplacement du revenu si ce dernier présente une demande en vertu de l'article 8 et présente un problème de santé physique ou mentale qui découle principalement de son service dans les Forces canadiennes et entrave sa réinsertion dans la vie civile.

...

...

(3) Subject to subsection (4), the income replacement benefit begins to be payable on the later of

(3) Sous réserve du paragraphe (4), la prestation est exigible à compter du dernier en date des moments suivants :

(a) the first day of the month in which the Minister determines that the veteran has provided all the prescribed information, and

a) le premier jour du mois au cours duquel le ministre décide que le vétéran lui a communiqué tous les renseignements réglementaires;

(b) the day that is one year before the first day of the month in which the Minister determines that the veteran is entitled to the benefit.

b) un an avant le premier jour du mois au cours duquel le ministre décide que le vétéran a droit à la prestation.

...

...

## **Pain and Suffering Compensation**

## **Indemnité pour douleur et souffrance**

### **Eligibility**

### **Admissibilité**

45(1) The Minister may, on application, pay pain and suffering compensation to a member or a veteran who establishes that they are

45(1) Le ministre peut, sur demande, verser une indemnité pour douleur et souffrance au militaire ou vétéran qui démontre qu'il souffre d'une invalidité causée :



suffering from a disability resulting from	
a) a service-related injury or disease; or	a) soit par une blessure ou maladie liée au service;
(b) a non-service-related injury or disease that was aggravated by service.	b) soit par une blessure ou une maladie non liée au service dont l'aggravation est due au service.
...	...
[Emphasis added.]	[Je souligne.]

[13] *Veterans Well-being Regulations, SOR/2006-50*

<b>Income Replacement Benefit</b>	<b>Prestation de remplacement du revenu</b>
17(1) An application for an income replacement benefit shall be in writing and shall include	17(1) Les demandes de prestation de remplacement du revenu sont présentées par écrit et sont accompagnées des renseignements et documents suivants :
(a) in the case of an application made under subsection 18(1) of the Act,	a) dans le cas de la demande visée au paragraphe 18(1) de la Loi :
(i) information that is necessary to determine the veteran's imputed income and all amounts payable from prescribed sources under subsection 19(1) of the Act,	(i) les renseignements qui sont nécessaires à la détermination du revenu attribué du vétéran et des sommés exigibles d'une source réglementaire aux termes du paragraphe 19(1) de la Loi,
(ii) medical reports or other records that document the veteran's physical or mental health problem,	(ii) tout dossier ou bilan médical concernant les problèmes de santé physique ou mentale du vétéran,
(iii) any information or document that indicates the nature of the veteran's service in the Canadian Forces, and	(iii) tout renseignement ou document faisant état du service militaire du vétéran,

(iv) any other information or document that indicates the circumstances of the veteran's physical or mental health problem that the veteran considers to be relevant in support of the application;

...

(2) For the purposes of paragraph 18(3)(a) of the Act, the information and documents referred to in subparagraphs (1)(a)(ii) to (iv) are the prescribed information.

[Emphasis added.]

(iv) tout autre renseignement ou document concernant les problèmes de santé physique ou mentale du vétéran qu'il estime utile à l'examen de sa demande;

...

(2) Pour l'application de l'alinéa 18(3)a) de la Loi, sont visés les renseignements et documents visés aux sous-alinéas (1)a)(ii) à (iv).

[Je souligne.]

#### IV. Issue and standard of review

[14] There is only one issue raised in this application for judicial review: Is the N2LA decision reasonable with regard to the date Mr. Chartrand's IRB payments became payable? The appropriate standard of review for a N2LA decision rendered under the Act is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16–17 [*Vavilov*]). The Court's role is therefore to consider the administrative decision-maker's rationale and the outcome to determine whether the decision is "based on an internally coherent and rational chain of analysis and. is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

V. Analysis

[15] Mr. Chartrand argues that the VAC's decision dated May 13, 2021, confirming that his health problem is due to his service in the Canadian Forces, shows that the decisions by VAC, N1LA and N2LA in relation to his initial application for rehabilitation and IRB dated September 30, 2020, are ill founded. He argues that now that it has been determined that his disability was due to his service, his initial application should have been approved and the date payable that should have been designated at that time is the date that applies in this instance. Mr. Chartrand claims that this date that of his medical release from the Canadian Forces confirmed by the May 13, 2021 decision, that is, October 6, 2020.

[16] Although I am sympathetic to Mr. Chartrand's situation, I cannot agree with his argument.

[17] In his initial application and the subsequent reviews, Mr. Chartrand was determined to be ineligible for rehabilitation services under section 8 of the Act and for the IRB because he had not successfully established that his health problem resulted primarily from his service. Although the May 13, 2021 decision found in the end that such a causal connection did exist, that decision was rendered by a different decision maker as part of a separate administrative process, as stipulated in section 45 of the Act. Hence, that finding cannot invalidate the decision rendered by N2LA on April 15, 2021 in Mr. Chartrand's initial application. Given that Mr. Chartrand did not apply for judicial review of that decision, it must be considered final and remains valid in law.

[18] However, VAC's favourable decision dated May 13, 2021 triggered the presumption stipulated in subsection 8(3) of the Act. That provision stipulates that, for the purposes of subsections 8(1) and 18(1) of the Act, a veteran's physical or mental health problem is deemed to have resulted primarily from service in the Canadian Forces if, as a result of the health problem, the veteran suffers from a disability for which pain and suffering compensation has been granted under section 45. Therefore, the section 8 criterion that Mr. Chartrand was unable to meet at the time of his initial application is now recognized by operation of the Act.

[19] The respondent, the Attorney General of Canada (AGC), confirmed during the hearing that Mr. Chartrand did not provide any new documents with his second application, and that it was approved on the basis of information provided in support of his initial application and of his newly recognized entitlement to compensation for pain and suffering under section 45 of the Act. I told the AGC that the VAC decision dated May 20, 2021 confirmed that Mr. Chartrand had provided all of the necessary information for his application on May 18, 2021, but that paragraph 18(3)(a) of the Act sets the date payable on the basis of when a veteran provided all of the prescribed information. Given that Mr. Chartrand had already provided all the documents related to his health problem as set out in subsection 17(2) of the Regulations on September 30, 2020 as part of his initial application, the only new element in this case was VAC's position on the cause of his health problem, which was under VAC's control, not Mr. Chartrand's.

[20] The AGC stated that, to be eligible for the IRB under subsection 18(1) of the Act, the veteran must first file an application under section 8 and receive a favourable decision confirming entitlement. I note that this statement is confirmed by the language of

subsection 18(1) of the Act, which states that the Minister may pay a veteran an income replacement benefit if the veteran files an application under section 8, and by the text of the IRB application form, which states that the veteran's entitlement is conditional on active participation in the rehabilitation program.

[21] Furthermore, subparagraph 17(1)(a)(iv) and subsection 17(2) of the Regulations stipulate that, for the purposes of paragraph 18(3)(a), the information that must accompany an IRB application includes any other information or document that indicates the circumstances of the veteran's health problem that the veteran considers to be relevant in support of the application. Thus, the confirmations of entitlement under section 8 and section 45 constitute the prescribed information stipulated in paragraph 18(3)(a) of the Act. In Mr. Chartrand's case, VAC determined that that prescribed information was also necessary for the favourable processing of his IRB application.

[22] As a result, in an active IRB application, the date payable for the first payment under paragraph 18(3)(a) of the Act is tied to the date of confirmation of the veteran's eligibility for the program under section 8. It does not matter that Mr. Chartrand has not submitted new documents since his initial application: Since that application was rejected in a final decision by N2LA dated April 14, 2021, he had no other choice, following the May 13, 2021 decision, but to file a new IRB application based on his eligibility for the benefit and the program under section 8, which was confirmed on May 18, 2021. And this is what he did, on May 18, 2021.

[23] Consequently, the VAC set the date payable as May 1, 2021, in accordance with the Act, because it is the first day of the month in which Mr. Chartrand provided all of the prescribed information needed to determine his entitlement. Hence, the N2LA decision dated December 14, 2021 is reasonable because it is based on an internally coherent and rational chain of analysis and is justified in light of the factual and legal constraints. The application for judicial review will be dismissed. The AGC did not insist on costs.

**JUDGMENT in T-66-22**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
without costs.

“Peter G. Pamel”

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Judge

Certified true translation  
Michael Palles

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-66-22

**STYLE OF CAUSE:** JÉRÔME CHARTRAND v ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** MATTER HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 14, 2022

**JUDGMENT AND REASONS:** JUSTICE PAMEL

**DATED:** SEPTEMBER 28, 2022

**APPEARANCES:**

Jérôme Chartrand

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Sarom Bahk

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT