

Date: 20071206

Docket: T-1825-06

Citation: 2007 FC 1278

Ottawa, Ontario, the 6th day of December 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

STEVEN D. SONIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Veterans Review and Appeal Board of Canada (the Board) dated July 25, 2006, communicated to the applicant on September 25, 2006. The decision was further to an order of the Federal Court dated June 6, 2006. The applicant was granted a partial pension of one-fifth of the total disability resulting from aggravation of his illness.

I. Facts

[2] The applicant is from Tracadie-Sheila in New Brunswick and is 56 years old. He was a full-time police officer for the municipal police of that municipality from 1981 to August 21, 1997.

[3] On August 21, 1997, the municipality of Tracadie-Sheila and the province of New Brunswick signed two agreements by which the Royal Canadian Mounted Police (RCMP) would be responsible for providing the necessary police services in the municipal territory as of the date of signature. The documents provided that regular members of the municipal police force would become regular members of the RCMP pursuant to section 20 of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10. Accordingly, the applicant was a regular member of the RCMP from August 21, 1997, until June 21, 2004.

[4] After he was hired by the RCMP, the applicant was diagnosed with a major depressive disorder resulting from his work as a police officer. On February 3, 2003, the applicant filed an application with Veterans Affairs Canada for a disability pension. This application was denied on October 29, 2003. He retired from the RCMP on June 21, 2004, due to his health problems.

[5] The applicant subsequently submitted to the Board an application for review of the decision of October 29, 2003. This application was also denied on May 6, 2005, on the same grounds as were given in the initial decision, namely, that the applicant's condition did not result from and had no direct connection with his service with the RCMP.

[6] By its decision of February 7, 2006, the Board dismissed the appeal made by the applicant from the decision of October 29, 2003, on the ground that the applicant had not provided sufficient evidence to establish that members of the former Tracadie-Sheila municipal police were eligible for a pension under the *Pension Act*, R.S.C. 1985, c. P-7, for services rendered before amalgamation with the RCMP in 1997.

[7] The applicant then filed an application in the Federal Court for judicial review of the Board's decision of February 7, 2006. It was at this stage that, for the first time, the applicant provided the evidence necessary to establish that his service with the Tracadie-Sheila police should be considered for purposes of the *Pension Act*. Based on this information, the parties agreed that the application for judicial review would be allowed. Consequently, an order was made by the Federal Court on June 6, 2006, which allowed the applicant's application, setting aside the Board's decision and referring the matter back to the same appeal panel for re-hearing and decision.

[8] After a re-hearing held on July 25, 2006, the Board appeal panel published its decision on September 25, 2006. By its decision, the panel awarded the applicant a partial pension.

II. Impugned decision

[9] In its decision, the Board explained that it was awarding the applicant a pension equivalent to one-fifth for his major depressive disorder, an amount which was intended to compensate him for the part of his condition resulting directly from his service with the RCMP.

[10] The Board noted that the applicant met the requirements of subsection 5(2) of the *Royal Canadian Mounted Police Superannuation Regulations*, C.R.C. c. 1393, and acknowledged that subsection 5(2) prevented the applicant from receiving compensation from the province of New Brunswick for his service with the RCMP.

[11] The Board explained its hesitation in granting a full and complete pension by the fact that it was not prepared to compensate the applicant for events not related to his service with the RCMP, including the diagnosis that he was suffering from cancer and high blood pressure and his wife's automobile accident in 1994. The Board accepted the report of March 27, 2003, prepared by Dr. Levesque in which the following factors contributing to the development of a major depressive disorder in the applicant were noted:

- (1) the fact that the applicant had suffered stress as a result of his wife's automobile accident in 1994;
- (2) the existence of disturbing events during his term as president of the Tracadie-Sheila police officers association;
- (3) the fear of losing his employment just before the municipal police were amalgamated in 1997: this fear of being unemployed at age 47 caused him to suffer depression; and
- (4) the news that the applicant was suffering from intestinal cancer in 2002, a fact which contributed largely to his depression.

[12] Further, the Board based its reasons in part on the following passage from *DSM-IV*, *Diagnostic and Statistic Manual of Mental Disorders*, Fourth Edition, page 342:

. . . Chronic general medical conditions are also a risk factor for more persistent episodes.

Episodes of Major Depressive Disorder often follow a severe psychological stressor, such as the death of a loved one, or divorce. Studies suggest that psychosocial events (stressors) may play a more significant role in the precipitation of the first or second episodes of Major Depressive Disorder and may play less of a role in the onset of subsequent episodes [Emphasis added.]

[13] The Board interpreted the subject passage from DSM-IV, *supra*, in light of the comments by Dr. Sylvie Levesque explaining that the applicant internalized all his problems and when he learned he was suffering from intestinal cancer, this was the last straw. Accordingly, the Board dismissed the application for a full and complete pension and concluded, pursuant to subsection 21(2.1) of the *Pension Act*, that the applicant's disability was aggravated by his service with the RCMP. It consequently awarded compensation for one-fifth of the total disability.

[14] The Board also noted that the applicant's work for the Tracadie-Sheila police officers association was voluntary, not compulsory. Based on the factors listed in Dr. Levesque's report and the DSM-IV guidelines, the Board found that the applicant was entitled to one-fifth of the total compensation sought.

[15] At the conclusion of its reasons, the Board explained that in cases where determination of psychological disability is in question, it is important to submit relevant information regarding the expertise and qualifications of the professional making the diagnosis. In the case at bar, the panel said it had received no such information. Following inquiries by panel members, it was disclosed that the College of Psychologists of New Brunswick described Dr. Levesque as an "associate" and

felt she should be supervised by a certified psychologist. Consequently, the evidentiary force of the evidence prepared by Dr. Levesque was treated with greater reserve.

III. Issues

[16] The issues in the case at bar are the following:

- A. Did the Board err in awarding a pension that was one-fifth of the total compensation sought?
- B. Did the Board err in its assessment of the evidence and, in particular, fail to comply with the rules set out in section 39 of the Act?
- C. Did the Board err in minimizing the evidentiary value of the medical report by questioning the qualifications of the physician on evidence obtained on its own initiative and on which the applicant was unable to submit arguments?

IV. Standard of review

[17] On the first issue, the discussion turned especially on the Board's finding that the medical evidence did not show that the applicant's depression resulted exclusively from his service with the RCMP, or was directly related to it. In a recent judgment, the Federal Court of Appeal held that the standard of review applicable to a question involving causal connections which allegedly resulted in an applicant's disability problems was that of patent unreasonableness (*Canada (Attorney General) v. Wannamaker*, 2007 FCA 126, at paragraph 12).

[18] On the second issue, the Federal Court of Appeal has held that the standard of review applicable to the question of whether the Board considered evidence in accordance with the

requirements of section 39 of the *Veterans Review and Appeal Board Act*, a question of mixed fact and law, is that of reasonableness *simpliciter* (*Wannamaker, supra*, at paragraph 13).

[19] Finally, the third issue is essentially to determine whether there was a breach of procedural fairness. The Federal Court of Appeal has held that the standard of review applicable to a question of procedural fairness is that of correctness (*Sketchley v. Canada (Attorney General)*, 2005 FCA 404, at paragraph 47).

V. Legislation

[20] The relevant provisions of the *Pension Act*, *Veterans Review and Appeal Board Act*, S.C. 1995, c. 18, and the *Royal Canadian Mounted Police Superannuation Act* are set out in the appendix to this judgment.

VI. Analysis

[21] In the case at bar, the Board by its decision of July 25, 2005, accepted that the applicant met the implicit eligibility criteria in section 32 of the *Royal Canadian Mounted Police Superannuation Act* and awarded him a pension. However, the applicant is disputing the proportion awarded, namely, one-fifth of the total.

[22] The applicant argues that he should be given a full and complete pension because of the conclusions of Dr. Levesque's [TRANSLATION] "psychological assessment report" (the report). The applicant contends that the Board could not rely on the passage from the DSM-IV as a basis for

contradicting Dr. Levesque's overall finding. He argues that the Board exceeded its authority by obtaining and checking, on its own initiative, the professional qualifications of the psychologist and by substituting its opinion for the finding given by Dr. Levesque. The applicant states that the Board did not give the only uncontradicted medical evidence submitted sufficient evidentiary force.

[23] Section 39 of the *Veterans Review and Appeal Board Act* requires the Board to accept any uncontradicted evidence presented to it that it considers to be credible. In the case at bar, Dr. Levesque's report was not contradicted. She arrived at the general conclusion that [TRANSLATION] "it was during his last employment, that is, with the police, that Mr. Sonier experienced various events which upset him" and that [TRANSLATION] "based on the information obtained from Mr. Sonier, his situation was due to his work with the police". At the same time, she also noted the existence of other factors not related to the applicant's service with the RCMP, as discussed above. The Board based its decision to withhold four-fifths of the total compensation in reliance on these other factors not related to the applicant's service and on the DSM-IV guidelines:

Following a thorough review of the evidence available and taking into consideration the *DSM-IV*, the Board withholds four-fifths pension entitlement based on the role played in the onset of the claimed disability by factors unrelated to the Appellant's services in the RCMP [Emphasis added.]

[24] Subsections 35(1) and (2) of the *Pension Act* provide that the amount of a disability pension is to be determined by an assessment of the extent of the disability resulting from the injury or disease in question. This assessment is made in accordance with the instructions and a

table of disabilities to be made by the Minister. To this may be added any other medical evidence that may be before the Board. These guidelines and disability tables constitute authoritative medical evidence and the Board may dismiss any other medical evidence in the event of a conflict. Further, it is well established in the case law that the guidelines allow the Board to refer to the DSM-IV, specifically authorized by the Act (*Cramb v. Canada (Attorney General)*, 2006 FC 638, at paragraph 25). In the case at bar, the Board was entitled to consider guideline DSM-IV. The Board was also entitled to assess Dr. Levesque's report in light of the DSM-IV passage and to draw the relevant conclusions from this. I feel that the Board correctly assessed and weighed the evidence in accordance with the rules set out in section 39 of the Act and did not abuse its discretion or make any reviewable error.

[25] The applicant claims that he was not given an opportunity to submit his arguments and respond to the information in the DSM-IV guideline. I cannot accept this argument. It was for the applicant to show that his case met the guidelines and to ask his physician to respond to the stated requirements in her opinion (*Gavin v. Canada (Attorney General)*, [1999] F.C.J. No. 676 (QL), at paragraph 11).

[26] On the third issue, although it might have been better for the Board to have shared the information it obtained on its own initiative on Dr. Levesque's qualifications with the applicant so he could respond, I feel that in the case at bar this infringement of the rule of procedural fairness is of no consequence. The infringement has to be considered in the context of the decision as a whole. The Board was entitled to consider all the medical evidence adduced. That evidence consisted not only of Dr. Levesque's report, but also the guidelines. In assessing the evidentiary value of the

evidence, the Board could question Dr. Levesque's qualifications. The Board did not reject Dr. Levesque's report. On the contrary, the report was considered by the Board and used as grounds for the decision to award a one-fifth pension. Even if I were satisfied that the Board had erred in minimizing the evidentiary value of Dr. Levesque's report as the result of information obtained from the College of Psychologists of New Brunswick, I feel that this error would not be significant in the Board's finding and would in no way warrant intervention by the Court.

VII. Conclusion

[27] In view of the evidence as a whole and for the reasons discussed above, I consider that, in finding as it did, the Board made no error that would warrant the Court's intervention. The application for judicial review will accordingly be dismissed.

JUDGMENT

IT IS HEREBY ORDERED that:

1. The application for judicial review is dismissed.

“Edmond P. Blanchard”

Judge

Certified true translation
Susan Deichert, Reviser

APPENDIX

Pension Act: sections 2, 21, 21(2.1) and 35(1),(2).

2. The provisions of this Act shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to provide compensation to those members of the forces who have been disabled or have died as a result of military service, and to their dependants, may be fulfilled.

.....

21(2) In respect of military service rendered in the non-permanent active militia or in the reserve army during World War II and in respect of military service in peace time,

(a) where a member of the forces suffers disability resulting from an injury or disease or an aggravation thereof that arose out of or was directly connected with such military service, a pension shall, on application, be awarded to or in respect of the member in accordance with the rates for basic and additional pension set out in Schedule I;

21(2.1) Where a pension is awarded in respect of a disability resulting from the aggravation of an injury or disease, only that fraction of the total disability, measured in fifths, that represents the extent to which the injury or disease was aggravated is pensionable. (My emphasis.)

35. (1) Subject to section 21, the amount of pensions for disabilities shall, except as provided in subsection (3), be determined in accordance with the assessment of the extent of the disability resulting from injury or disease or the aggravation thereof, as the case may be, of the applicant or pensioner.

2. Les dispositions de la présente loi s'interprètent d'une façon libérale afin de donner effet à l'obligation reconnue du peuple canadien et du gouvernement du Canada d'indemniser les membres des forces qui sont devenus invalides ou sont décédés par suite de leur service militaire, ainsi que les personnes à leur charge.

.....

21(2) En ce qui concerne le service militaire accompli dans la milice active non permanente ou dans l'armée de réserve pendant la Seconde Guerre mondiale ou le service militaire en temps de paix :

a) des pensions sont, sur demande, accordées aux membres des forces ou à leur égard, conformément aux taux prévus à l'annexe I pour les pensions de base ou supplémentaires, en cas d'invalidité causée par une blessure ou maladie — ou son aggravation — consécutive ou rattachée directement au service militaire;

21(2.1) En cas d'invalidité résultant de l'aggravation d'une blessure ou maladie, seule la fraction — calculée en cinquièmes — du degré total d'invalidité qui représente l'aggravation peut donner droit à une pension. (Je souligne).

35. (1) Sous réserve de l'article 21, le montant des pensions pour invalidité est, sous réserve du paragraphe (3), calculé en fonction de l'estimation du degré d'invalidité résultant de la blessure ou de la maladie ou de leur aggravation, selon le cas, du demandeur ou du pensionné.

.....

.....

(2) The assessment of the extent of a disability shall be based on the instructions and a table of disabilities to be made by the Minister for the guidance of persons making those assessments.

(2) Les estimations du degré d'invalidité sont basées sur les instructions du ministre et sur une table des invalidités qu'il établit pour aider quiconque les effectue.

Veterans Review and Appeal Board Act: sections 3, 38 and 39.

3. The provisions of this Act and of any other Act of Parliament or of any regulations made under this or any other Act of Parliament conferring or imposing jurisdiction, powers, duties or functions on the Board shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to those who have served their country so well and to their dependants may be fulfilled.

3. Les dispositions de la présente loi et de toute autre loi fédérale, ainsi que de leurs règlements, qui établissent la compétence du Board ou lui confèrent des pouvoirs et fonctions doivent s'interpréter de façon large, compte tenu des obligations que le peuple et le gouvernement du Canada reconnaissent avoir à l'égard de ceux qui ont si bien servi leur pays et des personnes à leur charge.

38. (1) The Board may obtain independent medical advice for the purposes of any proceeding under this Act and may require an applicant or appellant to undergo any medical examination that the Board may direct.

38. (1) Pour toute demande de révision ou tout appel interjeté devant lui, le Board peut requérir l'avis d'un expert médical indépendant et soumettre le demandeur ou l'appellant à des examens médicaux spécifiques.

(2) Before accepting as evidence any medical advice or report on an examination obtained pursuant to subsection (1), the Board shall notify the applicant or appellant of its intention to do so and give them an opportunity to present argument on the issue.

(2) Avant de recevoir en preuve l'avis ou les rapports d'examens obtenus en vertu du paragraphe (1), il informe le demandeur ou l'appellant, selon le cas, de son intention et lui accorde la possibilité de faire valoir ses arguments

39. In all proceedings under this Act, the Board shall

39. Le Board applique, à l'égard du demandeur ou de l'appellant, les règles suivantes en matière de preuve :

(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of the applicant or appellant;

a) il tire des circonstances et des éléments de preuve qui lui sont présentés les conclusions les plus favorables possible à celui-ci;

(b) accept any uncontradicted evidence presented to it by the

b) il accepte tout élément de preuve

applicant or appellant that it considers to be credible in the circumstances; and

non contredit que lui présente celui-ci et qui lui semble vraisemblable en l'occurrence;

(c) resolve in favour of the applicant or appellant any doubt, in the weighing of evidence, as to whether the applicant or appellant has established a case.

c) il tranche en sa faveur toute incertitude quant au bien-fondé de la demande.

Royal Canadian Mounted Police Superannuation Act: section 32.

32. Subject to this Part, an award in accordance with the *Pension Act* shall be granted to or in respect of

(a) any person to whom Part VI of the former Act applied at any time before April 1, 1960 who, either before or after that time, has suffered a disability or has died, or

(b) any person who served in the Force at any time after March 31, 1960 as a contributor under Part I of this Act and who has suffered a disability, either before or after that time, or has died,

in any case where the injury or disease or aggravation thereof resulting in the disability or death in respect of which the application for the award is made arose out of, or was directly connected with, the person's service in the Force. (My emphasis.)

32. Sous réserve des autres dispositions de la présente partie, une compensation conforme à la *Loi sur les pensions* doit être accordée, chaque fois que la blessure ou la maladie — ou son aggravation — ayant causé l'invalidité ou le décès sur lequel porte la demande de compensation était consécutive ou se rattachait directement au service de l'intéressé dans la Gendarmerie, à toute personne, ou à l'égard de celle-ci :

a) visée à la partie VI de l'ancienne loi à tout moment avant le 1^{er} avril 1960, qui, avant ou après cette date, a subi une invalidité ou est décédée;

b) ayant servi dans la Gendarmerie à tout moment après le 31 mars 1960 comme contributeur selon la partie I de la présente loi, et qui a subi une invalidité avant ou après cette date, ou est décédée. (Je souligne).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1825-06

STYLE OF CAUSE: STEVEN D. SONIER v. ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: Fredericton, New Brunswick

DATE OF HEARING: September 5, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** The Honourable Mr. Justice Blanchard

DATED: December 6, 2007

APPEARANCES:

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