

Federal Court



Cour fédérale

Date: 20260331

Docket: T-2632-24

Citation: 2026 FC 416

Ottawa, Ontario, March 31, 2026

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

PAUL STEPHEN BORG

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND JUDGMENT

I. INTRODUCTION

[1] Mr. Paul Stephen Borg (the “Applicant”) seeks judicial review of a Decision (the “Decision”) made on September 9, 2024, by the Minister of Employment and Social Development Canada (the “Minister”). The Decision found that no “erroneous advice or administrative error” within the scope of subsection 66(4) of the *Canada Pension Plan*, R.S.C.,

1985, c. C-8 (the “Act”), had occurred relative to his appeal rights arising from a decision made on August 24, 2020 for disability benefits (the “Benefits”).

[2] The Applicant commenced this application for judicial review on October 8, 2024, seeking the following relief:

- a) A declaration that the Decision was not reasonable and/or was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- b) In addition, or in the alternative, a declaration that the Decision represents an error of law, whether or not the error appears on the face of the record;
- c) A declaration that the Decision represents a breach of the Applicant’s section 7 Charter right to liberty and security of the person;
- d) An Order that the Applicant is entitled to retroactive CPP Disability Benefits for the period of February 2018 to August 2021 (the “Missing Entitlement”);
- e) An Order that the Applicant is entitled to interest on the Missing Entitlement;
- f) Alternatively, an Order that the decision of the Minister be referred back for redetermination in accordance with directions that this Honourable Court deems appropriate;
- g) An Order that the Applicant is entitled to damages of \$20,000.00 for the irreparable harm to the Applicant’s physical and/or psychological health as a result of the Decision;
- h) An Order that the Applicant is entitled to damages of \$10,000.00 for the breach of the Applicant’s section 7 Charter right to liberty and security of the person as a result of the Decision;
- i) An Order for costs of the within Application on a substantial indemnity basis; and
- j) Any such and further relief that his Honourable Court deems just.

[3] By Order issued on November 12, 2024, the Applicant was granted leave to amend his notice of application for judicial review to name only the Attorney General of Canada as the Respondent (the “Respondent”). An amended notice of application was filed on November 22, 2024.

[4] The issue arising from this application is whether the Applicant received a letter mailed to him on August 24, 2020, that communicated the denial of a request to reconsider denial of his request for benefits and the availability of an appeal.

II. BACKGROUND

[5] The following facts and details are taken from the affidavit of the Applicant sworn on November 22, 2024, filed in support of this application, and from the Certified Tribunal Record (the “CTR”). The Applicant attached a number of exhibits to his affidavit which form part of the evidence.

[6] The Applicant was diagnosed with Gullian-Barré Syndrome on July 18, 2018. He was no longer able to work. On November 18, 2019, he applied for disability benefits under the Act. His application was denied on March 30, 2022.

[7] On May 25, 2020, the Applicant requested reconsideration of the denial. A letter dated August 24, 2020, advised the Applicant that his reconsideration request had been denied and referred to the availability of an appeal to the General Division, Social Security Tribunal (the “Tribunal”) in respect of that negative decision.

[8] The Applicant re-applied for the benefits on August 25, 2022. His application was denied on September 8, 2022. On October 3, 2022, he asked for reconsideration of that decision.

[9] On February 8, 2023, the Applicant was granted the benefits with the beginning date in September 2021. This represents the maximum period of retroactivity allowed pursuant to paragraph 42(2)(b) of the Act.

[10] On March 29, 2023, the Applicant “appealed” to the Tribunal about the starting date of his benefits.

[11] Three “case conferences” took place between June 26, 2023, and March 8, 2024.

[12] On March 13, 2024, the Applicant applied to the Minister for relief pursuant to subsection 66(4) of the Act. Subsection 66(4) provides as follows:

Where person denied benefit due to departmental error, etc.

(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

(a) a benefit, or portion thereof, to which that person would have been entitled under this Act,

(b) a division of unadjusted pensionable earnings under section 55 or 55.1, or

(c) an assignment of a retirement pension under section 65.1, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position

Refus d’une prestation en raison d’une erreur administrative

(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) en tout ou en partie, une prestation à laquelle elle aurait eu droit en vertu de la présente loi,

b) le partage des gains non ajustés ouvrant droit à pension en application de l’article 55 ou 55.1,

c) la cession d’une pension de retraite conformément à l’article 65.1,

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.

[13] An investigation was conducted, and the Applicant was given the opportunity to make submissions. An Investigation Report included in the CTR includes the following recommendation:

Based on the balance of probabilities, the Minister is not satisfied that an administrative error occurred, or that erroneous advice was given. It is therefore recommended that the EA/AE provision under subsection 66(4) of the CPP Act not be invoked. Mr. Borg should be informed of the decision in writing and provided with the right to seek judicial review with the Federal Court.

[14] The Minister advised as follows in the Decision from Service Canada:

Dear Sir,

This is further to your claim following the Case Conference held on November 1, 2023, that you did not receive the reconsideration denial letter dated August 24, 2020, related to your first Canada Pension Plan (CPPD) application received on November 18, 2019.

A review of your allegation and your file is now complete. There is no evidence that erroneous advice or administrative error occurred for the following reasons:

- Notes on your account indicate that the reconsideration denial letter was mailed to you on August 24, 2020.
- A copy of the reconsideration denial letter was kept on file. The letter has appeal rights to the Social Security Tribunal (SST).
- A review of your account verified that your address was correct on the letter and your address has not changed since your CPPD file was created in November 2019.
- No returned or undeliverable mail has been received.

It has therefore been determined that you were not denied a benefit due to erroneous advice or administrative error under Section 66(4) of the Canada Pension Plan.

Although you may be disappointed, we hope that you understand the reasons for this decision.

III. SUBMISSIONS

A. *The Applicant*

[15] The Applicant argues that the decision of the Minister is based upon a incorrect interpretation of subsection 66(4) of the Act, that it is unreasonable, and that it amounts to a breach of his rights pursuant to section 7 of the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982, 1982, c. 11 (UK)* (the “Charter”).

[16] The Applicant submits that the Decision is unreasonable and shows that the Minister misunderstood the scope and meaning of subsection 66(4) of the Act.

[17] The Applicant also argues that his rights pursuant to section 7 of the Charter have been infringed as a result of the Decision. He submits that he has suffered psychological harm and will suffer financial hardship, as a result of the Decision.

B. *The Respondent*

[18] The Respondent contends that the Decision meets the applicable standard of review, that is reasonableness. He submits that the Decision reflects full consideration of the evidence, within

the statutory and policy limits, and that the Minister reasonably concluded, on a balance of probabilities, that no erroneous advice had been given and no administrative error occurred.

[19] The Respondent further argues that there is no evidentiary basis for the Applicant's claim for damages pursuant to the Charter. He submits that the Applicant has failed to show that section 7 of the Charter is engaged.

IV. DISCUSSION AND DISPOSITION

[20] The first issue for consideration is the standard of review.

[21] Following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the Decision is reviewable on the standard of reasonableness.

[22] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra*, at paragraph 99.

[23] The Decision was made by the Minister in the exercise of the discretion conferred by subsection 66(4) of the Act, to address situations where either erroneous advice was given or an administrative error occurred.

[24] The issue here is whether the Minister “reasonably” concluded that no administrative error occurred in the delivery of the letter of August 24, 2020 to the Applicant.

[25] Non-receipt of that letter by the Applicant impacted his right to appeal the negative decision made upon his reconsideration request. A successful appeal could have meant that he would have received the benefits earlier than he did. When the Applicant received a positive decision upon his second application and second request for reconsideration in February 2023, he was granted benefits as of September 2021 together with a retroactive payment in the amount of \$23,576.66.

[26] In a letter dated April 9, 2023, Service Canada acknowledged the Applicant’s claim for consideration, pursuant to subsection 66(4) of an administrative error by Service Canada in respect of the August 24, 2020 letter. The letter advised the Applicant that he could submit more information. The Applicant submitted a letter dated April 21, 2024, written jointly with his social worker.

[27] The “potential” administrative error here would be non-delivery of the letter of August 24, 2020. According to the Investigation Report, it was determined that the letter was sent in the usual manner to the Applicant’s address on file. The Report records the dispatch of other letters to the Applicant to his address on file and that no mail was returned to Service Canada.

[28] This history is noted in the Report as follows:

The Department is responsible for communicating decisions to the client and there is evidence on file that this was done and that

proper procedures were followed. Mr. Borg's address has not been changed since his CPPD file was created in November 2019. Furthermore, a review of correspondence on Mr. Borg's file confirms that the Department has used the same mailing address supplied by Mr. Borg for all correspondence, including the reconsideration decision letter dated August 24, 2020. No returned mail has been received.

[29] In *Bartlett v. Canada*, 2012 FCA 230, the Federal Court of Appeal commented about the burden on the Minister when dealing with a question of administrative error, at paragraph 40, as follows:

[40] In normal circumstances, the respondent may discharge this burden by showing that the letter was mailed to the appellant at the address to which prior correspondence had been delivered. When a government official sends a letter to the address to which prior correspondence has been successfully delivered, it seems logical to assume that the appellant received it. If, however, the appellant denies receiving it, then the whole of the circumstances should be examined to determine whether the allegation of non-receipt is credible. If it is, then that is the end of the matter as far as that letter is concerned. In this case, it is not apparent from the judgment that this examination was carried out by the Federal Court judge.

[30] In *Bartlett, supra*, the Court addressed the scope of the remedial power available to the Minister when an administrative error has been found. The paragraph cited above addresses how the Minister can respond to an allegation about an administrative error.

[31] I agree with the Respondent's submissions that the record in this case shows that the Minister reasonably considered the evidence that was available about the dispatch of correspondence to the Applicant.

[32] In *King v. Canada (Attorney General)*, 2010 FCA 122 (CanLII), at paragraph 11 the Federal Court of Appeal spoke about the circumstances in which subsection 66(4) operates to provide relief:

That said, for subsection 66(4) of the Plan to have any application, the alleged administrative error must have resulted in the denial of a benefit the appellant was entitled to. This requires the pleadings to assert a factual foundation for the allegation the administrative error is what led the Minister to reach the wrong conclusion about the appellant's entitlement to remedial action. ...

[33] Access to subsection 66(4) of the Act is fact dependent. It is up to the Minister or his delegate to weigh the evidence in deciding if an administrative error occurred. In this case, the Applicant claims that he did not receive the letter of August 24, 2020, but the records of Service Canada show that other letters were sent to the Applicant's address on file, without problem.

[34] In the face of the evidence held by Service Canada and no evidence to show any sustained interruption of postal services in Ontario in August 2020, the Minister reasonably concluded that no administrative error within the scope of subsection 66(4) had been established.

[35] I am satisfied that the Decision meets the standard of reasonableness.

[36] I turn now to the Applicant's claim that his right to liberty and security of the person, pursuant to section 7 of the Charter, has been breached, thereby giving rise to a claim for damages.

[37] I agree with the position of the Respondent that section 7 of the Charter is not engaged here. I refer to the decision in *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at pages 361-62 as follows:

Charter decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Charter* and inevitably result in ill-considered opinions. The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of *Charter* issues. A respondent cannot, by simply consenting to dispense with the factual background, require or expect a court to deal with an issue such as this in a factual void. *Charter* decisions cannot be based upon the unsupported hypotheses of enthusiastic counsel.

[38] There is no factual foundation here to support a claim for the engagement of section 7. It follows that there is no basis to engage in an assessment of a breach of section 7.

[39] In *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 at paragraph 59, the Supreme Court of Canada commented about the invocation of section 7 in respect of psychological harm, as follows:

Delineating the boundaries protecting the individual's psychological integrity from state interference is an inexact science. Dickson C.J. in *Morgentaler*, supra, at p. 56, suggested that security of the person would be restricted through "serious state-imposed psychological stress" (emphasis added). Dickson C.J. was trying to convey something qualitative about the type of state interference that would rise to the level of an infringement of this right. It is clear that the right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action. If the right were interpreted with such broad sweep, countless government initiatives could be challenged on the ground that they infringe the right to security of the person, massively expanding the scope of judicial review, and, in the process, trivializing what it means for a right to be constitutionally protected. ...

[40] These observations apply here.

[41] Although the application for judicial review will be dismissed, it is appropriate to address the Applicant's claim for damages, had he been successful.

[42] In his prayer for relief, the Applicant sought damages. He claimed damages in the amount of \$20,000.00 for damage to his physical or psychological health. He also claimed damages in the amount of \$10,000.00 for breach of his section 7 Charter right to liberty and security of the person, resulting from the Decision.

[43] The general rule is that damages are not available upon an application for judicial review; see the decision in *Canada (A.G.) v. Telezone Inc.*, [2010] 3. S.C.R. 585.

[44] The Applicant here brought an application for judicial review, not an action for damages. The remedies upon judicial review are set out in section 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

V. CONCLUSION

[45] I am satisfied that the Decision of the Minister meets the applicable standard of review, that is reasonableness. There is no evidence to support a claim for a breach of section 7 of the Charter. There is no basis for judicial intervention and the application for judicial review will be dismissed.

[46] The Respondent does not seek costs, and no costs will be awarded.

JUDGMENT IN T-2632-24

THIS COURT'S JUDGMENT is that that the application for judicial review is dismissed. There is no Order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2632-24

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OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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