

IMPORTANT NEWS FOR VETERANS WITH DISABILITY CLAIMS

(By Ron Gladstone)

A recent ruling by Chief Justice Richard and concurred in by Justices J.A. Linden and J.A. Ryder of the Federal Court of Appeal in Winnipeg, is of significant interest to all Veterans who have been refused compensation for disabilities incurred while in service to Canada. In effect it finds that Veterans Affairs had instituted guidelines under the Minister's Table of Disabilities for granting claims that were not in accordance with legal provisions of the Pension Act.

This all arose when Larry W. Nelson, on having been turned down by the Board for a claim based on hearing loss, applied for a judicial review of a decision by the Veterans Review and Appeal Board (VRAB) that denied him disability benefits under subsection 21(2) of the Pensions Act. The Honourable Mr Justice O'Keefe, after considering all the evidence directed that the VRAB decision be set aside and the matter referred to a different panel of VRAB for redetermination. This judgement was appealed by the Attorney General of Canada who wanted this judgement set aside.

The Federal Court of Appeal supported the judgement of Mr Justice O'Keefe because – “Section 2 requires that the provisions of the Act be liberally construed and interpreted to recognize Canada's obligation to provide compensation to those members of the forces who have been disabled or have died as a result of military service. Section 5 of the Act is also aimed at making the application process as informal and expeditious as possible, requiring the Minister to draw every reasonable inference in favour of the applicant and to resolve any doubt in favour of the applicant when weighing the evidence”. Accordingly the Government's Appeal was denied and, significantly, they were required to pay all the costs of Mr Nelson. Indeed, in this judgement the Justices went even further and did not restrict this finding to hearing loss but to ALL disabilities suffered as the result of Service in the Armed Forces of Canada.

What does this mean to us? It means that, if you have been turned down for disability compensation in the past on grounds based on the “Minister's Guidelines” which attempted to supersede the Acts provisions you now have grounds for appeal (or additional appeals) to Veterans Affairs. In doing so you may wish to quote: Canadian (Attorney General) v. Nelson, 2007 FCE (CanLII) dated 2007-05-25