

FEDERAL COURT

BETWEEN:

JONATHAN PELLETIER

Applicant

and

**VETERANS REVIEW AND APPEAL BOARD CANADA and
ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR
ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: November 28, 2023

Issued by: (*Registry Officer*)
Federal Court
Canadian Occidental Tower
635 Eighth Avenue SW
3rd Floor, P.O. Box 14
Calgary, AB T2P 3M3

TO:

Attorney General of Canada
Department of Justice
Prairie Region
National Litigation Sector
300, 10423 – 101 Street SW
Edmonton, AB T5H 0E7

APPLICATION

1. This is an Application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, (RSC 1985, c F-7) in respect of Decision Number 100004947897 (the “**Decision**”) of the Veterans Review and Appeal Board Canada (the “**Board**”), dated June 27, 2023, which was communicated to the Applicant, Jonathan Pelletier (the “**Pelletier**”), on or about July 5, 2023.

2. In the Decision, the Board denied Pelletier’s application for a Critical Injury Benefit pursuant to section 44.1 of the *Veterans Well-being Act* (SC 2005, c 21) on the basis that the Injury (defined below): (1) did not require complex treatments; and (2) did not cause a severe impairment and interference in Pelletier’s quality of life.

THE APPLICANT MAKES APPLICATION FOR:

3. An Order:
- a. quashing or setting aside the Decision;
 - b. in the nature of *mandamus*, requiring the Board to grant Pelletier the full compensation claimed by same with respect to the Injury (defined below);
 - c. for costs of this Application; and,
 - d. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

4. Pelletier served as an infantryman and military police officer from July 1996 to December 2017, including in Special Duty Areas such as Bosnia, Cyprus, and Afghanistan.

5. On June 28, 2016, Pelletier suffered a fractured left femur from a fall while participating in mandatory team sports as part of his duties (the “**Incident**”).

6. An orthopedic surgeon diagnosed Pelletier with a “left hip femoral neck fracture in patient with previous hip resurfacing” (the “**Injury**”). Pelletier required complex surgery as a result of the Injury, including a total hip replacement, and was hospitalized for four days.

7. The procedural history of this matter is as follows:

- a. on August 25, 2016, Pelletier applied for a Critical Injury Benefit in respect of the Injury;
- b. on February 9, 2017, Veterans Affairs Canada (“**VAC**”) denied Pelletier’s application for the Critical Injury Benefit (the “**VAC Decision**”);
- c. on February 14, 2018, a Review Panel of the Board upheld the VAC Decision on the basis that the Injury: (1) was not the result of a “sudden and single incident”; and (2) did not require “complex” treatments within the meaning of section 48.3(h) of the *VWA Regulations* (SOR/2006-50) (the “**Review Decision**”);
- d. on June 3, 2021, an Appeal Panel of the Board found that the Injury *did* require complex treatments and cause a severe impairment and interference with Pelletier’s quality of life, but denied the Critical Injury Benefit on the basis that the Injury *was not* the result of a “sudden and single incident” (the “**Appeal Decision**”);
- e. on July 7, 2022, Pelletier’s application for judicial review was granted (the “**Judicial Review Decision**”), with the Court finding that the Appeal Decision was unreasonable because, *inter alia*:
 - i. there was no evidence before the Appeal Panel that Pelletier’s prior hip problems caused or contributed to the Injury;
 - ii. the Review Panel drew impermissible factual inferences about the cause of the Injury in the absence of medical knowledge or expertise; and

- iii. the *Veterans Well-being Act* (SC 2005, c 21) and *Veterans Review and Appeal Board Act* (SC 1995, c 18) prevented the Board from drawing inferences against Pelletier in the face of credible uncontroverted evidence.
 - f. the matter was remitted to the Board, and on June 27, 2023, a fresh Appeal Panel released the Decision that is the subject of this Application, finding that although the Injury *was* the result of a “sudden and single incident”, it did *not* require complex treatments or cause a severe impairment and interference in Pelletier’s quality of life. The latter two findings were contrary to those reached by the first Appeal Panel on the same evidence.
8. The Applicant submits that the Board erred:
- a. in law in its application of the *Veterans Review and Appeal Board Act* (SC 1995, c 18) by failing to correctly apply: (1) the mandatory rules of evidence set out in section 39 of same, including by drawing medical inferences that were not supported by the evidence; and (2) the mandatory rules of construction set out in section 3 of same;
 - b. in law and/or fact, or was otherwise unreasonable, in finding that Pelletier did not require the assistance of at least one person to perform at least three activities of daily living for a minimum of 112 consecutive days, given his uncontroverted evidence that, during the relevant period of time, he required the assistance of his spouse for, *inter alia*: (1) personal hygiene below the knee; (2) dressing his lower body; (3) moving from a prone to sitting position; and (4) driving;
 - c. in law and/or fact, or was otherwise unreasonable, in finding that the Injury did not require complex treatments, despite uncontroverted evidence from Pelletier’s orthopedic surgeon that the Injury required “chirurgie COMPLEXE comprenant multiples interventions”;

- d. in law and/or fact, or was otherwise unreasonable, in finding that the Injury did not require complex treatments, which was contrary to the conclusion reached by the Appeal Panel on the same evidence, despite the Board failing to provide reasons for the discrepancy or acknowledge same; and
- e. such further and other errors as counsel may advise and this Honourable Court may permit.

9. The Applicant will rely on the *Federal Courts Act* (RSC 1985, c F-7), the *Veterans Review and Appeal Board Act* (SC 1995, c 18), the *Veterans Well-being Act* (SC 2005, c 21), any amendments to and regulations under those Acts, the *Federal Courts Rules* (SOR/98-106, as amended), and such further and other grounds as the Applicant may submit and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- 10. Decision number 100004947897 of the Board;
- 11. The relevant portions of the record before the Board; and,
- 12. Such further and other information as counsel may advise and this Honourable Court may permit;

13. The Applicant requests that the Board, pursuant to Rule 317 of the *Federal Courts Rules* SOR/98-206, as amended), send a certified copy of all material in its possession relevant to the within Application including the Statement of Case, medical literature, and reports, statements, and examinations by medical professionals and witnesses be sent to the Applicant, and to the Registry.

All of which respectfully submitted this 28th day of November 2023



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