

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180912

Docket: A-412-17

Citation: 2018 FCA 164

**CORAM: NADON J.A.
STRATAS J.A.
BOIVIN J.A.**

BETWEEN:

TYRONE EUVERMAN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on September 12, 2018.
Judgment delivered from the Bench at Vancouver, British Columbia, on September 12, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on September 12, 2018).

STRATAS J.A.

[1] The Appeal Division of the Social Security Tribunal refused the appellant leave to appeal from the General Division's denial of disability benefits: see 2017 SSTADIS 98 and 2016 SSTGDIS 50.

[2] Leave to appeal to the Appeal Division may be had on the basis of only certain grounds: *Department of Employment and Social Development Act*, S.C. 2005, c. 34, ss. 58(1). The Appeal Division found that none of these grounds were present. It refused leave to appeal.

[3] In response, the appellant applied to the Federal Court for judicial review. By judgment dated November 20, 2017, the Federal Court (*per* Manson J.) dismissed the application: 2017 FC 1054. The Federal Court held that the refusal of leave was reasonable, supported as it was by the statutory provisions, case law and evidence in the case.

[4] The appellant appeals to this Court.

[5] In oral argument, the appellant pointed to various conditions and circumstances, his difficulties in maintaining employment and the cruel discrimination he has experienced in the workplace. This was before the General Division, but based on a weighing of all the evidence before it, it found that the appellant did not meet the tough and stringent legal test for disability – *i.e.*, incapability of regularly pursuing any substantially gainful occupation around the minimum qualifying period defined under the Act (here, December 31, 2008).

[6] Key to the General Division's decision was a doctor's determination that the appellant was fit to return to employment just before the minimum qualifying period, the relevant time for assessing the appellant's eligibility for disability benefits. During argument, we were taken to evidence in July-August, 2007 that suggests that the appellant could work but at reduced hours.

[7] In noting these things, in no way do we minimize the appellant's great difficulties. But on appeal, our powers in a case like this are limited: all we can do is examine whether the evidence was considered in a defensible way against the proper legal test. This happened here. On appeal, we are not allowed to reweigh the evidence.

[8] Therefore, the appeal will be dismissed. We see no basis upon which we can interfere with the judgment of the Federal Court. The Federal Court properly chose reasonableness as the standard of review and properly applied this deferential standard to the decision of the Appeal Division. Indeed, we agree with the analysis of the Federal Court.

[9] We would like to compliment the appellant on his intelligent, thoughtful and articulate presentation in court.

[10] As the respondent does not seek costs, none shall be awarded.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-412-17
STYLE OF CAUSE:	TYRONE EUVERMAN v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	SEPTEMBER 12, 2018
REASONS FOR JUDGMENT OF THE COURT BY:	NADON J.A. STRATAS J.A. BOIVIN J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

Tyrone Euverman	FOR THE APPELLANT (ON HIS OWN BEHALF)
Marcus Dirnberger	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT
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