

Date: 20071031

Docket: A-475-06

Citation: 2007 FCA 347

**CORAM: RICHARD C.J.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

DONALD LABRECQUE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on October 30, 2007.

Judgment delivered at Ottawa, Ontario, on October 31, 2007.

REASONS FOR JUDGMENT BY:

NADON J.A.

CONCURRED IN BY:

**RICHARD C.J.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

NADON J.A.

[1] This is an application for judicial review of a decision of the Pension Appeals Board (the “Board”) dated July 31, 2006 (PAB File No. CP23117).

[2] In dismissing the applicant’s appeal from a decision of a Review Tribunal dated July 30, 2003, the Board concluded that the applicant’s disability, i.e. mid-thoracic back pain, was not “severe” as required by paragraph 42(2)(a) of the *Canada Pension Plan* (the “Plan”) and that, as a

result, he was not incapable of regularly pursuing any substantially gainful occupation. Thus, in the Board's view, the applicant was not entitled to a disability pension under the Plan.

[3] In so concluding, the Board considered the applicant's personal characteristics, his medical condition and the fact that he had elected to stop physiotherapy treatment and not attempted to retrain or obtain employment since leaving the workforce.

[4] In our view, on the evidence before it, it was unquestionably open to the Board to conclude as it did. Further, we are satisfied that the Board reached its conclusion only after a careful review of both the evidence and the relevant case law.

[5] Consequently, we have not been persuaded that in reaching its ultimate conclusion, the Board made any error, either of fact or of law, which would allow us to intervene. The application will therefore be dismissed.

[6] As the respondent is not seeking costs, no such order will be made.

“M. Nadon”

J.A.

“I agree.
J. Richard C.J.”

“I agree.
J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-475-06

STYLE OF CAUSE: DONALD LABRECQUE v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Ottawa, ON

DATE OF HEARING: October 30, 2007

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: RICHARD C.J.
PELLETIER J.A.

DATED: October 31, 2007

APPEARANCES:

Donald Labrecque THE APPLICANT ON HIS OWN
BEHALF

Jennifer Hockey FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada