Date: 20080218

Docket: A-31-05

Citation: 2008 FCA 64

CORAM: **DESJARDINS J.A.**
NOËL J.A.
TRUDEL J.A.

BETWEEN:

GERALDINE GALLANT

Applicant

and

MINISTER OF HUMAN RESOURCES DEVELOPMENT

Respondent

Heard at Fredericton, New Brunswick, on February 18, 2008.

Judgment delivered from the Bench at Fredericton, New Brunswick, on February 18, 2008.

REASONS FOR JUDGMENT OF THE COURT BY: DESJARDINS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Fredericton, New Brunswick, on February 18, 2008)

DESJARDINS J.A.

[1] This is an application for judicial review of a decision of the Pension Appeals Board (PAB) which found that the applicant did not have a disability as defined in paragraph 42(2)(a) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8, at the minimum qualification period of December 31, 1996.

[2] The applicant applied for a Canada Pension Plan disability benefit on July 14, 2000. She states that she was last employed as an office clerk and stopped working in November, 1975 due to

pregnancy. She indicates that her main disabling conditions were chronic fatigue syndrome and multiple food and chemical allergies.

[3] Until the applicant became ill, she was healthy, outgoing and very energetic. On account of her illness, she abandoned exercising. Her walks are now limited to around the block. She lacks energy.

[4] The applicant claims that the PAB's decision is patently unreasonable considering that all the medical evidence points to the fact that she is suffering from an ailment that prevents her from obtaining any substantially gainful occupation.

[5] The Board considered not only the medical evidence but all the evidence, and concluded at para. 36-38:

> [36] I bear these factors in mind: Mrs. Gallant retired from the work force in 1975 to bear and raise her children; with the assistance of her husband, she did all of the housework; she was engaged, to a limited degree, in society outside of her home; she was actively engaged in the teaching of scripture to her daughter and other young women in her church; she furthered her education by taking the business course in 1975 and the upgrading of her high school credits in 1994-95; and in July, 1998, Dr. McKelvey, a neurologist, recommended that she maintain and increase her physical and mental activity, indicated that she was successful on her minimental status examination, that she did fairly well remembering elements of short paragraphs put to her, and that she performed fairly well on the Stroup test, a fairly demanding test of concentration. On this last aspect of the matter, Dr. Renaud explained the tests administered by Dr. McKelvey's and the results of those tests.
>
> [37] There was no evidence of any attempt by the Appellant to obtain employment at or about the MQP or at any time after that, or of any attempt by her to retrain so that she could apply for employment although it is apparent from her evidence that she is educable.

> [38] In the main, I agree with the Review Tribunal. In my opinion Mrs. Galland, whatever the state of her health may be now, did not have a disability as defined in Paragraph 42(2)(a) of the *Plan* at the MQP, i.e., December, 1996.

[6] In *Inclima* v. *Canada (Attorney General)*, 2003 FCA 117, Pelletier J.A., for the Court stated:

> ¶ 2 Subsection 42(2) of *Canada Pension Plan*, *supra*, says that a person is severely disabled if that person "is incapable regularly of pursuing any substantially gainful occupation". In *Villani* v *Canada* [2002] 1 F.C. 130 at paragraph 38, this court indicated that severe disability rendered an applicant incapable of pursuing with consistent frequency any truly remunerative employment.
>
> ¶ 3 This was put into context in paragraph 50 of the same decision where the following appears:
>
> > This restatement of the approach to the definition of disability does not mean that everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Claimants still must be able to demonstrate that they suffer from a "serious and prolonged disability" that renders them "incapable regularly of pursuing any substantially gainful occupation". Medical evidence will still be needed *as will evidence of employment efforts and possibilities*. (emphasis added)
>
> Consequently, an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but where, as here, there is evidence of work capacity, must also show that efforts at obtaining and maintaining employment have been unsuccessful by reason of that health condition.
>
> (italics in original, underline is my emphasis)

[7] The Board first found the applicant was educable and thus she had not discharged her burden of bringing forward evidence to support a finding that, on or prior to December 31, 1996, she was suffering from a severe and prolonged medical condition of indefinite duration which precluded her from regularly pursuing any substantially gainful occupation.

[8] This is not a case which warrants our intervention. We are incapable of finding that the Board rendered a patently unreasonable decision in concluding as it did.

This application will be dismissed. The respondent is not asking for costs.

"Alice Desjardins"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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