

Date: 20081203

Docket: A-581-07

Citation: 2008 FCA 377

**CORAM: DÉCARY J.A.
LÉTOURNEAU J.A.
NOËL J.A.**

BETWEEN:

BRENT WARREN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Hearing held by video-conference
Between Montréal, Quebec and St. John's, Newfoundland and Labrador, on December 2, 2008.

Judgment delivered at Montréal, Quebec, on December 3, 2008.

REASONS FOR JUDGMENT BY:

DÉCARY J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
NOËL J.A.**

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REASONS FOR JUDGMENT

DÉCARY J.A.

[1] This is an application for judicial review of a decision of the Pension Appeals Board (the Board) 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, 2002.

[2] The applicant essentially alleges that the Board erred in law by requiring objective medical evidence where an applicant suffers from chronic pain and in any event that the Board made an unreasonable finding in not giving sufficient weight to some of the medical evidence.

[3] It is now settled law that the Board's interpretation of what is needed in law to establish disability should be reviewed for correctness, and that the Board's determination of whether an applicant was disabled should be reviewed for reasonableness.

[4] In the case at bar, the Board made no error in law in requiring objective medical evidence of the applicant's disability. It is well established that an applicant must provide some objective medical evidence (see section 68 of the *Canada Pension Plan Regulations*, C.R.C., c. 385, and *Inclima v. Canada (Attorney General)*, 2003 FCA 117; *Klabouch v. Minister of Social Development*, 2008 FCA 33; *Canada (Minister of Human Resources Development) v. Angheloni*, [2003] F.C.J. No. 473 (QL)).

[5] There was evidence before the Board that while the applicant could not return to his old job, he could seek "sitting/light duty jobs" (see *Klabouch*, supra).

[6] There was also before the Board evidence that the applicant had failed, without giving any explanation, to abide by and submit to treatment recommendations.

[7] The function of this Court is not to reweigh the factors considered by the Board, nor to review the decision on the merits (see *Janzen v. Attorney General of Canada*, 2008 FCA 150).

[8] As I have not been persuaded that the Board committed any reviewable error, I would dismiss this application. No costs were sought by the respondent.

“Robert Décary”

J.A.

“I agree.

Gilles Létourneau J.A.”

“I agree.

Marc Noël J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-581-07

(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE PENSION APPEALS BOARD, DATED NOVEMBER 16, 2007, DOCKET NO. CP24790)

STYLE OF CAUSE: Brent Warren v. The Attorney
General of Canada

MOTION DEALT BY VIDEO-CONFERENCE WITH APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY: DÉCARY J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
NOËL J.A.

DATED: December 3, 2008

APPEARANCES:

E. Mark Rogers FOR THE APPLICANT

Joel Robichaud FOR THE RESPONDENT

SOLICITORS OF RECORD:

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