

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20110608

Docket: A-200-10

Citation: 2011 FCA 195

**CORAM: BLAIS C.J.
SHARLOW J.A.
TRUDEL J.A.**

BETWEEN:

BALVIR GILL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on June 7, 2011.

Judgment delivered at Vancouver, British Columbia, on June 8, 2011.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

BLAIS C.J.
SHARLOW J.A.

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REASONS FOR JUDGMENT

TRUDEL J.A.

[1] Following an injury sustained at work in 2001, the applicant applied for a disability pension under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (Plan). Her request was denied originally and upon reconsideration by Human Resources Development Canada. Her successive appeals to the Review Tribunal and the Pension Appeals Board (Board) were unsuccessful. This is an application for judicial review of the Board's negative decision, dated April 27, 2010.

[2] Pursuant to subsection 42(2) of the Plan, a person can be considered disabled only if he or she has a severe and prolonged mental or physical disability. The onus is on the applicant to establish disability under the Plan.

The applicant's position

[3] Ms. Gill was present at the hearing of this application, but her husband addressed the Court on her behalf. The applicant raises issues of procedural fairness, as well as other errors committed by the Board in assessing the evidence. In particular, Ms. Gill, now for the first time, complains about interpretation problems while in front of the Board. She states that the Punjabi interpreter did not properly convey her testimony and position to the Board and that he interchangeably used Punjabi and Hindi words making it difficult for her to understand the questions she had to answer. She also feels that the respondent's medical expert, Dr. Rowan, was biased as "he appeared cold... treated this case as if it was unimportant... and heavily influenced the decision of the [Board]" by giving a "negative synopsis" [of her file] (see application for judicial review, at paragraph 2 and applicant's memorandum of fact and law, at paragraph 20).

[4] On the merits of her application, the applicant feels that the opinion of her family doctor, Dr. Shu, should have been preferred.

Analysis

[5] Although I sympathise with Ms. Gill's plight, I am of the view that her application cannot succeed.

[6] To begin with, the problems of interpretation at the hearing should have been raised at the first opportunity: *Mohammadian v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 371. Considering the nature of Ms. Gill's complaint, I fail to see why she did not immediately tell the Board that she did not understand the questions.

[7] The applicant's husband, who was present and is fluent in English and Punjabi, states that he "noticed that the interpreter (...) was not correctly translating, [adding that] several things that my wife explained were not properly conveyed to the Panel." Mr. Gill also claims that he was "not allowed to speak or correct the interpreter's faulty translation" (applicant's record, affidavit of Mr. Gill, at pages 14 and following). Yet, this issue was not put to the Board by the applicant. Moreover, there are no examples on record permitting this Court to assess the nature of the interpreter's alleged difficulties and their consequences, if any, on the impugned decision. Therefore, I would not allow the application on this ground.

[8] Regarding the allegations of bias directed at Dr. Rowan, I conclude that the applicant has failed to show that Dr. Rowan had a predisposition against her that would have tainted his objectivity resulting in the Board being misled as to the contents of the applicant's medical records or being negatively influenced in its decision. Dr. Rowan was called by the respondent to provide the Board with his assessment of the medical evidence on record. He was not asked to give his opinion as to whether the applicant was disabled within the meaning of the Plan and there is no evidence that he did so.

[9] As to the merits of Ms. Gill's claim, the Board noted, as the Review Tribunal had before it, that, in every year after her accident, Ms. Gill filed income tax returns showing self-employment income earned for babysitting two grandchildren at her home. On the basis of that evidence, the Board found that her disability was not severe, as she was not incapable of regularly pursuing any substantially gainful occupation. On the record, it was reasonably open to the Board to reach that conclusion and to consider it unnecessary to conduct a detailed review of the medical evidence.

[10] However, I note that the Review Tribunal, preferring "the findings of Dr. Lui and Dr. How over the evidence of Ms. Gill concerning her symptoms," had already concluded that Ms. Gill's disability was also not prolonged, that is likely to be long continued and of indefinite duration or likely to result in death. Based on the evidence, it found that her initial injury had been resolved (Review Tribunal's decision, at paragraphs 46 and 42).

Conclusion

[11] In my view, the Board's decision was reasonable and fell within a range of possible acceptable outcomes, which are defensible in respect of the facts and the requirements of the Plan (*Dunsmuir v. New Brunswick*, 2008 SCC 9; [2008] 1 S.C.R. 190, at paragraph 47). Therefore, I would dismiss the application for judicial review, but without costs as the respondent is seeking none.

[12] At the request of the respondent, the style of cause has been amended to name the Attorney General of Canada as the proper respondent.

"Johanne Trudel"

J.A.

"I agree
Pierre Blais C.J."

"I agree
K. Sharlow J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-200-10

STYLE OF CAUSE: Balvir Gill v.
Attorney General of Canada

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: June 7, 2011

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: BLAIS C.J.
SHARLOW J.A.

DATED: June 8, 2011

APPEARANCES:

Balvir Gill ON HER OWN BEHALF

Dale Noseworthy FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada