

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20111013

Docket: A-318-10

Citation: 2011 FCA 281

**CORAM: NADON J.A.
SHARLOW J.A.
DAWSON J.A.**

BETWEEN:

BARBARA EVANS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

SUSAN KOROTASH

Respondent

and

MINISTER OF HUMAN RESOURCES AND SKILLS DEVELOPMENT

Respondent

Heard at Edmonton, Alberta, on October 12, 2011.

Judgment delivered at Edmonton, Alberta, on October 13, 2011.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

**NADON J.A.
SHARLOW J.A.**

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] The Pension Appeals Board (Board) in Appeal CP25866 determined that Barbara Evans had not cohabited with a deceased contributor to the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (Plan) continuously in a conjugal relationship for 12 months prior to the contributor's death. In consequence, Ms. Evans did not fall within the definition of "common-law partner" contained in subsection 2(1) of the Plan. As a result, pursuant to subsection 42(1) of the Plan, the Board concluded that the deceased contributor's separated legal spouse was entitled to survivor's benefits under the Plan.

[2] Ms. Evans did not appear at the hearing of this application and for that reason the Court relied solely upon her written submissions. Both respondents appeared by counsel. On this application for judicial review of the Board's decision Barbara Evans argues that the Board:

- a. used the wrong legal test in defining "common law partner" by using the wrong definition of "cohabitated";
- b. failed to give proper weight to the evidence before it; and
- c. imputed that she was not credible because she didn't appear at the hearing.

[3] Central to the Board's decision was its finding that:

Ms. Evans chose not to attend either this hearing or the proceedings before the Review Tribunal; nor did she appoint a representative in spite of bearing the onus of proving her claim. Consequently, this panel could only look at the documents she submitted to consider

whether she met the evidentiary onus of establishing her claim to have cohabited continuously with the deceased for at least 12 months up to the date of his death. Without having the benefit of observing how such sometimes inconsistent and contradictory statements would stand up to cross-examination, this panel is unable to accord much weight to that evidence.

[4] Ms. Evans has not shown this finding to be unreasonable. There was conflicting evidence before the Board concerning when Ms. Evans resumed her relationship with the deceased contributor. The Board was entitled to weigh the evidence and find that Ms. Evans had not met the onus of proof upon her when she did not attend before it to resolve the conflicting documentary evidence she had submitted in support of her claim. For this reason, contrary to Ms. Evans' submissions, the Board neither failed to give proper weight to the evidence before it, nor made any credibility finding against Ms. Evans.

[5] It is not necessary to consider Ms. Evans' submission that the Board applied the wrong legal test by using an incorrect definition of "cohabited" because the Board made no error of law when it stated that Ms. Evans bore the evidentiary onus of establishing that she cohabited continuously with the deceased for at least 12 months prior to his death. The Board's finding that Ms. Evans failed to meet her evidentiary burden because she failed to resolve inconsistencies and contradictions in the documents she had submitted was fatal to her claim.

[6] For these reasons, I would dismiss the application for judicial review with costs payable by Ms. Evans to the respondent Susan Korotash. The Attorney General of Canada did not seek costs and no costs should be awarded to him.

“Eleanor R. Dawson”

J.A.

“I agree
M. Nadon J.A.”

“I agree
K. Sharlow J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-318-10

STYLE OF CAUSE: BARBARA EVANS v.
ATTORNEY GENERAL OF CANADA et al.

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: October 12, 2011

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: NADON J.A.
SHARLOW J.A.

DATED: October 13, 2011

APPEARANCES:

No Appearance

FOR THE APPELLANT

Mr. Michael Stevenson

FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA AND OTHER FEDERAL
RESPONDENTS

Ms. Lesley Tough

FOR THE RESPONDENT SUSAN
KOROTASH

SOLICITORS OF RECORD:

N/A

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(self-represented)

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FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA AND OTHER
FEDERAL RESPONDENTS

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FOR THE RESPONDENT SUSAN
KOROTASH