

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190606

Docket: A-107-18

Citation: 2019 FCA 168

**CORAM: DAWSON J.A.
WOODS J.A.
LASKIN J.A.**

BETWEEN:

MICHELLE MACKEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at St. John's, Newfoundland and Labrador, on May 30, 2019.

Judgment delivered at Ottawa, Ontario, on June 6, 2019.

REASONS FOR JUDGMENT BY:

LASKIN J.A.

CONCURRED IN BY:

**DAWSON J.A.
WOODS J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190606

Docket: A-107-18

Citation: 2019 FCA 168

**CORAM: DAWSON J.A.
WOODS J.A.
LASKIN J.A.**

BETWEEN:

MICHELLE MACKEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

LASKIN J.A.

[1] Michelle Mackey applies to this Court for judicial review of a decision of the Appeal Division of the Social Security Tribunal of Canada (Tribunal File Number AD-16-1168), dismissing an appeal by Ms. Mackey from a decision of the Tribunal's General Division. The General Division had dismissed her appeal from a reconsideration decision of the Minister of Employment and Social Development, denying her application for a disability pension under the *Canada Pension Plan*, R.S.C. 1985, c. C-8.

[2] To qualify for a disability pension under the CPP, an applicant must, as of his or her minimum qualifying period date, have a disability that is both severe and prolonged, as defined in the CPP. By subparagraph 42(2)(a)(i) of the CPP, a disability is severe “only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation.” Ms. Mackey based her application for a disability pension on a back injury she suffered in a 2010 workplace accident and on related chronic pain, which she claimed made her incapable of doing any work. Her minimum qualifying period date was December 31, 2012.

[3] The General Division found that Ms. Mackey had failed to establish on a balance of probabilities that she had a severe disability as of that date. In dismissing her appeal, the Appeal Division concluded that the General Division made no reversible error in making this determination. It also rejected Ms. Mackey’s submission that the General Division denied her procedural fairness in conducting the hearing before it by teleconference.

[4] In her application to this Court, Ms. Mackey submits that the Appeal Division erred by failing to consider certain medical evidence supporting her claim. She asks that the Court “once again review medical reports stating that [she] was unable to work” (applicant’s memorandum, page 4).

[5] In my view, the application cannot succeed.

[6] Ms. Mackey is essentially asking this Court to redo the analysis of the evidence carried out by the General Division and reviewed on appeal by the Appeal Division, and to find that she had, or has, a severe and prolonged disability. There are two problems with this request.

[7] First, as noted above, the question of severe and prolonged disability must be determined as of the minimum qualifying period date, not as of the current date or the date of the Appeal Division's decision. To the extent that Ms. Mackey asks us to find that she currently has a disability, that is not a finding that would assist her.

[8] Second, and in any event, it is not our role on judicial review of a decision of the Appeal Division to decide afresh the applicant's entitlement to a disability pension. Instead, our task is to determine whether the decision of the Appeal Division was reasonable: *Cameron v. Canada (Attorney General)*, 2018 FCA 100 at para. 3. Unless its decision was unreasonable, we cannot intervene. We cannot, therefore, give effect to Ms. Mackey's request that we reweigh the evidence and reconsider the merits of her claim.

[9] The medical evidence that Ms. Mackey argues the Appeal Division overlooked appears to be the same evidence that she asked the Appeal Division to find the General Division overlooked. But as the Appeal Division noted (at paragraphs 24 and 25 of its decision), the General Division expressly stated that it had reviewed all of the medical evidence on file, and the fact that it did not make specific reference to certain evidence does not mean that the evidence was ignored. This was a reasonable conclusion, and the Appeal Division's decision on this point discloses no error that calls for the Court to intervene.

[10] For these reasons, despite my sympathy for Ms. Mackey's position, I would dismiss her application. The respondent does not seek costs, and I would not award them.

"J.B. Laskin"

J.A.

"I agree.

Eleanor R. Dawson J.A."

"I agree.

Judith Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-107-18

(APPEAL FROM A DECISION OF THE SOCIAL SECURITY TRIBUNAL OF CANADA DATED MARCH 2, 2018, DOCKET NUMBER AD-16-1168)

STYLE OF CAUSE: MICHELLE MACKEY v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND
AND LABRADOR

DATE OF HEARING: MAY 30, 2019

REASONS FOR JUDGMENT BY: LASKIN J.A.

CONCURRED IN BY: DAWSON J.A.
WOODS J.A.

DATED: JUNE 6, 2019

APPEARANCES:

Michelle Mackey, self-represented

FOR THE APPLICANT

Matthew Vens

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin
Deputy Attorney General of Canada

FOR THE RESPONDENT