

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200123

Docket: A-388-18

Citation: 2020 FCA 19

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

BETWEEN:

DAVID ATKIN

Applicant

and

**MINISTER OF EMPLOYMENT
AND SOCIAL DEVELOPMENT**

Respondent

Heard at Toronto, Ontario, on January 23, 2020.
Judgment delivered from the Bench at Toronto, Ontario, on January 23, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200123

Docket: A-388-18

Citation: 2020 FCA 19

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

BETWEEN:

DAVID ATKIN

Applicant

and

**MINISTER OF EMPLOYMENT
AND SOCIAL DEVELOPMENT**

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 23, 2020).

WOODS J.A.

[1] This is an application by David Atkin with respect to a claim for a disability pension under the *Canada Pension Plan*, R.S.C. 1985, c. C-8. Mr. Atkin seeks judicial review of a decision of the Appeal Division of the Social Security Tribunal dated October 19, 2018, which dismissed his appeal from a decision of the General Division of that Tribunal.

[2] The issue before the General Division was whether Mr. Atkin had established that he was disabled, as that term is defined in the *Canada Pension Plan*, as interpreted by the case law. The determination is to be made for the period on or before May 31, 2002, his “minimum qualifying period”. The General Division concluded that Mr. Atkin did not satisfy the “disabled” requirement because his disability did not prevent him from earning a living.

[3] In the Appeal Division, Mr. Atkin submitted that the General Division made an error of law by failing to consider whether his work during the relevant period was a “substantially gainful occupation.” Mr. Atkin submitted that it was not. The Appeal Division found that there was no error of law because the evidence demonstrated that Mr. Atkin had the capacity to work.

[4] In this Court, Mr. Atkin submits that the Appeal Division erred in law by “sustaining the legal failure of the General Division to consider whether the Applicant’s business was substantially gainful.” He also suggests that this issue should be reviewed on a standard of correctness.

[5] We are all of the view that the Appeal Division did not commit any error that would warrant this Court’s intervention.

[6] As for the standard of review, it has been well established by this Court that the standard of review that is to be applied is reasonableness and not correctness (*Cameron v. Canada Attorney General*), 2018 FCA 100 at para. 3, 292 A.C.W.S. (3d) 564). Recently, the Supreme Court of Canada reconsidered the appropriate standards of review in judicial review applications

and reinforced that the reasonableness standard should be applied in these circumstances. (See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 35-37, 53.)

[7] Mr. Atkin submits that the General Division made an error in not considering whether his business was substantially gainful. He suggests that this work goes to the “heart” of determining whether he was capable of pursuing a substantially gainful occupation. The Appeal Division reasonably concluded otherwise. In our view, the Appeal Division reasonably concluded that the General Division did not err when it did not consider whether Mr. Atkin’s business was profitable.

[8] Mr. Atkin also submits that the evidence does not support the General Division’s conclusion that he had the capacity to pursue substantially gainful work. In light of the significant deference that must be given by this Court to the Social Security Tribunal, and the ample record supporting the General Division’s conclusion, the Appeal Division reasonably concluded that the General Division made no reviewable error.

[9] We will therefore dismiss the application without costs.

"Judith Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-388-18

STYLE OF CAUSE: DAVID ATKIN v. MINISTER OF
EMPLOYMENT AND SOCIAL
DEVELOPMENT

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JANUARY 23, 2020

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
STRATAS J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

APPEARANCES:

H.J. Yehuda Levinson FOR THE APPLICANT

John Unrau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levinson & Associates FOR THE APPLICANT
Toronto, Ontario

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada