

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251021

Docket: A-92-24

Citation: 2025 FCA 189

**CORAM: STRATAS J.A.
LEBLANC J.A.
GOYETTE J.A.**

BETWEEN:

DAVID MENZELEFSKY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 21, 2025.

Judgment delivered from the Bench at Toronto, Ontario, on October 21, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on October 21, 2025).

STRATAS J.A.

[1] Mr. Menzelefsky seeks to set aside the decision dated January 17, 2024 of the Social Security Tribunal – Appeal Division: 2024 SST 51. In that decision, the Appeal Division found that Mr. Menzelefsky was no longer disabled as of January 2019 within the meaning of the

Canada Pension Plan, R.S.C. 1985, c. C-8. As a result, from April 2019, Mr. Menzelefsky was no longer entitled to benefits. Further, he had to pay back roughly two years of benefits received after that time. Mr. Menzelefsky contests this.

[2] Mr. Menzelefsky's application will be dismissed. Overall, the Appeal Division's decision is reasonable. It is based on an internally consistent and rational chain of analysis and is justified on the facts and the law: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[3] The Appeal Division based its decision on the requirements for entitlement to a disability pension under the *Canada Pension Plan*. Under the *Plan*, to qualify for a disability pension, a claimant's disability must be severe enough that they are "incapable regularly of pursuing any substantially gainful occupation" and prolonged such that "the disability is likely to be long continued and of indefinite duration or is likely to result in death": *Canada Pension Plan*, s. 42(2)(a). This Court has acknowledged previously that "the definition of disabled is highly restrictive": *Atkinson v. Canada (Attorney General)*, 2014 FCA 187, [2015] 3 F.C.R. 461 at para. 3. Based on the evidence before it, the Appeal Division reasonably held that Mr. Menzelefsky was no longer entitled to benefits.

[4] In the course of its reasons, the Appeal Division considered the issue of "substantially gainful occupation". A "substantially gainful" occupation is one that provides a salary or wages equal to, or above, the threshold set out in section 68.1 of the *Canada Pension Plan Regulations*,

C.R.C., c. 385. The Appeal Division considered the maximum amounts for 2019 and 2021 and found on the evidence that for those years, Mr. Menzelefsky's gross earnings exceeded them.

[5] Mr. Menzelefsky disagrees. He says that the Appeal Division should have considered his business expenses when determining whether his earnings were equal to or above the substantially gainful threshold. Mr. Menzelefsky points out that his gross income in 2019 was only approximately \$200 above the amount set by the regulations. Mr. Menzelefsky asserts that his business expenses were legitimate because his employer required him to attend in-person training in New Jersey. He further argues that even if the Minister queried his expenses, the small amount required to bring him under the threshold should weigh in favour of finding his work was not substantially gainful.

[6] We disagree and find the Appeal Division's decision on this point to be reasonable. The Appeal Division properly relied on past decisions that show the Minister may rely on gross business income, not net business income, because the profitability of a business is not necessarily evidence of a claimant's capacity to work: *S.W. v. Minister of Employment and Social Development*, 2022 SST 952, citing *Kiriakidis v. Canada (Attorney General)*, 2011 FCA 316. As well, the Appeal Division refused to consider the business expenses because it found them "anomalous". Among other things, Mr. Menzelefsky had listed his expenses as office expenses in his Statements of Business and Professional Activities, but at the hearing he referred to them as related travel. And his expenses were inordinately high compared to his earnings and were for a job that was supposed to be performed remotely and did not require travel.

[7] The Appeal Division also found (at para. 21) that Mr. Menzelefsky's earnings "do not decide the matter by themselves". It considered several additional facts: his ability to undertake multiple business trips to New Jersey (at para. 27), his hours worked were increasing into 2021 (at para. 30), and he wanted and intended to work more hours (at paras. 30-32). Further, the Appeal Division found that Mr. Menzelefsky's employer was not a "benevolent employer" who offered him work despite an inability to perform at a competitive level (at paras. 35-39).

[8] Based on these facts, it was reasonable for the Appeal Division to conclude that Mr. Menzelefsky had the capability to regularly do substantially gainful work and that his disability was no longer severe or prolonged within the meaning of the *Canada Pension Plan*.

[9] Mr. Menzelefsky says that the Appeal Division was procedurally unfair. We see nothing in this record that would give rise to a procedural fairness concern. Mr. Menzelefsky expresses surprise about the decision of the Appeal Division, but the Appeal Division is entitled to consider cases before it afresh.

[10] Mr. Menzelefsky also argues that requiring him to pay back the benefits he received after April 2019 will cause him undue financial hardship. Accordingly, he says his debt should be excused.

[11] It is not open to the Appeal Division to excuse the debt. As the Appeal Division noted (at para. 33), Parliament has not given it the power to consider financial hardship. As an administrative tribunal, it can exercise only the powers Parliament has given to it:

Tranchemontagne v. Ontario (Director, Disability Support Program), 2006 SCC 14, [2006] 1 S.C.R. 513; and see also the Social Security Tribunal's powers under subsection 64(2) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34.

[12] For these reasons, we will dismiss the application. The respondent did not seek costs and so none will be awarded.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-92-24
STYLE OF CAUSE:	DAVID MENZELEFSKY v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
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REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. LEBLANC J.A. GOYETTE J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

David Menzelefsky	FOR THE APPLICANT (UNREPRESENTED)
Nathan Beck	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT
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