

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131029

Docket: A-500-12

Citation: 2013 FCA 254

**CORAM: STRATAS J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

TANYA GAUDET

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Fredericton, New Brunswick, on October 28, 2013.

Judgment delivered at Halifax, Nova Scotia, on October 29, 2013.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

WEBB AND NEAR JJ.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Ms. Gaudet applies to quash the decision dated August 22, 2013 of the Pension Appeals Board. The Board denied her application for disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8.

[2] Originally, the respondent was named as the Minister of Human Resources and Skills Development. Under Rule 303(2), the respondent should be the Attorney General of Canada. Accordingly, at the outset of the hearing, the Court amended the title of proceeding.

[3] At the outset of the hearing, Ms. Gaudet sought permission to file a new, unsworn document to provide information about her recent condition and to give some background to a medical report in the record. The respondent objected to its admission.

[4] The respondent's objection is well-founded: even if sworn, documents like this are not normally admissible on an application for judicial review (see, e.g., *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297). Even if the document were admissible, it would not have affected the outcome of this application for judicial review.

[5] Under subsection 42(2) of the *Plan*, an applicant for disability benefits must demonstrate, among other things, that her disability is "severe and prolonged" such that she could not pursue regularly any substantially gainful occupation by the end of her minimum qualifying period under the *Plan*, here December 2001.

[6] Many applicants for disability benefits are suffering pain and discomfort at the time of the Board's proceedings and the judicial review in this Court. Many are unsuccessful. This is no reflection on them or their condition. It is a reflection only of the difficult standard applicants must

meet in order to demonstrate their disability is “severe and prolonged” within the meaning of subsection 42(2) of the *Plan*.

[7] In this case, the Board found that most of the medical evidence on file was dated 2004 or later – well after the relevant December 2001 date. Further, in its view, this evidence fell short of the difficult “severe and prolonged” standard under the *Plan*.

[8] In particular, based on the medical and other evidence before it, the Board held that by the relevant time, December 2001, Ms. Gaudet did not have a “severe” disability within the meaning of the *Plan* and associated case law. The Board conceded that Ms. Gaudet’s medical condition today might be “severe,” but the medical reports did not support severity as of December 2001.

[9] In an application for judicial review, this Court’s powers are limited. We are not allowed to retry the factual issues, reweigh the evidence or re-do what the Board did. Rather, we are to assess whether the Board reached an outcome that was acceptable and defensible on the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47. This is a deferential standard. In a case like this, where the decision is mainly factual, the range of defensible and acceptable outcomes available to the Board is relatively wide: *First Nations Child and Family Caring Society of Canada*, 2013 FCA 75 at paragraph 13.

[10] In my view, the Board examined the evidence before it and reached an outcome that was acceptable and defensible on the facts and the law. There is no basis upon which this Court can intervene. In saying this, I do not minimize at all the pain and discomfort Ms. Gaudet has been and

is now experiencing. This Court is simply bound by the wording of subsection 42(2) of the Plan, the associated case law, and its limited powers on an application for judicial review.

[11] Accordingly, despite the informative and eloquent submissions of Ms. Gaudet, I would dismiss the application. In these circumstances, the Crown has not asked for its costs and so none shall be awarded.

"David Stratas"

J.A.

"I agree
WymanW. Webb J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-500-12

**AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE PENSIONS
APPEALS BOARD DATED OCTOBER 29, 2012**

STYLE OF CAUSE: TANYA GAUDET v. MINISTER
OF HUMAN RESOURCES AND
SKILLS DEVELOPMENT

PLACE OF HEARING: FREDERICTON, NEW BRUNSWICK

DATE OF HEARING: OCTOBER 28, 2013

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: WEBB AND NEAR J.A.

DATED: OCTOBER 29, 2013

APPEARANCES:

Tanya Gaudet ON HER OWN BEHALF

Daniel K. Willis FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada