

**Date: 20070614**

**Docket: A-541-05**

**Citation: 2007 FCA 237**

**CORAM: DÉCARY J.A.  
SEXTON J.A.  
PELLETIER J.A.**

**BETWEEN:**

**SHARON MILLER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Calgary, Alberta, on June 12, 2007.

Judgment delivered at Calgary, Alberta, on June 14, 2007.

**REASONS FOR JUDGMENT BY: DÉCARY J.A.**

**CONCURRED IN BY: SEXTON J.A.  
PELLETIER J.A.**

**Date: 200706**

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PELLETIER J.A.**

**BETWEEN:**

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**Respondent**

**REASONS FOR JUDGMENT**

**DÉCARY J.A.**

[1] This application for judicial review is with respect to a decision of the Pension Appeals Board rendered October 7, 2005. The Board confirmed the decision of the Review Tribunal issued May 27, 2004 finding that Ms. Miller did not meet the definition of disability when she last qualified in late 2000.

[2] The evidence before the Board indicated that Ms. Miller had returned to employment and reported earnings of some \$10,000.00 and \$38,000.00 for the years 2003 and 2004. The Board reached the following conclusion:

[11] Under the circumstances, the Board is unable to conclude that her physical limitation caused by the fibromyalgia and chronic fatigue syndrome rendered her incapable regularly of engaging in reasonably remunerative employment for a long and undetermined period of time.

[12] The legislation in these circumstances precludes a disability determination. The capacity to regularly engage in remunerative employment is the very antithesis of a severe and prolonged disability, as set out in the legislation.

[3] It is now trite law that the standard of review for decisions of the Board determining disability is patent unreasonableness (*Osbourne v. Canada (Attorney General)*, [2005] F.C.J. No. 2043 (CA)).

[4] In the case at bar, the Board's decision is clearly supported by the evidence and, as it rightly points out, the capacity of an applicant for a disability benefit to regularly engage in remunerative employment is the very antithesis of a severe and prolonged disability.

[5] That ground of judicial review cannot therefore succeed.

[6] Ms. Miller also made reference to the reinstatement provisions of the Canada Pension Plan Regulations, particularly section 71(1). These provisions have no application in this case as the present matter relates to an initial application.

[7] Finally, Ms. Miller submits that she did not get a fair hearing before the Board. The evidence before us indicates that she was given a reasonable opportunity to submit her case.

[8] I would dismiss the application for judicial review. No costs were sought by the Respondent.

”Robert Décary”

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J. A.

“I agree  
J. Edgar Sexton JA”

“I agree  
J. D. Denis Pelletier JA”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-541-05

**STYLE OF CAUSE:** Sharon Miller v.  
Attorney General of Canada

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** June 12, 2007

**REASONS FOR JUDGMENT OF THE COURT BY:** Décary J.A.  
Sexton J.A.  
Pelletier J.A.

**DELIVERED FROM THE BENCH BY:** Décary J.A.

**APPEARANCES:**

Ms. Sharon Miller FOR THE APPLICANT

Ms. Jennifer Hockey FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ms. Sharon Miller FOR THE APPLICANT  
Monarch, Alberta

Mr. John H. Sims, Q. C. FOR THE RESPONDENT  
Deputy Attorney General of Canada

