

Federal Court



Cour fédérale

Date: 20100915

Docket: T-1040-10

Citation: 2010 FC 920

Ottawa, Ontario, September 15, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

NETSANET-TSEGAI (ANNETTE) MEBRAHTU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a decision by a member of the Pensions Appeal Board (PAB) denying the Applicant's leave to appeal a decision of a Review Tribunal which had found that the Applicant was not eligible for disability benefits under the *Canada Pension Plan*, R.S., 1985, c. C-8.

[2] As a preliminary matter, the Respondent should be the Attorney General of Canada alone. The order to be issued will contain that amendment to the style of cause.

[3] The Respondent has objected to the inclusion in the record of materials not in evidence before the decision makers. Given the result, it is not necessary to deal with this proper objection.

[4] To be eligible for a CPP disability pension, a claimant is required to establish that they made contributions for not less than the minimum qualifying period (MQP). As there is no issue that the MQP ended on December 31, 2001, the Applicant had to establish that she was “disabled” as of December 31, 2001 and continuously thereafter as per s. 42(2)(a) of the *Canada Pension Plan*, which requires a claimant’s disability to be severe and prolonged.

[5] The Applicant had initially complained of a thumb injury in 1999. Unfortunately, by 2004 she was also suffering from blurred vision, chest pains, a burning sensation throughout the body and light aversion. She was diagnosed with a delusional disorder in 2005.

[6] The Review Tribunal denied the Applicant’s claim because the evidence showed that after 1999, and more importantly, after December 31, 2001, the Applicant was able to work on a regular basis, at least until the time of her 2004 diagnosis. The Applicant made statements during the hearing process in 2008 which also served to confirm her ability to work.

[7] The PAB denied leave to appeal the Review Tribunal’s decision having found that the Applicant did not have an arguable case. The PAB relied on the evidence before the Review Tribunal that the Applicant was capable of performing gainful work when she last met her MQP and that the onset of her subsequent disorder occurred after the MQP.

[8] The issues in this judicial review are:

- (a) did the PAB apply the correct legal test of “an arguable case”, a matter subject to the “correctness” standard of review?
- (b) did the PAB err in its application of the legal test, a matter subject to the “reasonableness” standard of review?

[9] While the PAB decision is brief, it is apparent that the Member identified the correct legal test.

[10] As to the application of that test in this case, despite some issues of dates which the Applicant raised, there was a good evidentiary basis for finding that the injury to the Applicant’s thumb did not, as of the MQP, constitute a severe and prolonged disability. The Applicant’s post MQP activities and the medical opinions provide a reasonable basis for the PAB’s decision.

[11] The Applicant’s delusional disorder is truly unfortunate, and a factor which should diminish the effect any of her statements made against interest in the Review Tribunal decision. Nevertheless, the fact remains that this disorder and other conditions occurred after the MQP.

[12] Therefore, this judicial review will be dismissed without costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed without costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1040-10

STYLE OF CAUSE: NETSANET-TSEGAI (ANNETTE) MEBRAHTU
and
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Fredericton, New Brunswick

DATE OF HEARING: September 13, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: September 15, 2010

APPEARANCES:

Ms. Annette Mebrahtu FOR THE APPLICANT

Mr. Allen Matte FOR THE RESPONDENT

SOLICITORS OF RECORD:

SELF-REPRESENTED FOR THE APPLICANT

MR. MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario