

CORAM: PRATTE J.A.
STONE J.A.
McDONALD J.A.

BETWEEN:

RITA CAPLAN

Applicant

- and -

THE MINISTER OF HUMAN RESOURCES DEVELOPMENT

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Halifax, Nova Scotia,
on Wednesday, October 15, 1997)

PRATTE J.A.

This application for judicial review is directed against a decision of the Pension Appeals Board holding that, on or prior to December 1991, the applicant was not disabled pursuant to paragraph 42(2)(a) of the *Canada Pension Plan* (R.S.C. 1985, c. C-8).

The applicant put forward two main arguments in support of her application: first, that the Board had erred in its assessment of the medical evaluation and, second, that one of the members of the Board had slept during a substantial part of the hearing.

The applicant's first submission must clearly be rejected. It is well established that in proceedings of this kind the Court cannot reassess or reweigh the evidence that was before the tribunal.

The applicant's second attack would deserve serious consideration if the evidence established that one of the members of the Board had, in fact, fallen asleep during the hearing. However, the only evidence on this point is the affidavit of the applicant to the effect that a member of the Board "appeared" to her to be asleep. This is not enough. A member of a board or a judge who is wide awake may appear to some to be asleep.

The application will be dismissed.

"Louis Pratte"
J.A.

A-797-96

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Heard at Halifax, Nova Scotia, on Wednesday, October 15, 1997.

Judgment rendered from the Bench on Wednesday, October 15, 1997.

REASONS FOR JUDGMENT OF THE COURT BY:

PRATTE J.A.

IN THE FEDERAL COURT OF APPEAL

A-797-96

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