

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20100216**

**Docket: A-24-09**

**Citation: 2010 FCA 46**

**CORAM: NOËL J.A.  
PELLETIER J.A.  
LAYDEN-STEVENSON J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**GIUSEPPE RINALDIS**

**Respondent**

Heard at Ottawa, Ontario, on February 16, 2010.

Judgment delivered from the Bench at Ottawa, Ontario, on February 16, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on February 16, 2010)**

**LAYDEN-STEVENSON J.A.**

[1] This is an application for judicial review of a decision of the Pension Appeals Board (the board) dated December 8 2008, wherein it determined that the respondent became disabled in February, 2001. We are of the view that the application should be allowed.

[2] The board concluded that the evidence of a medical expert “is not contradicted in any credible sense.” On that basis, the board determined that the respondent met the conditions of subsection 42(2) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8.

[3] Although there was medical evidence that the respondent was clinically depressed, the question -- whether the respondent was incapable regularly of pursuing any substantially gainful occupation -- is one for the board to decide on the basis of all of the evidence before it.

[4] In this respect, notwithstanding the respondent's medical condition, there was evidence upon which the board could find that the respondent was not disabled within the meaning of the statute. In particular, we refer to the evidence regarding his involvement in the operation of the bed and breakfast as well as his activities related to the renewals of insurance policies. It was incumbent upon the board to confront this evidence before reaching a final conclusion. This, the board failed to do.

[5] Consequently, the application for judicial review will be allowed, the decision of the Pension Appeals Board will be set aside and the matter will be returned for redetermination before a differently-constituted panel in conformity with these reasons. Since no costs were requested, none will be granted.

“Carolyn Layden-Stevenson”

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-24-09

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. GUISEPPE RINALDIS

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** February 16, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:** (Noël, Pelletier, Layden-Stevenson  
JJ.A.)

**DELIVERED FROM THE BENCH BY:** Layden-Stevenson J.A.

**APPEARANCES:**

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