

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100224

Docket: A-236-09

Citation: 2010 FCA 64

**CORAM: PELLETIER J.A.
TRUDEL J.A.
STRATAS J.A.**

BETWEEN:

KAREN MELVIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on February 24, 2010.

Judgment delivered at Halifax, Nova Scotia, on February 24, 2010.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**PELLETIER J.A.
STRATAS J.A.**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100224

Docket: A-236-09

Citation: 2010 FCA 64

**CORAM: PELLETIER J.A.
TRUDEL J.A.
STRATAS J.A.**

BETWEEN:

KAREN MELVIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

TRUDEL J.A.

[1] This is an application for judicial review concerning a decision of the Pension Appeals Board (the Board) dated May 12, 2009 (Appeal CP26065), which denied the applicant's appeal from a decision of the Review Tribunal and dismissed her application for a disability pension as she had failed to show that she was disabled within the meaning of subsection 42(2) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the Plan) on or prior to her minimum qualifying period (MQP) of December 31, 2006.

[2] The issue before this Court is whether the Board committed a reviewable error in finding that the applicant was not suffering from a severe and prolonged disability on or prior to her MQP.

[3] Ms. Melvin, a self-represented litigant before this Court, applied for disability benefits on November 8, 2006, on the basis of upper back and neck pain, anxiety and depression and irritable bowel syndrome (Review Tribunal's decision at paragraph 1).

[4] Having examined the applicant's medical evidence and record of earnings, the Board, as the Review Tribunal had done before it, found that Ms. Melvin was not entitled to a pension. The Board stated that there was no psychiatric diagnosis of bipolar mood disorder. It also concluded that the applicant was not "incapable regularly of pursuing any substantially gainful occupation" (paragraph 42(2)(a) of the Plan). As a matter of fact, the applicant was working at the time of the hearing in front of the Board and intended to increase her part-time work to 30 hours per week. The evidentiary record supports the Board's findings. Its conclusions fall within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

[5] Therefore, this application for judicial review will be dismissed.

"Johanne Trudel"

J.A.

"I agree

J.D. Denis Pelletier"

"I agree

David Stratas"

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-236-09

(APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE PENSION APPEALS BOARD DATED MAY 12, 2009)

STYLE OF CAUSE: Karen Melvin v.
Attorney General of Canada

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: February 24, 2010

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: PELLETIER J.A.
STRATAS J.A.

DATED: February 24, 2010

APPEARANCES:

Karen Melvin ON HIS OWN BEHALF

Jennifer Hockey FOR THE RESPONDENT

SOLICITORS OF RECORD:

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