

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110406**

**Docket: A-292-10**

**Citation: 2011 FCA 126**

**CORAM: NOËL J.A.  
SHARLOW J.A.  
DAWSON J.A.**

**BETWEEN:**

**MAURICE MICHAUD**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA  
(THE MINISTER OF HUMAN RESOURCES AND SKILLS DEVELOPMENT)**

**Respondent**

Heard at Ottawa, Ontario, on April 6, 2011.

Judgment delivered from the Bench at Ottawa, Ontario, on April 6, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Ottawa, Ontario, on April 6, 2011)**

**DAWSON J.A.**

[1] The applicant, Maurice Michaud, asks this Court to set aside the decision of the Pension Appeals Board (Board) that dismissed his claim for disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8. The issue before the Board was whether Mr. Michaud suffered from a severe and prolonged mental or physical disability as of December 31, 2001. This in turn required

the Board to determine whether, as of that date, Mr. Michaud's condition rendered him incapable of regularly pursuing with consistent frequency any truly remunerative occupation, taking into consideration factors such as his age, education level, language proficiency and past work and life experience. See *Villani v. Canada (Attorney General)*, 2001 FCA 248, 275 N.R. 324 at paragraph 38.

[2] Counsel for Mr. Michaud advanced a number of grounds upon which the decision of the Board should be set aside.

[3] First, counsel argued that the Board failed to give any meaningful reasons for its conclusion that Mr. Michaud was not disabled as of December 31, 2001. We respectfully disagree. At paragraph 14 of its reasons the Board noted that "none of the medical reports in evidence state the Respondent was unable to work because of his medical problems on or before December 31, 2001." Thereafter, at paragraphs 15, 16 and 17 of the reasons the Board supported this statement with reference to three specific medical reports. At paragraph 24 of its reasons the Board concluded:

Undoubtedly the Respondent is presently severely disabled. However, most of his present medical problems arose after his MQP. His main complaint before December 31, 2001 was low back pain. But Dr. Wilson reported in January 2002 that his symptoms were not significant. No other medical reports, including the clinical notes of his family physician, refer to Mr. Michaud's back problem until mid 2003 — and even thereafter all reference to the date he stopped work refer to December 23, 2003 when he closed his business.

[4] The Board's reasons are adequate because they permit the reviewing court to undertake a meaningful review of the decision against the appropriate standard of review. See *Johnson v. Canada (Attorney General)*, 2007 FCA 66, 362 N.R. 58 at paragraph 6.

[5] Counsel for the applicant next argued that the Board erred by ignoring Mr. Michaud's evidence that he did not work after 2001, and by failing to explain clearly why it rejected Mr. Michaud's evidence. Again, we are not persuaded that the Board erred as alleged. While the Board did not express any view on Mr. Michaud's credibility, it was open to the Board to prefer the documentary and medical evidence before it to Mr. Michaud's oral evidence. The Board could, on the evidence before it, reasonably conclude that Mr. Michaud had failed to establish, on the balance of probabilities, that he was incapable of pursuing any substantially gainful occupation as of December 31, 2001. The Board's decision was reasonable in the sense it was within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law. See *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47.

[6] Finally, counsel argued that the Board ignored Mr. Michaud's need to urinate frequently. However, there was no medical evidence in the record before the Board that this condition was present as of December 31, 2001. The first reference in the record to this condition occurs in 2004.

[7] For these reasons, the application for judicial review is dismissed. The respondent did not seek costs and no costs are awarded.

“Eleanor R. Dawson”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-292-10

**STYLE OF CAUSE:** MAURICE MICHAUD v. THE ATTORNEY GENERAL  
OF CANADA (THE MINISTER OF HUMAN  
RESOURCES AND SKILLS DEVELOPMENT)

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** APRIL 6, 2011

**REASONS FOR JUDGMENT OF THE COURT BY:** (NOËL, SHARLOW AND  
DAWSON J.J.A.)

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

**APPEARANCES:**

Mr. Glen Agar FOR THE APPLICANT

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