

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120308

Docket: A-197-11

Citation: 2012 FCA 82

**CORAM: BLAIS C.J.
EVANS J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

CHRISTINA SIMPSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on March 8, 2012.

Judgment delivered from the Bench at Vancouver, British Columbia, on March 8, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT

(Delivered from the Bench at Vancouver, British Columbia, on March 8, 2012)

EVANS J.A.

[1] This is an application for judicial review by Christina Simpson to set aside a decision of the Pension Appeals Board (Board), dated March 30, 2011. Allowing an appeal by the Minister of Social Development Canada from a decision of the Review Tribunal, the Board held that Ms Simpson had not established on a balance of probability that she was entitled to disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP).

[2] It is not disputed that the Board applied the correct legal test: has Ms Simpson continuously suffered from a medical condition as from December 2001, her Minimum Qualifying Period (MQP), that is severe and prolonged within the meaning of subsection 42(2) of the CPP? The Board reviewed a great number of medical reports written by different medical specialists over a period of more than ten years. It concluded that the evidence did not establish that, as from December 2001, Ms Simpson's medical condition was "severe" in the sense that it made her incapable regularly of pursuing substantially gainful employment, whether full-time or part-time.

[3] Ms Simpson left full-time employment as a credit manager in 1999 for health reasons. She was diagnosed at that time as suffering from fibromyalgia; she also had a number of other medical problems. Nonetheless, she did not apply for disability benefits until 2007, when she was permitted to make a late application. Ms Simpson stated in her application that pain prevented her from sitting for more than an hour, and from standing for more than thirty minutes without changing position. In addition, she had difficulty in concentrating, remembering, and sleeping when she was experiencing pain.

[4] We can accept that Ms Simpson's medical problems now render her incapable of work. However, in order to qualify for disability benefits, she had to demonstrate that her incapacity dated back to December 2001. In this respect, there were important weaknesses in the evidence that the Board reviewed in its reasons.

[5] First, there is very little medical evidence on her condition as from her MQP, December 2001; most of the reports address her medical problems as of a significantly later date and therefore are of limited probative value in supporting her claim that she has been unable to pursue substantially gainful employment since December 2001 because of her condition.

[6] Second, for the most part the reports on which she relies describe her medical condition, but do not also say that it prevented her from working. Indeed, Ms Simpson says in her affidavit that for some time she did not tell her physicians that she was incapable of work.

[7] Third, Ms Simpson did in fact work after 2001. In 2007, she worked as a cashier at a supermarket, but was dismissed after a short time because of her performance. She also made soap and candles for sale, and ran an artisans' craft store from 2001 to 2004. Medical reports dated 2002, 2007, and 2008 speak of her as having residual capacity for work: Respondent's Record, pp. 189, 289, and 349.

[8] Counsel for Ms Simpson agreed that, absent any legal error (and none was alleged), this Court may only set the Board's decision aside if its application of the law to the facts was unreasonable. The Board's decision might also be set aside if it ignored important evidence that indicated that Ms Simpson was in fact unable to work as from December 2001.

[9] In her written submissions, counsel for Ms Simpson identified seven reports which, she said, the Board either ignored, attached too much weight to, misunderstood, or misinterpreted. We are not

persuaded that either individually or collectively these criticisms undermine the reasonableness of the Board's ultimate conclusion.

[10] First, a tribunal need not refer in its reasons to each and every piece of evidence before it, but is presumed to have considered all the evidence. Second, assigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact. Third, even if we assume for the purpose of argument that the Board "misapprehended" some of the evidence as alleged, those mistakes, if mistakes they were, would not have made good the pervasive evidential weaknesses in Ms Simpson's case that we have already identified.

[11] In short, on the basis of the evidence before the Board, it could reasonably find that Ms Simpson had not proved on a balance of probability that from December 2001 she has suffered continuously from a severe and prolonged medical condition within the meaning of subsection 42(2) of the CPP that has prevented her from engaging in substantially gainful employment.

[12] While we are alive and sympathetic to the medical difficulties that continue to face Ms Simpson, her application for judicial review will be dismissed for the reasons we have given. Counsel for the Respondent requested no costs and none will be awarded.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-197-11

STYLE OF CAUSE: Christina Simpson v. Attorney
General of Canada

PLACE OF HEARING: Vancouver, British Columbia

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REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J., EVANS AND
LAYDEN-STEVENSON JJ.A.

DELIVERED FROM THE BENCH BY: EVANS J.A.

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