Federal Court of Appeal | Cour d'appel fédérale

Date: 20130315

Docket: A-43-12

Citation: 2013 FCA 81

CORAM: **BLAIS C.J.**
EVANS J.A.
STRATAS J.A.

BETWEEN:

HELENA FERREIRA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on March 14, 2013.

Judgment delivered at Ottawa, Ontario, on March 15, 2013.

REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: BLAIS C.J.
STRATAS J.A.

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REASONS FOR JUDGMENT

EVANS J.A.

[1] Helena Ferreira applied to Human Resources Development Canada for a disability pension under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (Plan) on October 22, 2007, on the ground that her medical condition prevented her from working. She effectively stopped working on January 29, 2007. In her application, she listed her main disabling conditions as diabetes, high blood pressure, and a mild stroke. Her application was denied.

[2] She appealed to the Review Tribunal which, in a decision dated August 20, 2009, held that she had not proved on a balance of probability that, as of April 30, 2007, her last potential Minimum Qualifying Period, she was incapable of regularly pursuing substantially gainful employment. Hence, she was not suffering from a "severe" medical disability within the meaning of subsection 44(2) of the Plan, and was thus not eligible for a disability pension. In assessing the "severity" requirement, the Tribunal took into account the "real world" context as required by *Villani v. Canada (Attorney General)*, 2001 FCA 124 (*Villani*).

[3] She appealed this decision to the Pensions Appeal Board (Board). The Board dismissed her appeal on December 2, 2011, on the ground that the medical evidence was consistent with her retaining a residual capacity for sedentary work "suitable to her conditions and limitations" (para. 35 of the Board's reasons). The Board took into account the *Villani* factors (at para. 44), including her age, education and level of skills. It also noted (at paras. 39 and 43) that there was no evidence that Ms Ferreira had sought employment after May 2007 or had taken any job training program.

[4] Ms Ferreira now makes an application for judicial review to this Court requesting that the Board's decision be set aside. Ms Ferreira argues that the Board erred in finding on the evidence before it that her condition was not severe.

[5] This is a question of mixed fact and law with which this Court can interfere only if satisfied that is was unreasonable: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 51. On an application for judicial review it is not the role of the Court to reweigh the evidence before the Board, but only to ensure that the Board's assessment of the evidence was not unreasonable.

[6] In her oral submissions in this Court, Ms Ferreira said that the Board failed to recognize that she had had a minor stroke in January 2007, characterizing it instead as a transient ischemic attack or T.I.A., which is temporary in nature. There is some confusion in the record on this question, although it is also true that subsequent MRIs and CT scans revealed no neurological abnormalities.

[7] More important, medical reports close in time to the MQP, April 30, 2007, did not state that Ms Ferreira's medical condition prevented her from any type of work. The key question in these cases is not the nature or name of the medical condition, but its functional effect on the claimant's ability to work.

[8] A letter written in October 2007 by her family physician stated that she was incapable of a full day's work. It was not unreasonable for the Board to infer from this that she was capable of part-time employment and that her medical condition was thus not "severe" within the meaning of the Plan. It was reasonably open to the Board to attach less weight to other letters from her physician written in August 2009 and February 2011 stating that she was "not a candidate for employment" and "was unlikely to work again".

[9] These are difficult cases and the Court is very sympathetic to Ms Ferreira's history of medical problems, and can well believe that she is now unable to work. However, the Court is bound by the statutory definition of both disability and the time at which it must be shown to have existed, as well as by Parliament's decision to entrust primary decision-making responsibility to specialist tribunals.

[10] Unless the Board made an unreasonable finding on the basis of the evidence before, we cannot intervene in this case. In my view, the Board's reasons carefully and fairly reviewed the medical evidence, which provided ample support for its conclusion that Ms Ferreira's medical condition was not "severe" in April 2007 at the latest. Its decision to dismiss her appeal was therefore not unreasonable.

[11] For these reasons, the application for judicial review will be dismissed. Costs were not requested and none will be awarded.

"John M. Evans"
J.A.

"I agree
Pierre Blais C.J."

"I agree
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-43-12
(JUDICIAL REVIEW OF A DECISION OF THE PENSION APPEALS BOARD RENDERED BY THE HONOURABLE GORDON KILLEEN, HONOURABLE DENIS ROBERTS AND HONOURABLE E.R. MILLETTE, DATED DECEMBER 5, 2011 (FILE NUMBER : CP27013))	
STYLE OF CAUSE:	HELENA FERREIRA v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 14, 2013
REASONS FOR JUDGMENT BY:	EVANS J.A.
CONCURRED IN BY:	BLAIS C.J. STRATAS J.A.
DATED:	MARCH 15, 2013

APPEARANCES:

Ms. Helena Ferreira	FOR THE APPLICANT ON HER OWN BEHALF
Ms. Vanessa Luna	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT