

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131112

Docket: A-57-13

Citation: 2013 FCA 259

**CORAM: BLAIS C.J.
DAWSON J.A.
O'REILLY J.A. (*ex officio*)**

BETWEEN:

HANIFE DAUTI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Edmonton, Alberta, on September 30, 2013.

Judgment delivered at Ottawa, Ontario, on November 12, 2013.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

**BLAIS C.J.
O'REILLY J.A. (*ex officio*)**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131112

Docket: A-57-13

Citation: 2013 FCA 259

CORAM: BLAIS C.J.
DAWSON J.A.
O'REILLY J.A. (*ex officio*)

BETWEEN:

HANIFE DAUTI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

DAWSON J.A.

[1] This is an application for judicial review of the decision of the Pension Appeals Board rendered in file number CP28003. The Board found that Mrs. Dauti, the applicant, was not disabled within the meaning of subsection 42(2) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8.

[2] For the reasons that follow, I have concluded that the Board's decision is unreasonable. In the result I would allow the application for judicial review, set aside the decision of the Board and

remit Mrs. Dauti's claim to the Board, or its designate, for redetermination by a differently constituted panel.

[3] Mrs. Dauti suffered injuries in two separate workplace accidents that led her to claim disability benefits. In the first accident she suffered physical injuries, including injuries to her right knee, back and ribs. In the second accident, while disposing of hazardous waste materials she suffered an acute onset of dizziness, fatigue and lightheadedness, followed by a fall. This is known as a syncope episode. Thereafter, Mrs. Dauti continued to suffer such episodes.

[4] At paragraph 17 of its reasons, the Board correctly set out the question it was required to determine:

[...] whether or not the Appellant became so disabled by either her physical injuries which occurred while working at the chemical plant or by the other group of what appeared to be physiological or neurological symptoms that led to fainting spells and syncope episodes which included hypertension and which she claimed resulted in headaches, dizziness, insomnia, depression and lack of energy and other similarly related symptoms; or a combination of both aspects of her claim that she is disabled as the term is defined. [emphasis added]

[5] The Board then commenced its analysis of the evidence, concluding that the physical injuries Mrs. Dauti suffered had been "sufficiently if not entirely resolved" prior to her minimum qualifying period (December 31, 2009). This conclusion was based upon the Board's finding that such injuries were not referred to in medical reports after February 2008. In fact, in a report dated January 7, 2010, Mrs. Dauti's family doctor referred to her ongoing joint and muscle pain (page 206 of the respondent's record). This report contradicted the Board's finding that Mrs. Dauti's physical injuries were not referred to in reports subsequent to February 2008.

[6] The Board then turned to consider Mrs. Dauti's psychological or neurological symptoms. The Board referred to a report dated January 7, 2008 said to be from Mrs. Dauti's family doctor which stated that she could do sedentary limited work at that time. It also referenced a report prepared in January 2008, by a doctor of internal medicine which according to the Board stated Mrs. Dauti could do "sedentary limited work of modified type". The Board ultimately found the fainting spells and syncope episodes did not prevent Mrs. Dauti from pursuing "regular gainful employment most of the time".

[7] The difficulty with this conclusion is twofold. First, the Board misapprehended the evidence. No physician ever provided an opinion which stated that Mrs. Dauti was capable of doing sedentary or limited work. The January 7, 2008 report referenced by the Board was not from Mrs. Dauti's family doctor. Rather, it was from a physiotherapist who was not treating Mrs. Dauti for her syncope episodes. Further, the report of the doctor of internal medicine said nothing of Mrs. Dauti's capacity to work. It is difficult to assess the impact of these errors on the Board's decision.

[8] The second difficulty is the Board's conclusion that Mrs. Dauti was not disabled was reached without consideration of the combined effect of the physical and psychological / neurological symptoms. This resulted from the Board's erroneous conclusion that the physical injuries had resolved prior to the minimum qualifying period. The failure to consider the combined effect of Mrs. Dauti's injuries was an error that rendered the Board's decision unreasonable.

[9] Accordingly, I would allow the application for judicial review, set aside the decision of the Board and remit Mrs. Dauti's claim to the Board, or its designate, to be redetermined by a differently constituted panel.

“Eleanor R. Dawson”

J.A.

“I agree.

Pierre Blais C.J.”

“I agree.

James W. O'Reilly J.A. (*ex officio*)”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-57-13

STYLE OF CAUSE: HANIFE DAUTI v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: SEPTEMBER 30, 2013

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

BLAIS C.J.
O'REILLY J.A. (*ex officio*)

DATED: NOVEMBER 12, 2013

APPEARANCES:

HANIFE DAUTI

FOR THE APPLICANT
(ON HER OWN BEHALF)

MARTIN KREUSER

FOR THE RESPONDENT

SOLICITORS OF RECORD:

WILLIAM F. PENTNEY
DEPUTY ATTORNEY GENERAL OF CANADA

FOR THE RESPONDENT