

**Date: 20090225**

**Docket: A-442-08**

**Citation: 2009 FCA 58**

**CORAM: DESJARDINS J.A.  
LÉTOURNEAU J.A.  
TRUDEL J.A.**

**BETWEEN:**

**CHRISTINA ERICKSON**

**Applicant**

**and**

**MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT**

**Respondent**

Heard at Vancouver, British Columbia, on February 23, 2009.

Judgment delivered at Vancouver, British Columbia, on February 25, 2009.

**REASONS FOR JUDGMENT BY:**

**TRUDEL J.A.**

**CONCURRED IN BY:**

**DESJARDINS J.A.  
LÉTOURNEAU J.A.**

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**REASONS FOR JUDGMENT**

**TRUDEL J.A.**

[1] This is an application for judicial review of a decision of the Pension Appeals Board (the Board) finding that the applicant did not have, on or prior to December 31, 2002, a prolonged or severe disability within the meaning of paragraph 42(2)(a) of the *Canada Pension Plan*, R.C.S., 1985, c. C-8 (the Plan).

[2] The applicant is 45 years old and is left-handed. In the years preceding her illness, she worked as a cashier. She stopped working in 2001. Later that year, she was diagnosed with left lateral epicondylitis and underwent surgery in March 2002.

[3] According to her, the surgery was to no avail and the pain remained (Board's reasons at paragraphs 7-8). Consequently, she applied for benefits to the Canada Pension Plan, as well as to the Workers' Compensation Board of British Columbia (the WCB).

[4] The WCB Appeal Tribunal accepted the applicant's claim for chronic pain and awarded her temporary wage loss benefits for the period of October 10, 2001 through December 4, 2002 (applicant's record, tab 2, page 278), as well as a small lump sum representing 2.5% of total disability due to permanent non-disabling chronic pain (*ibid.* at pages 285- 286). As shown from the record, the WCB did not accept that the applicant's compensable injury was disabling after December 2002, as her "lengthy period of unemployment could not be attributed to the work injury" (*ibid.* at page 287).

[5] However, the applicant's claim under the Plan was denied at all levels. Whether the Board erred in upholding the decision of the Review Tribunal and in finding that the applicant did not qualify for disability benefits under the Plan is the only issue in this appeal.

[6] It is now settled that the standard of review for a determination of disability by the Board, since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (*Dunsmuir*), is the

reasonableness standard (*Canada (Attorney General) v. Ryall*, 2008 FCA 164 at paragraphs 10-11, *Janzen v. Canada (Attorney General)*, 2008 FCA 150 at paragraph 5).

[7] To be deemed disabled under the Plan, the applicant bore the onus of establishing, on a balance of probabilities, that her disability was severe, because it rendered her incapable of regularly pursuing any substantially gainful occupation, and prolonged because it was likely to be long, continued and of indefinite duration or was likely to result in death (paragraph 42(2)(a) of the Plan).

[8] The applicant argues that the Board based its decision on erroneous findings of fact made without regard to the evidence before it. She strongly disagrees with the Board's finding that she "could return to her previous employment if she developed the will to do so" (Board's reasons at paragraph 48; applicant's memorandum of fact and law at paragraph 12). According to her, there was no evidence to that effect. Alternatively, she argues that the Board erred in preferring the opinion of Dr. Rowan, a general practitioner retained by the respondent to review the file, over those of Dr. Cudmore and Dr. Blocka, respectively, her treating family doctor and rheumatologist.

[9] The applicant lays emphasis on a 2006 diagnosis made by Dr. Blocka to the effect that her symptoms were "consistent with a chronic regional musculoskeletal pain disorder (CRMPD) arising as a consequence of her unresolved bilateral epicondylitis of the elbows" (appeal book, tab 2, page 351) – an impression endorsed by Dr. Cudmore (Board's reasons at paragraph 22). She contends that the Board "appears to have completely overlooked the evidence of CRMPD and the opinions

that CRMPD prevents the applicant from working" (applicant's memorandum of fact and law at paragraph 20).

[10] I disagree with the applicant's analysis of the Board's decision. The Board was well aware of its overall task: determining whether the applicant had a severe and prolonged disability, which prevented her from performing any gainful employment, given the options realistically available to her (Board's reasons at paragraphs 44-46; *Villani v. Canada (Attorney General)*, 2001 FCA 248 at paragraph 46; *Lutzer v. Canada (Minister of Human Resources Development)*, 2002 FCA 190 at paragraph 4; *Litke v. Canada (Human Resources and Social Development)*, 2008 FCA 366 at paragraph 5).

[11] A careful examination of the record convinces me that there was leading medical evidence on the applicant's condition as well as conclusive evidence on her lack of employment efforts (see Board's reasons at paragraphs 12, 13, 14, 33, 35, 36 and 48) allowing the Board to conclude as it did. It is not the role of this Court to reweigh the evidence and to substitute its own opinion to that of the Board. As the Board applied the correct legal test and reasonably discharged itself of its duty, the intervention of this Court is unwarranted. The Board's decision fell within a range of possible acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir, supra* at paragraph 47).

[12] I hasten to add that I am strongly sympathetic to the applicant's plight and do not doubt that she is experiencing limitations on her quality of life due to chronic pain. Nevertheless, she has failed to show that the Board committed a reviewable error.

[13] Therefore, I propose to dismiss this application without costs.

"Johanne Trudel"

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J.A.

"I concur  
Alice Desjardins J.A."

"I concur  
Gilles Létourneau J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-442-08

**STYLE OF CAUSE:** Christina Erickson v. Minister of  
Human Resources and Skills  
Development

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** February 23, 2009

**REASONS FOR JUDGMENT BY:** TRUDEL J.A.

**CONCURRED IN BY:** DESJARDINS J.A.  
LÉTOURNEAU J.A.

**DATED:** February 25, 2009

**APPEARANCES:**

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Allan Matte FOR THE RESPONDENT

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