

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090529**

**Docket: A-297-08**

**Citation: 2009 FCA 178**

**CORAM: NADON J.A.  
PELLETIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**ARCHIE PATTERSON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Halifax, Nova Scotia, on May 28, 2009.

Judgment delivered at Halifax, Nova Scotia, on May 29, 2009.

**REASONS FOR JUDGMENT BY:**

**TRUDEL J.A.**

**CONCURRED IN BY:**

**NADON J.A.  
PELLETIER J.A.**

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090529**

**Docket: A-297-08**

**Citation: 2009 FCA 178**

**CORAM: NADON J.A.  
PELLETIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**ARCHIE PATTERSON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT**

**TRUDEL J.A.**

[1] This is an application for judicial review of a decision of the Pension Appeals Board (the Board), CP24415, dated October 26, 2007. The Board allowed the appeal by the respondent, set aside the decision of the Review Tribunal and affirmed the decision of the Minister of Human Resources and Skills Development, concluding that the applicant was not disabled within the meaning of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the Plan) and therefore did not qualify for disability benefits.

[2] Pursuant to subsection 42(2) of the Plan, the applicant can be considered disabled only if he has a severe and prolonged mental or physical disability. A disability is severe only if the applicant is incapable regularly of pursuing any substantially gainful occupation, and a disability is prolonged only if the disability is likely to be long continued and of indefinite duration or is likely to result in death. Severe disability is not based upon the applicant's incapacity to perform his or her ordinary occupation, but rather any substantially gainful occupation that is suitable to his condition (*Villani v. Canada (Attorney General)*, 2001 FCA 248 at paragraphs 45-46).

[3] On the basis of the medical reports filed, the evidence and submissions of the parties, the Board was not persuaded that the applicant was disabled by reason of his sensitivity to chemical products. The Board found that the applicant "has retained the capacity for work suitable to his conditions and limitations" and that he "did not pursue diligently his alleged medical problems" (Reasons for Judgment at paragraphs 52 and 57). The Board therefore concluded that the applicant "has failed to establish on a balance of probabilities that he was disabled within the meaning of the [Plan] on or before the date of the hearing, namely, September 17, 2007." (*Ibid.* at paragraph 60.)

[4] We have not been persuaded that the Board's decision was unreasonable. The Board had to determine *de novo* the merits of the applicant's case on the basis of all the evidence presented to it (*Villani, supra* at paragraph 49). The record before this Court confirms that there was sufficient evidence before the Board to conclude as it did. While the applicant's situation is unfortunate, it is not open to this Court to reweigh the evidence that was before the Board.

[5] Therefore, this application for judicial review will be dismissed, but without costs as the respondent is not seeking costs.

“Johanne Trudel”

---

J.A.

“I agree.

M. Nadon”

“I agree.

J.D. Denis Pelletier”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-297-08

**STYLE OF CAUSE:** Archie Patterson v. Attorney  
General of Canada

**PLACE OF HEARING:** Halifax, Nova Scotia

**DATE OF HEARING:** May 28, 2009

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

**CONCURRED IN BY:** NADON J.A.  
PELLETIER J.A.

**DATED:** May 29, 2009

**APPEARANCES:**

Archie Patterson ON HIS OWN BEHALF

Dale Noseworthy FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada