

**Date: 20090331**

**Docket: A-415-08**

**Citation: 2009 FCA 104**

**CORAM: BLAIS J.A.  
EVANS J.A.  
RYER J.A.**

**BETWEEN:**

**JUDITH ARTHURS**

**Applicant**

**and**

**MINISTER OF HUMAN RESOURCES AND SKILLS DEVELOPMENT STYLED  
MINISTER OF HUMAN RESOURCES AND SOCIAL DEVELOPMENT**

**Respondent**

Heard at Vancouver, British Columbia, on March 31, 2009.

Judgment delivered from the Bench at Vancouver, British Columbia, on March 31, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**EVANS J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on March 31, 2009)**

**EVANS J.A.**

[1] This is an application for judicial review by Judith Arthurs to set aside a decision of the Pension Appeals Board, dated July 17, 2008, allowing an appeal by the Minister from a decision of the Review Tribunal, dated February 27, 2007.

[2] In that decision, the Review Tribunal had admitted as “new facts” two reports by Ms. Arthurs’ doctor, Dr D.E. Read, respecting the severity of her medical condition and her capacity to

work on or before the end of her minimum qualifying period (“MQP”), December 31, 1997. Dr Read’s reports are dated September 24, 2002, and January 20, 2003.

[3] Reversing its earlier decision, the Review Tribunal went on to find that Ms Arthurs was entitled to a disability pension under paragraph 44(1)(b) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (“CPP”), on the ground that, on or before the end of her MQP, her disability, which included fibromyalgia, was severe and prolonged within the meaning of subsection 42(2) of the CPP.

[4] On an appeal by the Minister from the decision of the Review Tribunal, the Pension Appeals Board found that the reports of Dr Read did not constitute “new facts” and therefore concluded that there was no basis for the Review Tribunal to have reversed its earlier decision that Ms Arthurs’ disability was not prolonged and severe.

[5] In so concluding, the Pension Appeals Board effectively ignored a decision by Justice O’Keefe of the Federal Court (2006 FC 1107) setting aside an earlier decision by the Review Tribunal refusing to reconsider its decision that Ms Arthurs’ disability was not prolonged and severe. Justice O’Keefe found that the Review Tribunal’s decision that the two reports by Dr Read did not constitute “new facts” was patently unreasonable. He remitted the matter to the Review Tribunal for “redetermination”. The Minister did not appeal Justice O’Keefe’s decision.

[6] In our view, the Federal Court's order meant that the Review Tribunal was to redetermine whether Ms Arthurs' disability was severe and prolonged on the basis of the evidence, including the medical reports from Dr Read that Justice O'Keefe had found constituted new facts.

[7] We are all of the view that the Pension Appeals Board erred in law in finding that the two reports were not "new facts", despite Justice O'Keefe's conclusion to the contrary, and in failing to redetermine, on the merits, the Minister's appeal from decision of the Review Tribunal.

[8] For these reasons, the application for judicial review will be allowed, the Board's decision will be set aside, and the matter remitted to the Board to redetermine the Minister's appeal on the merits, on the basis that the two reports from Dr Read constitute new facts.

"John M. Evans"

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J.A

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-415-08

**STYLE OF CAUSE:** Judith Arthurs v. Minister of Human Resources and Skills Development  
Styled Minister of Human Resources and Social Development

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

**DATE OF HEARING:** March 31, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (BLAIS, EVANS, RYER JJ.A.)

**DELIVERED FROM THE BENCH BY:** EVANS J.A.

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