

Date: 20091026

Docket: A-354-07

Citation: 2009 FCA 310

**CORAM: SHARLOW J.A.
LAYDEN-STEVENSON J.A.
RYER J.A.**

BETWEEN:

PATRICIA MAIDWELL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 26, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on October 26, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on October 26, 2009)

RYER J.A.

[1] This is an application for judicial review of a decision (CP24077) of the Pension Appeals Board in which Ms. Patricia Maidwell was determined not to be entitled to a disability pension, pursuant to paragraph 44(1)(b) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the “Plan”).

[2] To succeed, Ms. Maidwell was required to establish, on a balance of probabilities, that she was disabled, within the meaning of paragraph 42(2)(a) of the Plan, at the end of a minimum qualifying period as determined in accordance with subsection 44(2) of the Plan.

[3] Ms. Maidwell stopped work in 1990 and it is agreed that her minimum qualifying period ended in December of that year. She brought her application for a disability pension on November 10, 2003, almost thirteen years after the end of her minimum qualifying period.

[4] In her application for benefits, Ms. Maidwell stated that the illness that prevented her from working was chemical sensitivities. She also stated that she suffered from a rare and untreatable lung disease – minute pulmonary chemodectomata.

[5] In its decision, the Board referred to medical evidence from several doctors – Dr. Marian Zazula, Dr. E.S. Lilker, Dr. J.R. Zownir and Dr. N. Ranganathan – all of whom had provided reports with respect to Ms. Maidwell’s condition. The Board concluded that this medical evidence did not demonstrate that her medical condition at the end of her minimum qualifying period met the test of severity in the definition of disability in paragraph 42(2)(a) of the Plan.

[6] The question of whether an applicant suffers from a severe disability focuses upon her capacity to regularly pursue any substantially gainful occupation. This is a question of mixed fact and law that is reviewable by this Court on a standard of reasonableness.

[7] Based upon the medical evidence that was presented by the applicant, we are of the view that it was open to the Board to find that she had not established, on a balance of probabilities, that

her medical condition at the end of her minimum qualifying period was severely disabling.

Accordingly, we find no basis upon which to interfere with that decision.

[8] For these reasons, the application will be dismissed.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-354-07

**AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION DATED JUNE 20, 2007,
WHEREBY THE APPLICATION FOR CPP DISABILITY BENEFITS WAS DENIED PER
FILE: CP24077**

STYLE OF CAUSE: PATRICIA MAIDWELL v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 26, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (SHARLOW, LAYDEN-
STEVENSON & RYER JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Patricia Jeanette Maidwell

FOR THE APPLICANT
(SELF-REPRESENTED)

Nicole Butcher

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

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