

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220530

Docket: A-271-21

Citation: 2022 FCA 94

**CORAM: STRATAS J.A.
RENNIE J.A.
LASKIN J.A.**

BETWEEN:

NAZNEEN DHALLA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario and by online video conference hosted by the Registry,
on May 30, 2022.

Judgment delivered from the Bench at Toronto, Ontario, on May 30, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on May 30, 2022).

STRATAS J.A.

[1] The Appeal Division of the Social Security Tribunal dismissed the applicant's appeal from the General Division. It found that the General Division committed no errors in interpreting and applying to the applicant the incapacity provisions of the *Canada Pension Plan*, R.S.C. 1985, c. C-8. The applicant applies for judicial review of the Appeal Division's decision.

[2] We note that the issues in this case are largely factual in nature: based on the medical evidence and the conduct of the applicant, at what time was the applicant incapacitated under section 60 of the *Canada Pension Plan*? Was the applicant entitled to an earlier start date for her disability pension by reason of incapacity?

[3] The General Division, examining the evidence before it, answered those factual questions. The Appeal Division could interfere only if the General Division's answer was "erroneous" and was made "in a perverse or capricious manner or without regard to the material before it": *Department of Employment and Social Development Act*, S.C. 2005, c. 34, para. 58(1)(c). The Appeal Division found that that threshold was not met. In its view, the applicant was simply rearguing her case on the facts. As the Appeal Division noted at paras. 14 and 15 of its decision, it could not substitute its view of the facts for that of the General Division or reweigh the evidence. Nevertheless, the Appeal Division went further than it needed to under para. 58(1)(c) of the Act and reviewed in some detail the findings of the General Division and the evidentiary support for those findings.

[4] Like the Appeal Division, this Court cannot substitute its view of the facts for that of the General Division. This Court is restricted to reviewing the Appeal Division's decision for reasonableness: *Walls v. Canada (Attorney General)*, 2022 FCA 47; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 at paras. 83 and 86.

[5] As a Court, we cannot interfere unless we see unreasonableness, and still less just because we personally sympathize with the applicant or because we salute the applicant's son—

whose oral submissions on her behalf in this Court were well-formulated and articulate and who has been caring conscientiously and compassionately for his mother, the applicant.

[6] We are constrained by our legal role as a reviewing court and, like all other decision-makers, we are bound by the laws of the land—here, the *Canada Pension Plan* which places limits on the amount of benefits available to persons like the applicant. We have no general power to give additional benefits or support to the applicant.

[7] In this case, our sole task is to ask whether it was reasonable on this evidentiary record for the Appeal Division to find that the General Division did not make erroneous findings in a perverse or capricious manner or without regard to the material before it. We are not allowed to reweigh the evidence and come to a different conclusion.

[8] We find the Appeal Division's decision reasonable. It had no basis for finding that the General Division engaged in perverse or capricious fact-finding or fact-finding without regard to the material.

[9] The applicant submits that the General Division did not refer to all the evidence or place weight upon certain parts of the evidence. The applicant contends that this amounted to ignoring certain evidence. We disagree. Some of the evidence that the applicant says was ignored was, in fact, explicitly mentioned in its reasons.

[10] As the Appeal Division noted at para. 13, the General Division examined the evidence (some of which was favourable to the applicant's position), weighed it, and reached a factual conclusion open to it. The applicant's submissions in this Court amount to asking us to reweigh the evidence that was before the General Division. We are not allowed to do that.

[11] We agree with the applicant that there was some evidence in the record that supports her position. But the General Division's failure to give effect to that evidence does not mean that the General Division engaged in perverse or capricious fact-finding or in fact-finding without regard to the material. There was evidence upon which the General Division could find the facts it did. It chose to accord weight to that evidence and prefer it. This it was entitled to do.

[12] The applicant also seek damages for "blatant error" in this matter. We do not see any such error. Nor are damages recoverable in an application for judicial review: *Al-Mhamad v. Canada (Radio-Television and Telecommunications Commission)*, 2003 FCA 45.

[13] In oral submissions, the applicant submitted that the General Division failed to consider the evidence impartially. There is no evidence whatsoever of bias in this case.

[14] Therefore, we will dismiss the application. Appropriately, the Attorney General asks for a no-costs disposition. Therefore, we will order no costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-271-21

JUDICIAL REVIEW OF THE DECISION OF THE SOCIAL SECURITY TRIBUNAL OF CANADA, APPEAL DIVISION, DATED SEPTEMBER 8, 2021, FILE NO. AD-21-161.

STYLE OF CAUSE: NAZNEEN DHALLA v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: TORONTO, ONTARIO AND BY
ONLINE VIDEO CONFERENCE
HOSTED BY THE REGISTRY

DATE OF HEARING: MAY 30, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
RENNIE J.A.
LASKIN J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

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