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Canada Pension Plan cases

September 2 2006

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**These are the partial results of one of four researchers reviewing CPP cases.
This document will be updated with the other CPP cases.**

Canada Pension Plan FM & ME/CFS Cases:

Agnese Bozza v. Minister of Social Development (fmr Min. Human Resources Dvlpmt), (2005)

**Akram Rawdah v. Min. Social Development (fmr Min. Human Resources Dvlpmt) CP #: CP21567
Date Heard (2 December, 2004) - Date Decision Rendered (23 March, 2005)**

**Amelia De Sousa v. Min. Social Development (fmr Min. Human Resources Dvlpmt) CP #: CP22690
Date Heard (April 4, 2005) - Date Decision Rendered (April 29, 2005)**

**Andrew Cherewyk v. Minister of Social Development CP #: Appeal CP 23854 Date Heard
(September 29, 2005) - Date Decision Rendered (October 31, 2005) Andrew Cherewyk**

**Angela Candelaresi v. Min. Social Dvlpmnt (fmr Min. Human Res. Dvlpmt) CP #: Appeal CP21406
Date Heard (February 9, 2005) - Date Decision Rendered(February 21, 2005**

**Anne Piliarik v. Min. of Social Dvlpmnt (fmr Min. Human Resources Dvlpmt) CP #: Appeal CP22108
Date Heard (April 12, 2005) - Date Decision Rendered (May 24, 2005)**

**Barbara De La Penotiere v. Minister of Social Development CP #: Appeal CP 23224
Date Heard (October 17, 2005) - Date Decision Rendered (November 28, 2005)**

**Barbara Sly v. Min. of Social Dvlpmnt (fmr Min. Human Resources Dvlpmt) CP #: Appeal CP22687
Date Heard (April 28, 2005) - Date Decision Rendered (June 19, 2005)**

**Bernadette Louise Quinn v. Minister of Social Development CP #: Appeal CP 16956
Date Heard (July 6, 2005) - Date Decision Rendered (July 26, 2005)**

**Bernadette Shean v. Minister of Social Development CP #: Appeal CP 22826
Date Heard (April 27, 2005) - Date Decision Rendered (June 3, 2005)**

**Calivin Crane v. Minister of Social Development CP #: Appeal CP22612
Date Heard (August 8, 2005) - Date Decision Rendered (September 6, 2005)**

**Charlene Seymour v. Minister of Social Development CP #: Appeal CP20165
Date Heard (September 30, 2004) - Date Decision Rendered (February 18, 2005)**

**Christine M. Bak v. Minister of Social Development CP #: Appeal CP 22406
Date Heard (May 9, 2005) - Date Decision Rendered (May 18, 2005)**

**Diane Bushey v. Minister of Social Development CP #: Appeal CP19431
Date Heard (May 20, 2005) - Date Decision Rendered (June 28, 2005)**

**Diane Sharp v. Minister of Social Development CP #: Appeal CP22315
Date Heard (September 27, 2005) - Date Decision Rendered (December 28, 2005)**

**Donalda Duguay v. Minister of Social Development CP #: Appeal CP22044
Date Heard (October 5, 2004) - Date Decision Rendered (January 17, 2005)**

**Donna-Lee Gross v. Minister of Social Development CP #: Appeal CP 21949
Date Heard (September 28, 2004) - Date Decision Rendered (January 28, 2005)**

**Evelin J. Morison v. Minister of Social Development CP #: Appeal CP 22457
Date Heard (October 3, 2005) - Date Decision Rendered (October 24, 2005)**

**Faith Grace Rockton v. Minister of Social Development CP #: appeal CP 22106
Date Heard (May 10, 2005) - Date Decision Rendered (May 12, 2005)**

**Francoise C. Legault v. Minister of Social Development CP #: Appeal CP 22473
Date Heard (April 28, 2005) - Date Decision Rendered (June 30, 2005)**

**Georgina Robb v. Minister of Social Development CP #: Appeal CP 17441
Date Heard (November 23, 2004) - Date Decision Rendered (March 31, 2005)**

**Grazia Macri v. Minister of Social Development CP #: Appeal CP22830
Date Heard (October 28, 2004) - Date Decision Rendered (January 6, 2005)**

	<p>Appellant has a significant disabling condition.”</p> <p>Dr’s assessment is ignored in favour of the orthopaedic surgeons’ views.</p> <hr/> <p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Sam Handelsman (Rheumatology and Internal Medicine) Success rate: poor</p> <p>Judge’s comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input checked="" type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p><u>Doctor’s assessment:</u> November 21, 2002 – Patient has periarticular tender sites including the fibromyalgia points. Diagnosis: fibromyalgia with chronic low back pain. Sent for proactive physiotherapy.</p> <p><u>Judge’s response to doctor’s assessment:</u> Judge says there is “no objective medical evidence which indicates the Appellant has a significant disabling condition.” Dr’s assessment is ignored in favour of the orthopaedic surgeons’ views.</p> <hr/>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Reuven Lexier (orthopaedic surgeon) Success rate: fair</p> <p>Judge’s comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Sept. 27, 1999 - Dr. Lexier diagnosed patient with low back pain due to osteoarthritis and scoliosis. He advised a prophylactic exercise program.</p> <p>Judge refers to for failing to indicate that the patient’s condition is so severe it prevents her from any type of employment.</p> <hr/> <p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. John D. Graham (orthopaedic surgeon) Success rate: _____</p>

	<p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dec. 14, 1999 – Dr. Graham reported she had mechanical back pain, aggravated by lifting and bending activities, that could be relieved by rest. X-rays show she's in early stages of developing degenerate scoliosis. Advised proper back mechanics and light exercise program.</p> <p>"Mrs. Bozza's findings are very mild indeed and ought not to compromise her ability to hold employment at suitable light work or office work if she chooses to do so." (p. 6)</p> <p><u>Judge quotes as evidence of Mrs. Bozza's capacity to go back to work.</u></p> <hr/> <p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Apostolos A. Tountas (Orthopaedic Surgeon) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Jan. 29, 2001 – examined patient and found no distress. Diagnosed as progressive degeneration at the L4-5 lumbar segment and sent of physiotherapy.</p> <p>April 2, 2001 – Patient reports improvement with physio.</p> <p>Sept. 24 – Lower back pain of fluctuating intensity. No need for further investigations.</p> <p>Judge refers to for suggesting that she can go back to work as her condition is not so severe.</p>
<p>Judge's comments on expert witness</p>	<p><u>What is a good medical witness:</u></p> <p>Medical witnesses that focus on "objective medical evidence" (p. 10), which apparently does not the patient having periarticular tender sites including the fibromyalgia points.</p> <p>Witnesses with more medical expertise in specific areas, as opposed to the broader expertise of the family doctor, were generally better appreciated.</p> <p><u>What is a bad medical witness:</u></p>

	<p>The witness who focuses on subjective evidence of the patient's complaints and who refers to the expertise of another doctor (as did the family doctor in this instance).</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p><u>Comments:</u></p> <p>The Appellant's complaints of chronic back pain and tenderness were largely ignored in favour of objective evidence from x-rays.</p> <p>The experience of other Canadians with mechanical and muscular back problems that limit their capacity to work, but who still do work, was referenced as a reason that this Appellant should return to work. Thus, her statements to being unable to work were unheeded.</p> <p>The Appellant's credibility may have been undermined by the fact that she had a grade 5 education, and did not begin to suffer from these pains until already unemployed. However, no explicit references were made to this effect.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p><u>Comments:</u></p> <p>Medical evidence had to be very consistent with the Appellant's evidence otherwise the Appellant's claims were dismissed. As the board said, " There is no objective medical evidence which indicates that the Appellant has a significant disabling condition" (p. 11), despite her claims to be unable to leave the house to see her friends because she cannot sit for very long.</p>
<p>Surveillance</p>	<p>___ Y <u>X</u> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p>___ Y ___ N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>Appellant is 61 year old Italian woman with a grade 5 education who worked for 24 years in Canada. She was laid off due to cutbacks in her last job in 1998.</p> <p>In 1999 she developed back pain that stopped her from looking for work.</p>

Case Name: Akram Rawdah v. Minister of Social Development (formerly Minister of Human Resources Development)
CP #: CP21567
Date Heard (2 December, 2004) – Date Decision Rendered (23 March, 2005)

Counsel for the Appellant: Karmel Sakran
Counsel for the Respondent: Marcus Davies

<p>Outcome</p>	<p> <input type="checkbox"/> 1. FM proven <input type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted <input type="checkbox"/> Win (if 1 and 2) <input checked="" type="checkbox"/> Loss (if 3 or 4) LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: <u>Respondent showed Appellant not disabled at the time disability benefits were discontinued because, although he has not been pain free at that time, he was able to earn a “modest living with the assistance of medication, exercise and sheer determination” meaning that he was not incapable of pursuing a gainful occupation.</u> <input type="checkbox"/> Illness not prolonged Explain: Illness was prolonged as had existed since 1990. </p>
<p>Judges</p>	<p>Names: 1. L. Gotlib 2. Gordon Killeen 3. G.R. McMahon</p> <p>Record: Appellant won: _____ Appellant loss: <input checked="" type="checkbox"/></p>
<p>Expert Evidence (Appeals Board)</p>	<p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. Skupsky</u> Success rate: <u>poor</u></p> <p>Judge’s comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Skupsky is a general practitioner who observed the appellant suffering, in 1990, from aggravated neck, lower back, leg, arm and shoulder pain. He diagnosed as suffering from fibromyalgia, chronic pain, severe anxiety and reactive depression.</p> <p>Dr. advised, in 1990, the Appellant to stop working as a taxi driver due to aggravated neck and lower back pain.</p> <p>Dr. Skupsky’s medical reports were admitted to the Appeals Board. At various times, Dr. Skupsky said Appellant could do part-time work as tolerated, and at others said that the severity of the disability meant the Appellant could not return to gainful employment. At the relevant time of August 2000 no report existed, but the previous report in May 2000 and a later one in August 2001 said that the Appellant could do part-time work.</p>

	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. Robert A. Rowan</u> Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Rowan is a general practitioner who assisted the Board in interpreting the medical reports before it.</p> <p>The Board did not discuss his findings, except to say that the only relevant period was that of August 2000, so many of the reports from other periods of time were irrelevant.</p>
<p>Expert Evidence (Review Board)</p>	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. Stirling (neurologist)</u> Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Stirling reviewed the patient's history in 2002 and noted that the Appellant was self-employed driving a taxi, but did not recommend treatment or make reference to his functional capacity. The Appeals Board mentions this fact, implying that this specialist's failure to say the Appellant could not work suggests that he can.</p>
<p>Judge's comments on expert evidence</p>	<p><u>What is a good medical witness:</u> one that has evidence from the period specifically in question. <u>What is a bad medical witness:</u> one that has no evidence from the period specifically in question.</p> <p>* Few comments about medical witnesses were made as the decision seemed to be largely based on the Appellant's Income Tax returns showing that he had "gross income that shows he had some capacity to work and earn", his entrepreneurial capacity to sell off his taxi licence and take a trip to his homeland of Lebanon for 2 months in 2004 with this money, and the fact that "with the assistance of medication, exercise and sheer determination he has been able to earn a modest living" (p. 8).</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence was given some clout, but only to undercut his position that he cannot work. His interpretation was not taken as credible as evidenced by the decision. The Appellant stated that he had not worked at any occupation since March 2004, because his physical condition was getting worse and because of pain; however, he also said that he drives as much now as he did in 2000. The Board considered these two statements and, by implication of their decision, interpreted his driving as much as he did in 2000 to undermine his statement that he could no longer work as a taxi driver.</p>

<p>Importance of medical evidence being consistent with Appellant's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was generally consistent with the Appellant's statements, however, this does not seem to have been particularly important as the Board found his pain was not severe enough as he was capable of minimizing it through medication, and exercise and he was able to make a modest living under these circumstances.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	

Case Name: Amelia De Sousa v. Minister of Social Development (formerly Minister of Human Resources Development)
CP #: CP22690
Date Heard (April 4, 2005) – Date Decision Rendered (April 29, 2005)

Counsel for the Appellant: Appellant in person
Counsel for the Respondent: Marcus Davies

Outcome	<p>___ 1. FM proven <u>X</u> 3. FM not proven ___ 2. Relief granted <u>X</u> 4. Relief not granted</p> <p>___ Win (if 1 and 2) <u>X</u> Loss (if 3 or 4)</p> <p>LOSS: <u>X</u> Illness not severe Explain: <u>Appellant complained of neck, shoulder, and back pain but x-rays did not show any problems, between 1997 and 2001 she did not see any specialists about the problem and only took Advil for occasional pain, while continuing to drive, cook, clean, do laundry and occasionally care for her 2 grandchildren.</u></p> <p><u>X</u> Illness not prolonged Explain: <u>illness was held to be manageable so it is not long, continued and of indefinite duration.</u></p>
Judges	<p>Names: 1. D.H. Medhurst 2. J.K.. Holmes (concurring) 3. R. G. Conant (concurring)</p> <p>Record: Appellant won: ___ Appellant loss: <u>X</u></p>
Expert Evidence (Review Tribunal)	<p>Called by Plaintiff ___ Y ___ N ___ Non-Treating Doctor ___ Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: ___ Preference for evidence of the treating doctor over expert? ___ Doctors as advocates not impartial witnesses? ___ Generally positive comments about doctor as witness? ___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant ___ Y ___ N ___ Non-Treating Doctor ___ Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: ___ Preference for evidence of the treating doctor over expert? ___ Doctors as advocates not impartial witnesses? ___ Generally positive comments about doctor as witness? ___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
Expert Evidence (Appeal Board)	<p>Called by Appellant <u>X</u> Y ___ N ___ Non-Treating Doctor <u>X</u> Treating Doctor</p> <p>Name: Dr. S. Deen (family physician) Success rate: _____</p>

	<p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>In 2001, the Appellant went to Dr. Deen for neck, shoulder and back pain and was prescribed Celebrex 200 mg. In 2002 he prescribed Celebrex and physiotherapy, but found no remarkable findings other than tenderness and some pain on certain movements.</p> <p>For CPP application in 2002, Dr. Deen listed the Appellant's diagnosis as 1. Chronic pain, neck, shoulder back?? Fibromyalgia, 2. Hypertension, 3. Mild Depression.</p> <hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. D.S. Collins (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Appellant went to Dr. Collins due to pain in neck, shoulders, back, buttocks, knee and calf regions in 1995, 1996, 1997. Dr. Collins noted that 8 and 14 of the 18 fibrositic tender points were present. In 1997 he found that her back pain had spontaneously improved. He recommended home-based exercise and topical application of Capsaicin Cream.</p>
	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Micheline Begin (internal medicine) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Testimony of Dr. Begin is based on review of all the medical reports. She notes that the Appellant's main complaints have been neck, shoulder and back pain, but X-rays of those areas were essentially normal and the only medication prescribed was a low dose of Celebrex.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: one that relies on physical evidence such as exercises and observations (other than the complaints of the patient).</p> <p>What is a bad medical witness:</p>

<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments:</p> <p>The Appellant's statements that she did not look for work because of a fear of aggravating her shoulder-neck problem were considered in keeping with her testimony that she has a fair degree of mobility.</p> <p>Great significance was attached to the fact that between "January, 1997 and December 2001, Ms. De Sousa never saw any medical specialists concerning neck, shoulder and back pain" (p.7), she only complained to her family physician once during that period and she only takes Advil now for occasional pain.</p>
<p>Importance of medical evidence being consistent with Appellant's evidence</p>	<p>No. cases: _____</p> <p>Comments:</p> <p>The fact that the x-rays did not show any problems, in spite of the patient complaining of tenderness and pain, seems to have convinced the panel that there was no pain. Thus, medical evidence being inconsistent with the Appellant's evidence had a large impact on undermining the Appellant's position.</p>
<p>Surveillance</p>	<p>___ Y ___ X ___ N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p>___ Y ___ N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant was 55 year old immigrant with a grade 8 education who worked in a glass factory prior to its closing. She began to suffer from back-neck-shoulder pain in 1995.</p> <p>The Appellant applied for Employment Insurance benefits from July 16, 2000 to April 7, 2001 for which you must declare an ability to work. The panel considered this fact in its decision.</p>

Name: Dr. Sarel Vorster (family doctor) Success rate: good

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Vorster advised the Appellant to stay off work in 2000. In a report for the Appellant (presumably for the employer as well), Dr. Vorster advised that the Appellant was being investigated for chronic fatigue syndrome and fibromyalgia.

A report by Dr. Vorster on May 15, 2001, to the Appellant's employer, said that a definite diagnosis had not been established and a progressive return to work program was recommended.

A report by Dr. Vorster dated June 22, 2001 said that after investigations by specialists, the conclusion was that the Appellant suffered from CFS and advised cutting his shifts to four hours per day.

A report by Dr. Vorster for May 7, 2002 indicated that the Appellant was was diagnosed with CFS, fibromyalgia, and depression.

Called by Plaintiff Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. M.B. Bishop (family doctor) Success rate: good

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. M. B. on February 17, 2003 reported that the Appellant's medical history suggested that he would continue to experience "high levels of fatigue for a person his age, which could well limit his ability to work" and that he was depressed.

Called by Plaintiff Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Murray W. Davies Success rate: good

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?

	<p><input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Davies on January 2, 2004 filed a medical report in support of the Appellant's application stating that the Appellant was suffering from chronic fatigue syndrome and depression and that the prognosis was poor due to the Appellant's lack of insight into his problem.</p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. N. Shahoo (psychiatrist) Success rate: poor</p> <p>Judge's comments on doctor:</p> <p><input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Shahoo reported on May 21, 2002 that the Appellant's problems were primarily somatic and the Appellant did not need follow-up or treatment.</p> <hr/> <p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. K.L. McClean (specialist in the Division of Infectious Diseases at the College of Medicine at the University of Saskatchewan) Success rate: fair</p> <p>Judge's comments on doctor:</p> <p><input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. McClean reported on September 16, 2002 that the Appellant's symptoms did not meet the criteria for chronic fatigue syndrome but rather one of persistent fatigue. She recommended exercises and a low dose of Amitriptyline to help him sleep. Dr. McClean was not able to find reasons for many of the complaints, but felt that the Appellant was very prone to suggestion.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: one that can provide objective evidence, ideally, however, when dealing with CFS the tribunal will accept any supporting evidence provided they feel it is quality evidence. This is because objective clinical evidence is rarely available for CFS and the extent of pain cannot be measure objectively.</p>

	What is a bad medical witness:
Importance of Plaintiff's evidence + credibility	No. cases: _____ Comments: The Appellant's evidence and credibility was the turning point for this judgment. The Board acknowledged the difficulty of gaining objective clinical evidence and considered the evidence of the Appellant and his father along with the medical evidence to conclude in the Appellant's favour.
Importance of medical evidence being consistent with Plaintiff's evidence	No. cases: _____ Comments: Such consistency was deemed important, but the Board also acknowledged the difficulty of finding objective medical evidence for CFS.
Surveillance	___ Y ___ X ___ N If yes, did surveillance evidence affect judge's decision? ___ Y ___ N Reasons:
Other Comments	<u>The Board discussed the likelihood of finding a diagnosis of CFS or fibromyalgia as useful in a CPP claim:</u> "This Board has held on a number of occasions that a diagnosis of chronic fatigue syndrome (or chronic pain syndrome or fibromyalgia) does not of itself equate to total disability and automatically preclude all kinds of employment...Many sufferers can and do carry on with their jobs, often with job modifications. What the sufferer must establish is that the fatigue or pain is such as to render her or him incapable of regularly pursuing any substantially gainful occupation. Because the diagnosis is rarely supported by objective clinical evidence and the extent of fatigue or pain cannot be objectively measured, the decision of the tribunal will, of necessity, often heavily depend upon the quality of the evidence of the applicant and any supporting evidence." (12) Paragraph 42 (2) (a) of the <i>Plan</i> requires an applicant to establish that he is incapable of regularly pursuing any substantially gainful employment, which does not mean that "any kind of job will suffice to qualify as a substantially gainful occupation. Iparagraph 42 (2) (a) is concerned with the capacity of a disability applicant to work in a meaningful and competitive work environment meaning that the employer must be able to rely on the employee to show up regularly and perform the assigned work.

CANADA PENSION PLAN

Case Name: Angela Candelaresi v. The Minister of Social Development (formerly the Minister of Human Resources Development)

CP #: Appeal CP21406

Date Heard (February 9, 2005) – Date Decision Rendered(February 21, 2005)

Counsel for the Appellant: Lina M Demedeiros (agent)

Counsel for the Respondent: Arielle Elbaz

<p>Outcome</p>	<p> <input type="checkbox"/> 1. FM proven <input checked="" type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted <input type="checkbox"/> Win (if 1 and 2) <input checked="" type="checkbox"/> Loss (if 3 or 4) LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: The Appellant's disability was not viewed as severe within the law because refused to take sleeping pills which, potentially, would have enabled her to make some effort to find employment. As well, she refused to follow the advise of two of her doctors to improve her condition. Finally, there was evidence that she could walk for 50 minutes (meaning her statement that she could not walk for more than 20 minutes was false) and she was able to work in the garden (despite her statement that she could not). <input checked="" type="checkbox"/> Illness not prolonged Explain: A number of doctor's indicated that her pain would subside. Although no explicit acceptance of these doctors' opinions were made by the Board, their decision shows an implicit belief in their validity. </p>
<p>Judges</p>	<p>Names: 1. R.E. Salhany 2. Janet L. Boland (concurring) 3. G. Walsh (concurring)</p> <p>Record: Appellant won: _____ Appellant loss: X</p>
<p>Expert Evidence (Review Tribunal)</p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor Name: Dr. Hill (family physician) Success rate: poor</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Hill completed the medical report for her disability pension application in November 2000. He diagnosed the Appellant as having chronic lumbar sprain and contusion with degenerative disc disease, chronic sacroiliac sprain and contusions, chronic arthritis of the hip and other joints, chronic depression, insomnia, hypertension and prolapsed uterus. He recommended, among other things, psychotherapy and physiotherapy, none of which the patient underwent. He indicated that she was totally and permanently disabled.</p> <p>The Board did not say anything negative or positive about this physician's assessment. Rather they criticized the Appellant for not following his recommendations. Her claim was dismissed in part because she failed to follow his advice.</p>
	<hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor Name: Dr. M.K. Joseph Kwok (orthopaedic surgeon) Success rate:</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: After her work injury, Dr. Kwok evaluated her for right shoulder and wrist pain. He found minor tenderness, but no weakness or painful arc syndrome.</p>
	<hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor Name: Dr. Joel E. Maser (internist) Success rate: poor</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Maser diagnosed the Appellant's injury from falling on the airport tarmac as a "nasty bruise" that would "continue for several more months and that she should continue the same treatment he had prescribed" (6-7) which included a range of motion exercises regularly, light weight training, and one-half hour swimming in the pool.</p>
	<p>These recommendations were never followed by the Appellant. The Board</p>

viewed her failure to adhere to his instructions as indicative of her not being as disabled as she claimed.

The doctor's opinions were well respected by the Board.

Called by Appellant Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Hugh U. Cameron (orthopaedic surgeon) Success rate:

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Cameron suggested her symptoms would subside eventually. The Board may have seen this as suggesting her illness was not prolonged.

Called by Appellant Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. N.B. Tabar (chiropractor) Success rate:

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

The chiropractor treated the Appellant for 2 years, and diagnosed her as "totally disabled" (p. 8). No reasons were given for this statement. The Board states that they "place little weight on his opinion" (8). Their lack of faith in his diagnosis seems to stem from the lack of evidence he provided to back his opinion.

Called by Appellant Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Dan M. Mehta (rheumatologist) Success rate: poor

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Mehta noted that the Appellant had 14 out of the 18 fibromyalgia tender points and diagnosed her with soft tissue pain and perhaps a pattern of

	<p>chronic pain. He wanted to treat her for fibromyalgia.</p> <p>The Board made no comments about fibromyalgia or this doctor's assessment except to state his findings. Given that the Board determined the Appellant to not be "severely" disabled, however, it appears they did not view his findings of fibromyalgia as particularly relevant.</p> <hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> X <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Jack A. Mayer Success rate:</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Mayer diagnosed her condition as chronic strain in the neck and lower back and advised a pillow and abdominal exercises.</p> <hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> X <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Bhajan Sehmi (orthopaedic surgeon) Success rate: poor</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Sehmi was unable to explain why she was having so much pain in her right arm as most of her pains were of soft tissue nature. This opinion may have encouraged the Board to disbelieve the Appellant's complaints.</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A witness who brings forth objective evidence.</p> <p>What is a bad medical witness: A witness that cannot support his or her findings with objective evidence. As well, the Board's only criticism was of a chiropractor, so potentially whether or not a witness attended medical school or chiropractic college will have an impact.</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence and credibility played a large role in the dismissal of her application. She submitted inconsistent evidence relating to her ability to walk and garden. This led to the Board feeling she was less credible.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was not always consistent with the Plaintiff's evidence, but this had little impact on the decision. The Board was more concerned with the Appellant's failure to adhere to recommendations for improvement by doctor's.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>Appellant complained of pain in her lower back, neck, thighs, buttocks, right wrist and right hand, depression, anxiety, arthritis, and a sleep disorder.</p> <p>Appellant was last employed as a factory worker in 1994 when she stopped working due to her injury.</p> <p>The doctor's the Appellant called were simply all of the doctors she had seen. The decision states that they were the witnesses her application, though they may in fact support the defence more.</p>

CANADA PENSION PLAN

Case Name: Angela Mavis Fetter v. Minister of Social Development
CP #: Appeal: CP 23970
Date Heard (August 29, 2005) – Date Decision Rendered (October 3, 2005)

Counsel for the Appellant: James Ludwar
Counsel for the Respondent: Tania Nolet

<p>Outcome</p>	<p>___ 1. FM proven <u>X</u> 3. FM not proven ___ 2. Relief granted <u>X</u> 4. Relief not granted</p> <p>___ Win (if 1 and 2) <u>X</u> Loss (if 3 or 4)</p> <p>LOSS: <u>X</u> Illness not severe Explain: “no objective medical evidence of disability” (9) and the Appellant continued to work after the minimum qualifying period. <u>X</u> Illness not prolonged Explain: “no objective medical evidence of disability” (9) and the Appellant continued to work after the minimum qualifying period.</p>
<p>Judges</p>	<p>Names: 1. J. I. McKay 2. Bonnie Helper (concurring) 3. E. Loukidelis (concurring)</p> <p>Record: Appellant won: _____ Appellant loss: <u>X</u></p>
<p>Expert Evidence (Review Tribunal)</p>	<p>Called by Plaintiff ___ Y ___ N ___ Non-Treating Doctor ___ Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge’s comments on doctor: ___ Preference for evidence of the treating doctor over expert? ___ Doctors as advocates not impartial witnesses? ___ Generally positive comments about doctor as witness? ___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant ___ Y ___ N ___ Non-Treating Doctor ___ Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge’s comments on doctor: ___ Preference for evidence of the treating doctor over expert? ___ Doctors as advocates not impartial witnesses? ___ Generally positive comments about doctor as witness? ___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

Expert Evidence
(Appeal Board)

Called by **Plaintiff** Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. W.C. Neumann (family physician) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Neumann testified that the Appellant was "not capable of work in 1994 and 1995 and continues to be incapacitated to work" (6). The Board determined that there was no objective evidence for her inability to work.

To comments by other doctor's about the Appellant's addiction to Tylenol and abuse of medication, he said "In some ways I do [agree]. It is a difficult question" (6).

Called by **Plaintiff** Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. Norma E. Jibb Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Jibb reported that the patient has fibromyalgia, low back and left leg pain due to mechanical problems. The Board discounted this diagnosis as having no objective evidence.

Called by **Plaintiff** Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. J.A. Nixon (surgeon) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Nixon removed a tender nodule from the left axilla in 1992, and reported after the operation that the "tail of her left breast is very tender, although there is no discrete mass" (5). The Board did not count this evidence as sufficiently objective of severe disability.

	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Jeffrey Way (general surgeon) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Way reported to Dr. Neumann that the Appellant needs to undergo aggressive physiotherapy, but is not because she is working. He states that she is having shoulder pain because of her operation. The Board did not comment on this assessment, but found that there was no objective medical evidence of disability.</p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. R. J. Mitchell (eye physician and surgeon), Dr. J.A. Nixon, Dr. R. West, Dr. Norma E. Jubb, Dr. L. Immelman Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Mitchell states that "I am concerned that [the Appellant's addiction to Tylenol 3 and Percoset's] may be the real reason for her complaints" (6)</p> <p>Dr. Nixon, Dr. West, Dr. Jibb, and Dr. Immelman all refer to the Appellant's addiction to the medication.</p> <p>The Board did not find that addiction to any of these drugs would interfere with a sedentary occupation by the Appellant.</p> <hr/> <p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. P. Renaud</u> Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Renaud reviewed the medical reports filed and gave, what the Board states is a report that is "brief, ...complete and fair" (9).</p> <p>There is no preference for evidence of the treating doctor over the expert.</p>

<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one that can provide objective medical evidence of disability. The Board looked just as favourably upon doctor's that were not treating as they did on treating doctors.</p> <p>What is a bad medical witness: A witness that can provide no objective evidence.</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence that she continued to try to work after the minimum qualifying period was taken to undermine her claim. It was not directly stated by the Board, but the suggestion that she is addicted to Tylenol 3 and other drugs likely undermined her credibility in relation to her claims that she is sick at all.</p>
<p>Importance of medical evidence being consistent with Appellant's evidence</p>	<p>No. cases: _____</p> <p>Comments: Consistency was not that important as one of the doctor's diagnosed her as having fibromyalgia, and she testified to the same effect. Nevertheless, these assessments were deemed to not have any objective medical evidence attached to them, and thus useless.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>Appellant is a 64 year old woman with a Grade 11 education and a one-year mechanical drafting certificate. She is employed at seasonal work, most recently as a perfume demonstrator at the Bay.</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant ___ Y ___ N ___ Non-Treating Doctor ___ Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: ___ Preference for evidence of the treating doctor over expert? ___ Doctors as advocates not impartial witnesses? ___ Generally positive comments about doctor as witness? ___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Respondent ___ Y ___ N ___ Non-Treating Doctor ___ Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: ___ Preference for evidence of the treating doctor over expert? ___ Doctors as advocates not impartial witnesses? ___ Generally positive comments about doctor as witness? ___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness:</p> <p>What is a bad medical witness:</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments:</p>
<p>Importance of medical evidence being consistent with Appellant's evidence</p>	<p>No. cases: _____</p> <p>Comments:</p>
<p>Surveillance</p>	<p>___ Y ___ N</p> <p>If yes, did surveillance evidence affect judge's decision? ___ Y ___ N</p> <p>Reasons:</p>
<p>Other Comments</p>	

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: D. R. J. Borek (family doctor) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Borek advises her to close down her cleaning business when her pains became frequent.</p> <hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Stewart Bailey (orthopaedic surgeon) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Bailey reported that she would have "ongoing problems for an extended period of time in the future" (6). This helped the Board to determine that her illness was "prolonged".</p>
	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. G.A. McCain (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Despite this doctor being called upon by the Crown, he largely supports the Appellant's position. He reported in 1992 that the Appellant has all 18 fibrositic tender points for fibromyalgia and that she suffers from fibromyalgia, as the "objective evidence" (8) for it is shown.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: one that objectively states the facts, regardless of which side has called him or her.</p>

	What is a bad medical witness:
Importance of Appellant's evidence + credibility	<p>No. cases: _____</p> <p>Comments: The Appellant's credibility was a large factor in her win. The Board wrote "she was a credible witness, and generally reliable, although she was shown by Crown counsel to have some memory problems with some detail" (3).</p> <p>Notably, the Appellant did suffer psychiatric problems earlier; however the Board states that "the past psychiatric and other problems do not affect her present credibility or reliability as a witness" (4).</p> <p>The Appellant's faithfully adhering to the specialists and experts recommended, and taking all medications prescribed contributed to her being viewed as credible.</p>
Importance of medical evidence being consistent with Appellant's evidence	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence was "supported and corroborated by the medical reports filed" (3). This fact was significant in the Board's decision to grant this appeal.</p>
Surveillance	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
Other Comments	<p>The Appellant owned a maid service, but as a result of a car accident suffers neck and back injuries that eventually lead to her inability to work. Fibromyalgia appears to have resulted from this accident.</p>

Expert Evidence
(Appeal Board)

Called by Appellant Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. D.J. Thompson (family doctor) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
 X Doctors as advocates not impartial witnesses?
 Generally positive comments about doctor as witness?
 Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Thompson diagnosed the Appellant with chronic neck, and low back pain. He reported that she is likely to continue to have not improve and be in pain and that "she does seem motivated to work and in genuine pain with her conditions" (6). Several years later he diagnosis her with fibromyalgia and states that her prognosis is poor for further improvement.

The Board notes that there are some inconsistencies in Dr. Thompson's retroactive diagnoses, but accepts his testimony nonetheless.

Called by Appellant Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. R. W. Teasell (physical medicine and rehabilitation specialist)
Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
 Doctors as advocates not impartial witnesses?
 Generally positive comments about doctor as witness?
 Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Teasell reported that that the Appellant was likely to "continue to be left with disabling symptomatology" (9) and was a very "hard driving individual" (10) who was likely to follow the pattern of activity of trying to do too much when she felt better and then too little when the pain increases.

The Board respected his opinion as its judgment shows.

Called by Appellant Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. Ralph Potoschnik (orthopaedic surgeon) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
 Doctors as advocates not impartial witnesses?
 X Generally positive comments about doctor as witness?
 Generally negative comments about doctor as witness?

	<p>Comments / Quotes:</p> <p>Dr. Potoschnik stated that he felt it unlikely that she would resolve her pain in the foreseeable future due to her low back mobility limitations. The Board's decision is consistent with his report.</p> <hr/> <p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. E. Guirguis (psychiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>The Appellant went to him complaining of depression increasing, though the doctor found "no evidence clinically...of severe anxiety or florid depressive features and the main indicators are her subjective complaint." (12) He went on to suggest that her litigation with CPP and their denials of her benefits were causing her anxiety.</p> <p>The Board seems to have taken this anxiety into consideration in awarding her compensation.</p> <hr/> <p>Called by Respondent <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Manfred Harth (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Harth diagnosed the Appellant with fibromyalgia and advised an exercise regime. The Board agreed with his diagnosis.</p> <p>The Appellant did not follow Dr. Harth's recommendation. The Board believed this was due to her "perfectionist tendencies " and interest in being "in control" (13). This fact did not impact her getting an award.</p>
	<p>Called by Respondent <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Hans W. Dijk (physiotherapist) Success rate: _____</p>

	<p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Under this physiotherapist there was some indication that the Appellant improved, however, the physiotherapist's statements were not taken with as much consideration as those of the other doctor's.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one that is a physician as opposed to a physiotherapist and one who has had direct contact with the appellant.</p> <p>What is a bad medical witness: One that is inconsistent with his diagnoses.</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence and credibility was greatly important. The Board goes so far as to state as one reason they allow her appeal is that "she appeared in great distress, and very credible" (15).</p>
<p>Importance of medical evidence being consistent with Appellant's evidence</p>	<p>No. cases: _____</p> <p>Comments: Such consistency was important. The Board did not find that her knee problems were disabling, likely because of the lack of medical evidence in that regard, despite her claims.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> X N</p> <p>If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>Appellant was in a car accident in 1990. Subsequently, she suffered from impairments that prevented her from working as a sewer and as a waitress. She stated she suffers from arthritis, fibromyalgia, tendonitis, back and neck pain, bowel and bladder problems.</p>

CANADA PENSION PLAN

Case Name: Barbara Sly v. Minister of Social Development (formerly Minister of Human Resources Development)

CP #: Appeal CP22687

Date Heard (April 28, 2005) – Date Decision Rendered (June 19, 2005)

Counsel for the Appellant: Elizabeth Jones (agent)

Counsel for the Respondent: Adrian Bieniasiewicz

Outcome	<p><input type="checkbox"/> 1. FM proven <input checked="" type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted</p> <p><input type="checkbox"/> Win (if 1 and 2) <input type="checkbox"/> Loss (if 3 or 4)</p> <p>LOSS: <input type="checkbox"/> Illness not severe Explain: There is conflicting evidence on her capacity to maintain sedentary employment which suggests it MAY not be severe. The failure to be a prolonged illness, however, was the turning point.</p> <p><input checked="" type="checkbox"/> Illness not prolonged Explain: One of the doctor's stated that the Appellant's depression can be treated and that she could return to some form of remunerative employment.</p>
Judges	<p>Names: 1. Justice J.-M. Labrosse (reasons for judgment) 2. R.C. Rice (concurring) 3. E.E. Smith (concurring)</p> <p>Record: Appellant won: <input type="checkbox"/> Appellant loss: <input checked="" type="checkbox"/></p>
Expert Evidence (Review Tribunal)	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Shiozaki (family doctor) Success rate: poor</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Shiozaki noted that the Appellant's pain was progressively worse. He diagnosed her with fibromyalgia, which was reiterated by Dr. F.J. Espinosa (neurosurgeon). A CT scan indicated degenerative disc disease and mild spinal stenosis and X-rays of the lumbar area were described as being severe.</p> <p>The Review Tribunal held that the Appellant was not prevented from lighter work or disabled within the meaning of the CPP, despite Dr. Shiozaki's analysis.</p>

	<hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Deb Thomson (psychologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Thomson states that Mrs. Sly has major depressive disorder, panic disorder with agoraphobia, and pain disorder associated with both psychological factors and general medical conditions. She goes on to diagnose fibromyalgia, and state that these disorders make her unable to fulfill the demands of any job.</p> <p>This belief was not accepted by the Board in their decision. The reasons for their dismissal of this opinion are unexplained.</p> <hr/>
	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Wayne Quan (psychiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Quan states that it is possible that the Appellant has fibromyalgia, but then goes on to say that if she is appropriately treated for her depressive illness, "her circumstances certainly should be a lot different and she should be able to return to some form of remunerative employment" (10).</p> <p>The Board considered Dr. Quan's belief that the Appellant could return to work as instrumental in making their decision.</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Respondent <input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Matthew W. Faris (Department of Rehabilitation Medicine) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <hr/> <p>Dr. Faris prepared an independent medical evaluation for the Appellant's disability insurer. He finds chronic pain syndrome and fibromyalgia, but also major affective depression. "He believes that the disabilities of the Appellant are psychiatric and psychological in origin and that the Appellant has much greater physical capabilities than she perceives." (6). This belief was accepted by the Board in their decision.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: No comments explicitly made.</p> <p>What is a bad medical witness:</p>
<p>Importance of Appellant's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's failure to look for a less demanding and stressful work after she quit her job influenced the Board's decision to dismiss her appeal.</p>
<p>Importance of medical evidence being consistent with Appellant's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was inconsistent as regards her back problems. This inconsistency resulted in the Board finding that the Appellant had not demonstrated her condition.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N Reasons:</p>
<p>Other Comments</p>	

CANADA PENSION PLAN

Case Name: *Bernadette Louise Quinn v. Minister of Social Development*
CP #: *Appeal CP 16956*
Date Heard (*July 6, 2005*) – Date Decision Rendered (*July 26, 2005*)

For the Appellant: *Appellant in person*
For the Respondent: *Tania Nolet*

<p>Outcome</p>	<p><input checked="" type="checkbox"/> 1. FM proven <input type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted</p> <p><input type="checkbox"/> Win (if 1 and 2) <input type="checkbox"/> Loss (if 3 or 4)</p> <p>LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: The failure of the medical specialists to view the Appellant's problem as serious and the Appellant's failure to pursue any kind of employment were the reasons given for not concluding the illness is severe. <input type="checkbox"/> Illness not prolonged Explain: _____</p>
<p>Judges</p>	<p>Names: 1. R.E. Salhany (reasons for judgment) 2. J.Douglas Cunningham (concurring) 3. Justice T.W. Gallant (concurring)</p> <p>Record: Appellant won: _____ Appellant loss: <input checked="" type="checkbox"/> _____</p>
<p>Expert Evidence <i>(Review Tribunal)</i></p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

Expert Evidence
(Appeal Board)

Called by Appellant Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. R.D. Graham (family doctor) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- X Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Graham filed a report stating that the Appellant was permanently disabled and unemployable.

The failure for any of the specialists to agree (except Dr. Spears doing a psychometric study) resulted in the Board refusing to accept his assessment.

Called by Appellant Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. K. McCarthy (internal medicine) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. McCarthy found no collagen disease and felt she did not need to continue using steroids for headache control.

Called by Appellant Y N Non-Treating Doctor
 X Treating Doctor

Name: Dr. Allan W. Profitt (orthopaedic surgeon) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Profitt found no carpal tunnel syndrome, just overuse.

	<p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Shirley Callaghan (psychometrician) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Callaghan conducted tests for 4.5 hours. She found that there was a low level of functioning in every area and a depleted and debilitated personality structure, compatible with fibromyalgia.</p> <p>The Board found that because these tests were done 10 years after the MQP, they had little relevance.</p>
	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. A.S. Muzumdar (physiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Muzumdar diagnosed the Appellant with fibromyalgia, but felt that with weight reduction she would be able to re-enter the work force.</p> <p>The Board accepted that the Appellant may have fibromyalgia, but states that due to the nature of the disease more is needed than merely fibromyalgia to prove that the person is disabled for the CPP. "What the sufferer must establish is that the pain is such as to render her or him incapable of regularly pursuing any substantially gainful occupation" (11).</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: Judge's decision indicates that a good medical witness is one that is in agreement with all of the others. The Board writes "Dr. Graham concluded...that she was permanently disabled and unemployable, but none of the medical specialists who were consulted at his requested found her condition to be serious." (12).</p> <p>What is a bad medical witness: One whose examination falls 10 years after the MQP.</p>

<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Plaintiff's evidence was not particularly important as it was not corroborated by the medical specialists, thereby undercutting her credibility.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence generally was not consistent with the Plaintiff's evidence. This led to the dismissal of the appeal.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>Appellant complains of fibromyalgia, hypothyroidism, and asthma. She worked as a stenographer until 28 at which point she had a gallstone operation. She feels she cannot work as she is tired all the time and would be unable to do any job she is hired for.</p>

CANADA PENSION PLAN

Case Name: Bernadette Shean v. Minister of Social Development
CP #: Appeal CP 22826
Date Heard (April 27, 2005) – Date Decision Rendered (June 3, 2005)

For the Appellant: Dan Shean (agent)
For the Respondent: Michel Mathieu

<p>Outcome</p>	<p><input checked="" type="checkbox"/> 1. FM proven <input type="checkbox"/> 3. FM not proven <input checked="" type="checkbox"/> 2. Relief granted <input type="checkbox"/> 4. Relief not granted</p> <p><input checked="" type="checkbox"/> Win (if 1 and 2) <input type="checkbox"/> Loss (if 3 or 4)</p> <p>LOSS: <input type="checkbox"/> Illness not severe Explain: _____ <input type="checkbox"/> Illness not prolonged Explain: _____</p>
<p>Judges</p>	<p>Names: 1. E.E. Smith (reasons for judgment) 2. R.C. Rice (concurring) 3. Justice J.A. Forget (concurring)</p> <p>Record: Plaintiff won: <input checked="" type="checkbox"/> Plaintiff loss: <input type="checkbox"/></p>
<p>Expert Evidence <i>(Review Tribunal)</i></p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> X <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. H. Sequeira (psychiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Sequeira characterized the Appellant as having had severe depression, and stated that her social and occupational functioning was good at the time prior to the MQP.</p> <p>The Board accepts his assessment of the situation, and does not consider her ability to function in her job (though suffering from fibromyalgia and depression at this point) as undermining her claim. They simply ignore this comment.</p>
	<hr/> <p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> X <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Strader (family doctor) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Strader felt the Appellant could not fulfill her activities of even daily living in the MQP.</p> <p>The Board accepts this statement, but notes that there is little direct medical evidence to help them make the decision to accept her appeal.</p>
	<hr/> <p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> X <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. M.E. Guilmet Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Guilmet diagnosed the Appellant with fibromyalgia after the MQP. The Board observes that there is little direct medical evidence to help them shortly after they make this statement about Dr. Guilmet.</p>

	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one that can provide direct evidence. The Board writes "there is scant direct medical evidence to assist the Board in assessing the Appellant's capacity" (7).</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence that she was working in a family business and not doing very much was key to the decision in her favour. The Board observed "This being a family business, the fact that she did not invest herself in it more aggressively, provides a powerful clue as to the true state of her capacity regularly to pursue a substantially gainful occupation from 1997 onward." (8).</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was scant, so the importance of it's being consistent with the Appellent's evidence is difficult to say.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> X <input type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant was an RNA who later opened a family business. As a child she was physically, emotionally and sexually abused leading to her current depression. After stopping work she experienced a transient ischemic attack of some kind.</p>

	<p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Martin observed that the Appellant had significant injury to the soft tissue around the c-spine.</p> <hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. R. Avery (neurosurgeon) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Avery, in reviewing an MRI in which he found some mild degenerative changes, but no significant compression of the spinal cord, recommended the Appellant for a Pain Clinic. He believed there might be some sort of complex regional pain syndrome.</p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. J.C. Jacob (neurologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Jacob treated the Appellant for his shaking hand. For the hand alone, the neurologist felt there was no specific neurological disorder that was likely and considered the Appellant capable of returning to work. The Board emphasized in its judgment that the doctor was only assessing the Appellant's hand.</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. N.J. Lush Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Lush reported that he agrees with Dr. Power's assessment of chronic pain syndrome, but believes that the Appellant should be teated from a psychological or psychiatric viewpoint, as well as from the physical.</p> <p>The Board accepted that the Appellant suffers from "chronic pain".</p> <hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr Avery Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Avery reported that "Despite the lack of concrete physical findings on physical examination or diagnostic imaging, I do consider his condition to be severe. While it is beyond my ability to perform a thorough work performance assessment, I cannot think of any job that Mr. Crane could perform with any degree of comfort or competence, given the profound intensity of his pain" (8).</p> <p>The Board accepted this assessment.</p>
	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. K.J. O'Brien (occupational medicine) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. O'Brien testified that "chronic pain syndrome had no biological basis, that it was a behaviour problem, not an impairment" (8).</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness, for chronic pain, can include a psychiatrist, but does not have to.</p> <p>What is a bad medical witness:</p>

<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant was deemed very "sincere" (9). This combined with his attempts at every form of treatment over a great period of time, encouraged the Board to accept his appeal.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was consistent generally, however, this was not emphasized as being particularly important, likely because it was consistent.</p>
<p>Surveillance</p>	<p>___ Y <u>X</u> N</p> <p>If yes, did surveillance evidence affect judge's decision? ___ Y ___ N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The issue in this case was whether chronic pain qualifies as disabled. The Board agreed that it did after referring to other cases where chronic pain was said to qualify as severe and prolonged (<i>Nova Scotia (Workers' Compensation Board) v. Martin</i> [2003] 2 S.C.R. 504 which observed that "chronic pain" and all associated conditions such as "chronic pain syndrome, fibromyalgia, myofascial pain syndrome and all other like or relative conditions" could be disability conditions" (10)).</p> <p>The Board also referred to <i>Minister of National Health and Welfare v. Densmore</i> which accepted a diagnosis of chronic pain syndrome as meeting the criteria and opined that psychiatric evidence would be helpful. The Board observed that no psychiatric evidence on this appellant was yet available because of an inability to get to a pain management clinic, but the other medical opinions of non-psychiatric doctors were enough.</p>

CANADA PENSION PLAN

Case Name: Charlene Seymour v. Minister of Social Development
CP #: Appeal CP20165
Date Heard (September 30, 2004) – Date Decision Rendered (February 18, 2005)

For the Appellant: Appellant in person
For the Respondent: Ms. Florence Clancy

<p>Outcome</p>	<p><input checked="" type="checkbox"/> 1. FM proven <input type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted</p> <p><input type="checkbox"/> Win (if 1 and 2) <input checked="" type="checkbox"/> Loss (if 3 or 4)</p> <p>LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: The Board believed that the patient was really not suffering extensively but had simply "elected to be a mother rather than [go] back to the workplace. This finding was largely based on a lack of objective medical evidence and inconsistencies with complaints by the Appellant.</p> <p><input checked="" type="checkbox"/> Illness not prolonged Explain: The Board believed that the patient was really not suffering extensively but had simply "elected to be a mother rather than [go] back to the workplace. This finding was largely based on a lack of objective medical evidence and inconsistencies with complaints by the Appellant.</p>
<p>Judges</p>	<p>Names: 1. Mr. Justice Gordon Killeen 2. Mr. Justice P.C. Power 3. Mr. Justice E.R. Millette</p> <p>Record: Plaintiff won: <input type="checkbox"/> Plaintiff loss: <input checked="" type="checkbox"/></p>
<p>Expert Evidence <i>(Review Tribunal)</i></p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p>

	<p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Marlys Misfeldt (family doctor) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input checked="" type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Misfeldt reported that her patient was "back to her pre-December 11, 1996, accident condition" (12). She diagnosed fibromyalgia, migraines, endometriosis and stated that her patient cannot work "because of being 'overwhelmed' with discomfort from muscle aches and discomfort in her joint" (18).</p> <p>The Board wrote "Dr. Misfeldt's reports...overemphasized many of Ms. Seymour's complaints and smacked of patient advocacy" (22). "In my view, her later reports give the impression of an attempt to build up a case for more serious complaints than those actually presented to the other doctors" (23).</p> <hr/> <p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Kate Fast (physiotherapist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Ms. Fast noted that the x-rays of the neck and lumbar spine were normal. A bone scan, she noted, showed some inflammation of the left hip. The Board was very concerned with objective medical evidence being normal.</p> <hr/>

	<p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. W. Olszynski (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Olszynski's exam disclosed a good range of motion in both hips, no obvious physical or neurological deficits, and some "tender trigger points" over her ankles, the trapezius muscle, the S1 joints and around her knees.</p> <p>He diagnosed fibromyalgia and said "Patient was also advised to return to work since there is no evidence of any permanent impairment on examination of the musculoskeletal system" (7).</p> <p>The Board found this suggestion of return to work to undermine the patient's position that she was suffering from a disability under the CPP's definition.</p>
	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Evans (orthopaedist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Evans' physical exam revealed "a healthy young woman" and he found a full range of motion in her low back. (p. 6). CT scans on her back and neck showed some osteophytosis (spurs) and a bone scan on her left hip showed "slightly increased activity" in the left hip.</p> <hr/> <p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Clein (neurosurgeon) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Clein stated that the Appellant was "suffering from soft tissue injury only and that she requires more time to heal. Ultimately she will." (5). This was used by the Board to undermine the appeal.</p>

	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Jerilyn Sim (Bourassa report) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes "Prognosis, assuming continued patient compliance and approval of appropriate treatment funding, should be full functional recovery, but the client will be left with long term baseline symptoms that need to be accepted but will not restrict function" (11).</p> <p>At the end of the treatment, the Bourassa report stated that the appellant "feels that she has returned to her pre-motor vehicle accident functional status" (11). This report was used by the Board as evidence that she was not disabled.</p> <hr/> <p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Bindu Nair (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Nair reported that her prior "discomfort" of her neck and lower back was no longer a problem" and neurological testing was normal (14). He diagnosed hypermobility syndrome and noted she turned down free physiotherapy because "she does not have time". This report undermined the position of the Appellant's disability successfully.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one who is objective and consistent with other medical witnesses.</p> <p>What is a bad medical witness: One whose diagnosis "[smack] of patient advocacy" (23).</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: "I say, first, that I was not impressed with Ms. Seymour's own evidence. As it seems to me, she gave conflicting evidence about the course of her complaints and these conflicts in her evidence are reflected strikingly in the medical evidence...Over the years, Ms. Seymour had a multiplicity of objective medical tests done in the form of blood work, CT scans, X-rays, and bone scans, and each and every such test proved normal and tended to negate an organic basis for most of her complaints." (20).</p>

<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The Board felt it was very important: "In her own evidence, Ms. Seymour tried to paint a picture of suffering from a multiplicity of complaints almost constantly from her first accident but I thought she exaggerated her symptoms and described them in a manner inconsistent with what emerged from the medical reports" (22).</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant was a hairdresser who was injured in a rear-ended car accident from which she sustained a back injury in 1993 that was diagnosed as whiplash. In 1996 she was in another car accident which aggravated her earlier soft-tissue complaints and did not add to them. The MQP ended on December 31, 1997.</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Appellant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> X <input type="checkbox"/> Treating Doctor</p> <p>Name: D. J.E. Homik (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Homik concluded that she was probably suffering from fibromyalgia.</p> <p>The Board does not dismiss the interpretation but argues that she was not disabled by the MPQ and as such does not qualify for CPP.</p> <hr/> <p>Called by Appellant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Anne Sepanmaak-Lund (family physician) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Sepanmaak-Lund reported that "Mrs. Bak has not been able to work since 1998 due to her constant severe symptoms, which are only partially controlled with medications." (4)</p> <p>The Board does not dismiss the interpretation but argues that she was not disabled by the MPQ and as such does not qualify for CPP.</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: No comments were directly made as to this point.</p> <p>What is a bad medical witness:</p>

<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence was relatively consistent with the medical reports; however, because she did not have these problems prior to or at the MPQ, no relief was granted. Her credibility was thus not particularly relevant.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was consistent but because the MPQ was not met in terms of the time when she was disabled, this point became irrelevant.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. J.G. Campbell (family physician)</u> Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: <u>Dr. Campbell reported that due to neck sprain, left rotator cuff tear and depression she was "permanently unfit for work" (5).</u></p> <hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. J. C. Brutus (psychiatrist)</u> Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: <u>Dr. Brutus stated that "This woman is not saying that she does not want to work, but her physical limitations make it that it is particularly difficult for her to find work" (5). This statement was employed as evidence promoting the Appellant's credibility.</u></p> <hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. P.O Cano (rheumatologist)</u> Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: <u>Diagnosis included fibromyalgia. Dr. Cano agreed that this patient has "been incapacitated for work" (6).</u></p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: <u>Dr. Elizabeth Schneider (neurosurgeon)</u> Success rate: _____</p> <p>Judge's comments on doctor:</p>

	<p> <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness? </p> <p> Comments / Quotes: Dr. Schneider felt that the Appellant's return to work might be possible if modified duties capacity were provided or in a work hardening program situation. </p> <hr/> <p> Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor </p> <p> Name: Dr. David M. Harding (orthopaedic surgeon) Success rate: _____ </p> <p> Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness? </p> <p> Comments / Quotes: Dr. Harding stated "there is no medical contraindication for her continuing to work, if she feels able, and in fact she should be encouraged to do so as much as possible" (4). </p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness:</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's hard work record of 32 years at her job, and her hard work to secure employment were noted as indications of her credibility along with a psychological report saying there are no significant psychological factors that might impact on training or employment and that she has an excellent work history and has acquired a solid work ethic. Moreover, her consistency in reporting her symptoms to the medical specialists over the years, her following their instructions, and her cooperation with the Worker's Compensation Board leaned more to her credibility.</p> <p>The Board wrote, "It is not sufficient to find that chronic pain or fibromyalgia does exist. The pain or impairment must be such that it prevents the sufferer from regularly pursuing a substantially gainful occupation. Some factors to consider in making this assessment include: 1) the genuineness of what are strictly subjective symptoms; and 2) efforts made to seek treatment and to cope with the pain" (8). Thus, her credibility were incredibly important.</p>

<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The Board observed (as quoted immediately above) that evidence being consistent is important, but less so in fibromyalgia cases due to the subjective nature of the disease.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant was a prep cook who slipped on a step and injured her neck and left shoulder. A few years later, she reinjured her neck, shoulder and back while lifting a heavy load of potatoes. She describes her disabling conditions as problems with her left shoulder, neck and lower back as well as depression and a hearing impairment.</p>

Expert Evidence
(Appeal Board)

Called by Plaintiff Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. S. Rahaman (family physician) Success rate: _____

Judge's comments on doctor:

Preference for evidence of the treating doctor over expert?

Doctors as advocates not impartial witnesses?

Generally positive comments about doctor as witness?

Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Rahaman diagnosed fibromyalgia, irritable bowel syndrome, fatigue and generalized pain. He did not foresee recovery.

Called by Plaintiff Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Ian H. Holmes (internist) Success rate: _____

Judge's comments on doctor:

Preference for evidence of the treating doctor over expert?

Doctors as advocates not impartial witnesses?

Generally positive comments about doctor as witness?

Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Holmes examined CT scans, upper GI endoscopy, an echocardiogram, a bone scan and an US. He diagnosed her with atopic dermatitis, irritable bowel syndrome, and fibromyalgia.

Called by Plaintiff Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. P.M. Peloso (rheumatologist) Success rate: _____

Judge's comments on doctor:

Preference for evidence of the treating doctor over expert?

Doctors as advocates not impartial witnesses?

Generally positive comments about doctor as witness?

Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Peloso diagnosed fibromyalgia, irritable eczema, irritable bowel, and migraines. He advised her that she should try to continue with regular employment.

	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. T. Hussain (resident for Dr. Pollock rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Hussain diagnosed fibromyalgia due to the musculoskeletal system trigger points. The Board seemed to approve of his methods of diagnoses.</p> <hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Rahawan Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Rahawan stated that the Appellant was not able to cope and perform in a work environment.</p> <hr/> <p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. C.N. Johnson (physiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Johnson diagnosed fibromyalgia and stated that Ms Sharp was not able to work in a regular job of any description.</p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. J.L. Graner (internist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness?</p>

	<p>___ Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Graner diagnosed, irritable bowel syndrome, constant vaginal burning, and chronic skin disease. No fibromyalgia was diagnosed.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one that employs objective means like x-rays and the use of trigger points on the body to assess whether or not someone has fibromyalgia. This was implied by the Board.</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: Analyzing whether the Appellant is disabled requires "consideration of the medical reports [and]...an assessment of the testimony before this Board of Ms. Sharp, her daughter and her husband." (10). The Board felt that all were credible witnesses whose "testimony merits considerable weight" (11).</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was consistent and this was deemed to be important.</p>
<p>Surveillance</p>	<p>___ Y ___X_ N</p> <p>If yes, did surveillance evidence affect judge's decision? ___ Y ___ N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant was primarily a homemaker raising 2 children, who was also employed full time as a laundry aide at a nursing home until she quit due to health problems. She did not seek regular employment afterwards due to, as per her report, fibromyalgia with marked fatigue, aches and pains, joint swelling, irritable bowel disturbance, and sleep disorder.</p>

	<p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Fournier noted that the Appellant was suffering from a major depression with anxiety that was narcissistic in character, histrionics, and a compulsive personality.</p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Christian Calvy (psychiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Calvy found that, although the Appellant had a major depression, panic disorder without agoraphobia, and noted a GAF score of 60, she had a "total but non-permanent disability, with recovery of a satisfactory functional level" (5). "According to him, because she wanted to teach part-time, she seemed to have adapted completely" (5).</p> <p>Dr. Calvy's examination of tests that were performed that turned out normal was emphasized by the Board and seems to have encouraged them to take Dr. Calvy's diagnosis to heart.</p> <hr/> <p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. E.W. Busse (psychiatrist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Busse reviewed Dr. Calvy's report and stated that he did not believe her limitations were severe.</p>

	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Jacques Fournier (psychologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Fournier is a psychologist and a specialist in health psychology who recorded his behaviour observations of the Appellant. He concluded that she was not in a condition to hold a job at the time, but this did not mean she was disabled. He felt with proper behavioural treatment she could return to work in 12 weeks.</p> <p>The appellant's failure to adhere to these suggestions by taking the recommended psychotherapy encouraged the Board to rule against her.</p> <hr/> <p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Herve David (orthopedist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. David felt her shoulder problems could be resolved in a year and a half.</p>
<p>Expert Evidence (Review Board)</p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: One that provides objective evidence. "The objective medical evidence on file does not seem to be such as to enable us to find in her favour. Neither the documentary evidence nor the oral testimony seems to indicate, on a balance of probabilities, that the appellant was suffering from a disability that is both "severe" and prolonged" or that she was unable as a result to pursue any gainful occupation" (8).</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's admitting that she had not taken the recommended psychotherapy or tried to go back to work, either part-time or otherwise played a role in her claim's dismissal.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was not consistent with the Appellant's complaints. This resulted in her claim being dismissed.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>Appellant was a teacher from 1977 to 2000 at which point she retired stating she was suffering from extreme stress, inability to concentrate on her work, back and neck pains, extreme fatigue, anxiety and chest pains.</p> <p>The x-rays and other radiological tests were all normal. This fact played a role in her cases' dismissal.</p>

CANADA PENSION PLAN

Case Name: Donna-Lee Gross v. Minister of Social Development
CP #: Appeal CP 21949
Date Heard (September 28, 2004) – Date Decision Rendered (January 28, 2005)

For the Appellant: Appellant in person
For the Respondent: Shawna Noseworthy

Outcome	<input checked="" type="checkbox"/> 1. FM proven <input type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted <input type="checkbox"/> Win (if 1 and 2) <input checked="" type="checkbox"/> Loss (if 3 or 4) LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: The Board felt that, despite having fibromyalgia, the Appellant's capacity to do a less demanding job was still possible, thereby precluding her meeting the definition of severe. <input type="checkbox"/> Illness not prolonged Explain: The Board found she met the definition of prolonged.
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Judges	Names: 1. G.F. Kinsman 2. T.E. Quinlan 3. Justice J.H. Brockenshire Record: Plaintiff won: _____ Plaintiff loss: <input checked="" type="checkbox"/>
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Expert Evidence (Review Tribunal)	Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor Name: Dr. R.S. McDougall (rheumatologist) Success rate: _____ Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness? Comments / Quotes: Dr. McDougall found her symptoms were consistent with fibromyalgia. The board observed that there was no suggestion that the Appellant is incapable of working. <hr/> Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor Name: Dr. Z. Rehman (neurologist) Success rate: _____ Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness? Comments / Quotes: Dr. Rehman reported that she has generalized tension myalgias that are similar to fibromyalgia. The board observed that there was no suggestion that the Appellant is incapable of working.
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	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. R. Ugwumba (family doctor) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: "I examined her and found that all systems were functional and stable" (5).</p> <p>The board observed that there was no suggestion that the Appellant is incapable of working.</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Expert Evidence <i>(Appeal Board)</i></p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness will state their beliefs about whether or not the Appellant is capable of working. The Board noted, "in none of the reports filed is there any suggestion that the Appellant is incapable of working, either at her previous occupation or work involving lighter duties" (6).</p> <p>What is a bad medical witness:</p>

<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Board observed that the Appellant was unrepresented and "impressed us as a pleasant, well groomed lady. She expressed herself clearly and throughout her testimony did not in any way attempt to embellish her disabilities." (7) Nonetheless, despite finding her credible, they found that she had "simply made up he mind that she cannot [be gainfully employed]...and is disinclined to expect herself to do so." (7). This conclusion was a result of the evidence that the Appellant could perform light tasks in the home and the failure of any doctor to suggest she could not work. Thus, her evidence was significant, but not in her favour.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was consistent with the Plaintiff's; however, this evidence did not meet the qualifications of "disabled" under the CPP. As such, the claim failed.</p>
<p>Surveillance</p>	<p>___ Y ___ X ___ N</p> <p>If yes, did surveillance evidence affect judge's decision? ___ Y ___ N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant suffered from pain in her neck, back and knees.</p> <p>"It has been consistently held that the term "severe" is expressed in terms of capacity to work. A finding of severity is not based in medical evidence alone or a disease description such as "fibromyalgia". Nor is it based upon the Appellant's ability to perform her usual employment, rather than any substantially gainful employment. Capacity to perform regular part-time work, modified activities, or sedentary occupations has been held to preclude a finding of severity." (6).</p>

CANADA PENSION PLAN

Case Name: Evelin J. Morison v. Minister of Social Development
CP #: Appeal CP 22457
Date Heard (October 3, 2005) – Date Decision Rendered (October 24, 2005)

For the Appellant: Judy Michaud (agent)
For the Respondent: Tania Nolet

<p>Outcome</p>	<p> <input type="checkbox"/> 1. FM proven <input checked="" type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted <input type="checkbox"/> Win (if 1 and 2) <input checked="" type="checkbox"/> Loss (if 3 or 4) LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: There was no objective medical evidence provided for many of her complaints, despite one doctor diagnosing fibromyalgia. <input checked="" type="checkbox"/> Illness not prolonged Explain: The Board did not feel she was ill. </p>
<p>Judges</p>	<p>Names: 1. Mr. Justice J.D. Cunningham 2. I. Grotsky 3. J.B. Chadwick</p> <p>Record: Plaintiff won: _____ Plaintiff loss: <input checked="" type="checkbox"/></p>
<p>Expert Evidence (Review Tribunal)</p>	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: A.J. Preston (family doctor) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Preston diagnosed fibromyalgia; however, the Board seemed inclined to accept Dr. Buchanan's assessment of chronic pain syndrome due to the lack of objective evidence Dr. Preston provided.</p> <p>The Board noted, "only her family physician was able to conclude she was unfit for work. None of the many specialists whom Ms. Morrison has seen reached similar conclusions." (4) This failure led to the dismissal of the claim.</p>

	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input checked="" type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Buchanon (rheumatologist) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Buchanon diagnosed chronic pain syndrome.</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
Expert Evidence <i>(Appeal Board)</i>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one whose beliefs are reiterated by other doctors. (4).</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Plaintiff's beliefs about her disability were not accepted by the Board. Her failure to make efforts to retrain or undergo the recommended regular exercise that was encouraged by the doctors was taken into consideration in this rejection.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The Board found that "On balance, we have a woman who complains of a myriad of symptoms, very few of which have any objective basis" (4). This lack of consistency was important in dismissing the case.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	<p>The Appellant was a switchboard operator with a grade 12 education.</p>

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Defendant <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. J.P. Germain Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p> <p>Dr. Germain was said to be a "credible witness" who gave an "excellent summary of the medical evidence" despite not having ever examined the witness personally. (p.6)</p> <p>He did not dispute the fibromyalgia and chronic pain diagnosis, but argued that her mild personality disorder and major depressive disorder did not mean she was disabled from all employment whatsoever.</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is credible and gives an "excellent summary of the medical evidence on file" (6).\</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Plaintiff's evidence was found to be credible and she was found to have "difficulties with fibromyalgia, chronic pain, and fatigue as well as long standing difficulties in her mood" (7). Her statements, combined with her attempts to fulfill all recommendations save one, contributed to her getting CPP relief.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence was consistent with the Plaintiff's evidence and this contributed to the appeal being accepted.</p>

Surveillance	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision?</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
Other Comments	The Appellant was a practical nurse.

Surveillance	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N Reasons:
Other Comments	

CANADA PENSION PLAN

Case Name: Georgina Robb v. Minister of Social Development
CP #: Appeal CP 17441
Date Heard (November 23, 2004) – Date Decision Rendered (March 31, 2005)

For the Appellant: Hilary A. Balmer (agent)
For the Respondent: Adrian Bieniasiewicz

<p>Outcome</p>	<p><input checked="" type="checkbox"/> 1. FM proven <input type="checkbox"/> 3. FM not proven <input type="checkbox"/> 2. Relief granted <input checked="" type="checkbox"/> 4. Relief not granted</p> <p><input type="checkbox"/> Win (if 1 and 2) <input checked="" type="checkbox"/> Loss (if 3 or 4)</p> <p>LOSS: <input checked="" type="checkbox"/> Illness not severe Explain: There was no physical evidence of severe allergy, the "long list of complaints and symptoms were considered by the treating physicians and many found to be normal or unremarkable" (18), and while CFS and fibromyalgia were accepted to exist their degree was not intense enough. Finally, "As an applicant for a disability pension, she had an obligation to make reasonable efforts to look for a less stressful job and follow the instructions of her treating and consultant physicians. Her lack of cooperation throughout was unreasonable and resulted in the escalation of her condition" (21). <input type="checkbox"/> Illness not prolonged Explain: _____</p>
<p>Judges</p>	<p>Names: 1. H. Soubliere 2. H.P. Legg 3. Janet L. Boland</p> <p>Record: Plaintiff won: _____ Plaintiff loss: <input checked="" type="checkbox"/></p>
<p>Expert Evidence <i>(Review Tribunal)</i></p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>

	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Expert Evidence <i>(Appeal Board)</i></p>	<p>Called by Plaintiff <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Pierre Bourassa (GP) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: The Board spoke positively of the testimony of this doctor as he was "fair and helpful to both parties" (4). The Board did not seem to have any problem with his being the non-treating doctor and merely having reviewed the medical reports.</p> <hr/> <p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Frank J. Foley (Director of the Environmental Health Clinic at Women's College Hospital) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Frank felt she had "likely chronic fatigue syndrome" (5) and did not "feel she was capable of working in the future" (6).</p>

Called by Respondent Y N Non-Treating Doctor
 Treating Doctor
Name: Dr. L.C. Tebbutt (internist specializing in respirology) Success rate:

Judge's comments on doctor:
 Preference for evidence of the treating doctor over expert?
 Doctors as advocates not impartial witnesses?
 Generally positive comments about doctor as witness?
 Generally negative comments about doctor as witness?

Comments / Quotes:
Dr. Tebbutt found that her asthma was under control and there was no evidence of obstructive sleep apnea.

Called by Respondent Y N Non-Treating Doctor
 Treating Doctor
Name: Dr. Duncan A. Gordon (rheumatology) Success rate: _____

Judge's comments on doctor:
 Preference for evidence of the treating doctor over expert?
 Doctors as advocates not impartial witnesses?
 Generally positive comments about doctor as witness?
 Generally negative comments about doctor as witness?

Comments / Quotes:
Dr. Gordon finds that the appellant has chronic pain syndrome with features of fibromyalgia and chronic fatigue. He states "It has been suggested that she might try working at home part-time but she seems reluctant to consider this possibility, as well as the possibility of accepting a trial of antidepressants that you suggested.

Her failure to accede to suggestions or look for work was paramount in the dismissal of this claim.

Called by Respondent Y N Non-Treating Doctor
 Treating Doctor
Name: Dr. Arthur Leznoff (allergist and clinical immunologist) Success rate:

Judge's comments on doctor:
 Preference for evidence of the treating doctor over expert?
 Doctors as advocates not impartial witnesses?
 Generally positive comments about doctor as witness?
 Generally negative comments about doctor as witness?

Comments / Quotes:
Dr. Leznoff finds that her "seizures" are not epileptiform seizures but hysterical pseudoseizures. He goes on to report that her allergic reactions are actually a psychological illness. He writes "There are no objective findings which we could demonstrate which show that Miss Robb cannot perform the duties of her own occupation – but it should be noted that psychological illness, which is clearly present here, does not lend itself to objective data. Similarly, there is very little objective data to support the diagnosis of chronic fatigue syndrome in any patient...At this juncture I do not think she is capable of gainful employment, either full time or part time, although I believe that her major disability is psychosomatic" (10).

The Board generally agreed with Dr. Leznoff and found that the lack of objective evidence of disability undermined her claim enough to dismiss it.

Called by Respondent Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Peter G. Stenn (Psychiatrist) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Stenn diagnosed a "serious psychiatric problem which has not been [adequately]...treated" (12) involving pain disorder, and agoraphobia. He suggested that the duration of her disability will be a problem in getting her back to work as studies have shown the longer a person "views himself/herself as disabled the more difficult it is to get back to work" (12).

Called by Respondent Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Ted Haines (Occupational Medicine) Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Haines diagnosed fibromyalgia and CFS and observes that Ms. Robb is "anxious to return to appropriate work as soon as she can" (14).

Called by Respondent Y N Non-Treating Doctor
 Treating Doctor

Name: Dr. Joseph Berger (psychiatric disability assessment specialist)
Success rate: _____

Judge's comments on doctor:

- Preference for evidence of the treating doctor over expert?
- Doctors as advocates not impartial witnesses?
- Generally positive comments about doctor as witness?
- Generally negative comments about doctor as witness?

Comments / Quotes:

Dr. Berger, the Board notes, "was not able to perform a proper assessment or comment in great detail" (14), but observes that his report states that "scientific evidence is solidly against any of these [diagnoses] being considered a medical diseases or illnesses. At best they can be considered to be a symptom collections generally consisting of fatigue or aches and pains" (15).

	<p>Called by Respondent <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Robert K. Ferrie (EMDR therapist specializing in post traumatic stress disorder) Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input checked="" type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Ferrie found that she does not need psychotherapeutic treatment, but occupational medical treatment, despite the occupation doctors saying the opposite.</p>
Judge's comments on expert evidence	<p>What is a good medical witness: What is a bad medical witness:</p>
Importance of Plaintiff's evidence + credibility	<p>No. cases: _____ Comments: The Plaintiff's evidence was not overly important in light of the medical evidence. While she claimed to be allergic to many scents, for instance, the lack of physical evidence of her allergy was believed over her perception.</p>
Importance of medical evidence being consistent with Plaintiff's evidence	<p>No. cases: _____ Comments: The lack of consistency undermined her claim.</p>
Surveillance	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
Other Comments	

<p>Expert Evidence (Appeal Board)</p>	<p>Called by Plaintiff <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: Dr. Tozman Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes: Dr. Tozman reviewed the clinical notes of Dr. D'Agata, a physician that was deceased at the time of the appeal. He noted that the "Clinical notes ...[are] unacceptable" as they are illegible and would be "grounds for reprimand or dismissal" (6).</p> <p>He finds, based on Dr. D'Agata's notes, that the Appellant has chronic pain disorder, major depression, post traumatic stress disorder, and fibromyalgia.</p> <p>The Board found that this diagnosis is "at best speculative" and does not qualify as satisfying a disability.</p>
	<p>Called by Defendant <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Non-Treating Doctor <input type="checkbox"/> Treating Doctor</p> <p>Name: _____ Success rate: _____</p> <p>Judge's comments on doctor: <input type="checkbox"/> Preference for evidence of the treating doctor over expert? <input type="checkbox"/> Doctors as advocates not impartial witnesses? <input type="checkbox"/> Generally positive comments about doctor as witness? <input type="checkbox"/> Generally negative comments about doctor as witness?</p> <p>Comments / Quotes:</p>
<p>Judge's comments on expert evidence</p>	<p>What is a good medical witness: A good medical witness is one whose clinical notes are legible.</p> <p>What is a bad medical witness:</p>
<p>Importance of Plaintiff's evidence + credibility</p>	<p>No. cases: _____</p> <p>Comments: The Appellant's evidence was crucial. The fact that she was unable to show that she could not have gathered the evidence she now brought before the court at the time of the original hearing, was used as a reason to dismiss the case.</p>
<p>Importance of medical evidence being consistent with Plaintiff's evidence</p>	<p>No. cases: _____</p> <p>Comments: The medical evidence being consistent with the Appellant's evidence was not material to the issue.</p>
<p>Surveillance</p>	<p><input type="checkbox"/> Y <input checked="" type="checkbox"/> N</p> <p>If yes, did surveillance evidence affect judge's decision? <input type="checkbox"/> Y <input type="checkbox"/> N</p> <p>Reasons:</p>
<p>Other Comments</p>	