

Federal Court



Cour fédérale

Date: 20230815

Docket: T-1387-22

Citation: 2023 FC 1110

Ottawa, Ontario, August 15, 2023

PRESENT: Mr. Justice O'Reilly

BETWEEN:

HEATHER ELAINE THOMAS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Heather Thomas filed two tax forms late. The forms, called T1135s, should have been filed in 2016 and 2017; she filed them in 2020. The Canada Revenue Agency assessed Ms Thomas penalties and interest of about \$6,000.

[2] Ms Thomas asked the CRA for relief from the penalties and interest. She provided medical information relating both to her and her husband. The CRA denied her request finding that the couple's medical situation did not prevent them from filing the required forms on time.

[3] Ms Thomas submitted a second request and provided additional medical information. A CRA officer refused to reconsider the initial decision denying her relief.

[4] Ms Thomas submits that the officer's decision was unreasonable because it failed to take proper account of her medical circumstances and the CRA's own prior ruling granting her relief. She has also provided additional documentary evidence on this application for judicial review. She asks me to quash the officer's decision and order another officer to reconsider her request for relief. (I would note that counsel for the respondent, Mr Alexander Millman, graciously consented to Mr Bruce Thomas making oral submissions on behalf of his wife, Ms Heather Thomas.)

[5] While it is normally improper to consider new evidence on an application for judicial review, I find that the unusual circumstances of Ms Thomas's case permit me to do so. Considering that evidence, and the other evidence in the record, I agree with Ms Thomas that the CRA officer's decision was unreasonable. It failed to take adequate account of the medical circumstances experienced by Ms Thomas and her husband, and the CRA's own prior analysis of those circumstances. I will, therefore, allow this application for judicial review.

[6] There are two issues:

1. Should New Evidence be Admitted?
2. Was the CRA Officer's Decision Unreasonable?

II. The Officer's Decision

[7] The officer found that the medical information provided by Ms Thomas did not show that her ability to comply with her tax obligations was adversely affected. The officer noted that Ms Thomas was capable of running her business, which, in the officer's opinion, was of "comparable complexity" to filing tax returns.

[8] The officer considered whether Ms Thomas had acted quickly to remedy her failure to file her T1135s. Since Ms Thomas was able to file her 2017 and 2018 forms on time, the officer concluded that there was no justification for her failing to file her 2015 and 2016 forms when they were due.

III. Issue One – Should New Evidence be Admitted?

[9] Ms Thomas wishes me to consider the following documents:

- i.* Her request to the CRA for relief for her late GST filing and the CRA's positive response;
- ii.* Her letter to the CRA asking for confirmation that it had received her T1135s for previous years, her follow-up letter requesting copies of her other T1135 submissions, and the CRA's reply confirming that it had received her T1135 forms for all other years.

[10] Generally speaking, judicial reviews are conducted on the basis of the evidence that was before the decision-maker, in this case, the CRA officer. New evidence is not normally admissible. However, there are exceptions to the general rule: (1) when the new evidence simply provides background information that might help the reviewing judge; (2) when the evidence

shows that there was an absence of evidence before the decision-maker on a particular point; and (3) when the evidence shows defects in the evidentiary record (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[11] The new evidence Ms Thomas relies on is admissible under the second exception. The evidence about Ms Thomas's GST filing shows that the CRA officer failed to consider her parallel request for relief (on identical grounds). Similarly, the evidence chronicling her communications with the CRA shows, contrary to the decision of the officer, that she acted fairly promptly.

[12] I also note that the evidence Ms Thomas relies on is not really new. It was in the possession of the CRA, yet it was not considered (see *Bird v Canada Revenue Agency*, 2014 FC 843 at para 41).

IV. Issue Two – Was the CRA Officer's Decision Unreasonable?

[13] The Attorney General of Canada maintains that the officer's decision was reasonable because it took into account the medical information Ms Thomas had provided and the length of the delay in filing the required forms.

[14] I disagree.

[15] The medical information Ms Thomas provided the CRA described the long-standing challenges she was experiencing in areas such as decision-making, time management, and accuracy, which made it difficult for her to carry out complex tasks, such as filing tax returns. It also described health issues experienced by Mr Brian Thomas, which not only limited his ability to assist Ms Thomas but required Ms Thomas to care for him.

[16] The officer inferred from this information that Ms Thomas had been able to keep her business going, notwithstanding her health issues, so there was no reason why she could not file her tax forms. Ms Thomas is an interior designer. It is not clear how the officer equated her ability to continue to function in that capacity with her ability to manage complex tax matters. There is nothing in the record that would support that conclusion.

[17] The same medical information was provided to a CRA officer along with Ms Thomas's request for relief on her late GST filings. That officer approved her request and cancelled penalties and interest for the years 2015 to 2019, covering the same years for which she sought relief for late filing of her T1135s.

[18] It possible for two conflicting decisions both to be reasonable. Decision-makers have a degree of discretion and may weigh the same evidence differently. But where, as here, decision-makers reach opposite conclusions based on the same evidence, it falls to the reviewing court to determine whether the outcomes are, indeed, attributable to different reasonable assessments of the evidence, or are the result of a reviewable error. I find that the negative decision on Ms

Thomas's request for relief on her late filing of T1135s was the result of faulty inferences from the evidence that rendered the conclusion unreasonable.

[19] The officer also found that Ms Thomas had not acted quickly to remedy her late filings. In fact, in 2019, she sought confirmation from the CRA as to which T1135s were missing (she had already filed forms for 2017 and 2018, but was not sure about other years). Not receiving an answer, she wrote the CRA again in the spring of 2020. The CRA responded in July 2020. Ms Thomas provided the outstanding forms in May and August of 2020. Considerable delay was attributable to the CRA's late response to Ms Thomas's inquiries.

[20] I find that the officer's denial of Ms Thomas's request for relief was unreasonable. The officer provided two reasons, neither of which is supported by the evidence. As a result, the officer's conclusion is not justified, transparent, or intelligible.

V. Conclusion and Disposition

[21] The CRA's officer's decision did not respond meaningfully to the medical evidence Ms Thomas had tendered and unreasonably found that Ms Thomas had failed to act promptly to file her forms. Accordingly, I must allow this application for judicial review and order another CRA officer to reconsider her request for relief from penalties and interest.

JUDGMENT IN T-1387-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1387-22

STYLE OF CAUSE: HEATHER THOMAS v. Attorney General of Canada

PLACE OF HEARING: CALGARY AB

DATE OF HEARING: JUNE 6, 2023

JUDGMENT AND REASONS: O'REILLY J

DATED: AUGUST 15, 2023

APPEARANCES:

Heather Thomas	REPRESENTING THE APPLICANT
Brian Thomas	
Alexander Millman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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