

Federal Court



Cour fédérale

Date: 20220105

Docket: 21-T-51

Citation: 2022 FC 5

Toronto, Ontario, January 5, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JASON SHOWERS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a motion in writing pursuant to *Rule 369* of the *Federal Courts Rules*, SOR/98-106 [the “*Rules*”] for an extension of time to file an application for judicial review of a decision of the Canada Revenue Agency [CRA], dated April 30, 2020, concluding that the Applicant was ineligible for the Canada Recovery Benefit [the “*Decision*”].

II. Background

[2] On April 30, 2021, an officer of the CRA, on behalf of the Minister of Employment and Social Development, rendered the second-level Decision denying the application of the Applicant, Mr. Jason Showers, for the Canada Recovery Benefit [the “CRB”] because the Applicant did not reach the \$5,000 income threshold as required under paragraph 3(1)(e) of the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2 [the “CRBA”].

[3] The Applicant received the Decision on or about May 6, 2021.

[4] Following receipt of the Decision, the Applicant revised his 2019 taxes on or about May 18, 2021, with the assistance of Brownstone Tax Services. The revised taxes report self-employment gross income of \$6,850.00 and net income of \$5,390.00, as per the 2019 Tax Return Summary.

[5] The Applicant provided the revised 2019 Tax Return Summary to the CRA on or about June 30, 2021, requesting a redetermination of his eligibility for the CRB. On or about the last week of August, the Applicant was advised over the phone that the CRA refused to reassess his eligibility because a second-level review had already been completed.

[6] On October 1, 2021, the Applicant was in contact with the CRA Validations Department, with the assistance of legal counsel, and informed that a reassessment of eligibility would not be done and that a judicial review of the Decision was required.

[7] On October 18, 2021, the Applicant filed a Notice of Motion requesting an extension of time to apply for judicial review of the Decision to the Respondent by email. The Applicant filed his Notice of Motion with the Federal Court on October 22, 2021.

III. Issue

[8] The sole issue is whether the Applicant should be granted an extension of time to apply for judicial review of the Decision.

IV. Analysis

[9] As a preliminary matter, the style of cause should be amended to properly indicate the Respondent is the Attorney General of Canada. That amendment is hereby made.

[10] The Applicant was required to file a Notice of Application for Judicial Review by June 7, 2021 under subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, CF-7 – he was approximately 4 ½ months late in doing so.

[11] This Court has the discretion to extend the time within which a party directly affected by a decision may apply for judicial review. In considering whether granting an extension of time is in the interests of justice, the principal factors to be considered are whether the moving party has demonstrated:

- (i) a reasonable explanation for the delay;

- (ii) a continuing intention to pursue his or her application;
- (iii) that the application has some merit; and
- (iv) that no prejudice to the respondent arises from the delay.

[12] However, I agree with the Respondent that the overriding consideration is that the interests of justice be served [*Canada (Attorney General) v. Larkman* (2012) FCA 204 at para 62].

[13] The Applicant bases his request for an extension on his amended tax return for the 2019 taxation year made on May 18, 2021, which reported net self-employment income of \$5,390.00, and on significant personal medical issues prior to his request for the extension.

[14] However, that evidence was not before the decision-maker at the relevant time, and would not generally be admissible in his application for judicial review.

[15] Moreover, the Applicant's purported request for reconsideration to the CRA on June 30, 2021, and his alleged repeated requests with the intention of provoking a reply, cannot justify an extension of the time-limit to file an application for judicial review; nor does his lack of appreciation that the time to file his judicial review application continued to run notwithstanding his ongoing requests for reconsideration [*1594418 Ontario Inc. v. Canada (National Revenue)*, 2021 FC 157 at para 46; *Katebi v. Canada (Citizenship and Immigration)*, 2014 FC 813 at para 21].

[16] Nevertheless, I disagree with the Respondent that there was not an ongoing intent to pursue his application, or that there is not a reasonable explanation for the delay in doing so. I also do not find the prejudice that the Respondent argues for to be persuasive given the facts here.

[17] The real question is whether the application may have merit – and the issue of procedural fairness resounds as having some merit that should be properly considered in a judicial review.

[18] The CRA provides a two-tier administrative review process of requests. Upon submission of a request for review, the CRA will conduct a first review and will provide a decision in writing. A second request for review can also be made, in writing, if it is believed that the CRA did not properly exercise its discretion in considering the first request for review.

[19] The second review request requires:

- The reasons for disagreement with the CRA's decision, e.g., not all information was considered, certain facts or details were missing or misinterpreted or not considered in their proper context; and
- Any relevant new documents, new facts, or correspondence.

[20] Based on the information before me, it does not appear that a second level review was conducted in this case, though the CRA informed the Applicant of such. It appears that the Applicant made a request for the CRB. This request was denied in the Decision – this is the first level review. The Applicant then took steps to revise his taxes to submit to the CRA,

presumably as, what the CRA calls, the second administrative review. The revised tax information, as well as further information on the Applicant's health issues, are in fact *required* as relevant new documents and facts at the second level.

[21] It does not appear that the Applicant was afforded this second tier review.

[22] I hereby grant the extension requested until January 21, 2022, for the Applicant to file and serve his application for judicial review before this Court.

JUDGMENT in 21-T-51

THIS COURT'S JUDGMENT is that:

1. The extension to file and serve the Applicant's application for judicial review is hereby granted.
2. The Applicant shall have until January 21, 2022 to file and serve his application for judicial review.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 21-T-51

STYLE OF CAUSE: JASON SHOWERS v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MOTION IN WRITING

JUDGMENT AND REASONS: MANSON J.

DATED: JANUARY 5, 2022

APPEARANCES:

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| JASON SHOWERS | FOR THE APPLICANT |
| DOMINIK LONGCHAMPS JASON STOBER | FOR THE RESPONDENT |

SOLICITORS OF RECORD:

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|---|--------------------|
| JASON SHOWERS (SELF-REPRESENTED) CAMBRIDGE, ONTARIO | FOR THE APPLICANT |
| ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE CANADA OTTAWA, ONTARIO | FOR THE RESPONDENT |