Federal Court  Cour fédérale

Date: 20221205

Docket: T-683-22

Citation: 2022 FC 1671

Ottawa, Ontario, December 5, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JOSHAUA BEAULIEU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This decision relates to an application for judicial review of a decision of the Canadian Human Rights Commission [the Commission], dated February 23, 2022 [the Decision]. In the Decision, the Commission, pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [Act], dismissed the Applicant's complaint of discriminatory conduct by his employer, Veterans Affairs Canada [VAC], after reviewing and adopting the reasons in a

Report for Decision dated December 10, 2018 [the Report], prepared by a Human Rights Officer [the Officer].

[2] As explained in greater detail below, this application is dismissed, because the Decision is both reasonable and procedurally fair.

II. **Factual Background**

[3] The Applicant, Joshaua Beaulieu, worked as a National Contact Centre Network Analyst at VAC prior to the termination of his employment on May 22, 2019.

[4] The Report identifies (in paragraph 33) a series of facts to which the Report states the parties agree. However, the Applicant identified at the hearing a number of areas in which he disagrees with the Report's characterization of these facts. As such, the portion of the following summary that relates to the factual background leading to the Applicant's termination is intended to capture those facts in a manner that that does not repeat the disputed characterizations.

[5] In November 2016, the Applicant provided VAC with a medical note that indicated that he held a prescription for medical cannabis. The Applicant asked VAC about its policy for using medical cannabis in the workplace. At the time, cannabis was still a controlled substance in Canada, and VAC did not have such a policy in place.

[6] The Applicant wished to administer medical cannabis (by smoking cannabis buds in a pipe) in VAC's designated smoking area. VAC initially advised the Applicant that he could not

smoke cannabis in that area, but it later changed its position after consulting with its human resources [HR] representative and the Treasury Board of Canada Secretariat [Treasury Board]. As a result, the Applicant was permitted to smoke cannabis in the designated smoking area if he agreed to stay at least ten feet away from other smokers.

[7] In January 2017, VAC received complaints in relation to the Applicant's grinding of medical cannabis at his desk. VAC told the Applicant that he could not do this (or grind medical cannabis anywhere inside the workplace) due to the odour associated with it and because other employees were complaining about the odour.

[8] Around this time, VAC asked the Applicant to participate in a Fitness-to-Work Evaluation [FTWE] so that it could better understand his restrictions and limitations. The Applicant agreed to participate.

[9] On February 6, 2017, the Applicant went on paid leave for other reasons pending the results of the FTWE. On February 9, 2017, VAC provided the Applicant with a letter related to the FTWE, asking him to obtain additional information from his doctor about his restrictions and limitations. VAC asked for this information because, among other things, the Applicant stated that he could not pre-grind his medical cannabis outside of the workplace.

[10] VAC received the results of the Applicant's FTWE in June 2017 and noted that the Applicant had redacted some information. On June 8, 2017, VAC met with the Applicant, his union representative, and a HR representative. VAC confirmed to the Applicant that, based on

the information contained in the FTWE report, it could accommodate his medical needs in the workplace. However, during this meeting the Applicant stated that he wished to provide information in response to the information that he had redacted. He suggested that he undergo a further FTWE and wanted to remain on leave without pay during this process. VAC agreed.

[11] VAC's HR representative explained the process for the further FTWE to the Applicant and reiterated that he would be on leave without pay, because VAC was satisfied that he could return to work immediately and that it was his decision to remain on leave. The Applicant went on unpaid leave in June 2017 and never returned to work.

[12] In March 2019, Sun Life Financial [Sun Life], VAC's disability management provider, determined that the Applicant was totally and permanently incapacitated and approved him for disability benefits until 2052.

[13] The Applicant did not undergo the FTWE that had been discussed in June 2017. Although the Applicant advised VAC of his position that he was not totally and permanently incapacitated, VAC terminated the Applicant's employment on May 22, 2019.

[14] On December 10, 2018, the Applicant filed a complaint with the Commission alleging that he had been discriminated against since November 2016 [the Complaint]. He alleged that VAC discriminated against him in his employment on the grounds of disability by treating him in an adverse and differential manner and by pursuing a discriminatory policy or practice.

[15] After raising some preliminary issues with the parties, the Commission informed them on December 5, 2019 that it would deal with the Complaint. As a result, the Commission assigned the Officer to investigate the Complaint and provide a report and recommendation.

[16] On December 2, 2021, the Officer issued the resulting Report. As explained in the Report, in conducting her investigation the Officer reviewed the information submitted by the parties and spoke with the Applicant, VAC's Labour Relations Advisor who had been involved during some of the periods relevant to the Complaint, and the Applicant's union representative. The Report recommended that the Commission dismiss the Complaint pursuant to subparagraph 44(3)(b)(i) of the Act because, having regard to all the circumstances of the Complaint, further inquiry was not warranted.

[17] The Applicant provided submissions to the Commission in response to the Report, following which the Commission issued the Decision that is under review in this application.

III. **Decision Under Review**

[18] In its Decision dated February 23, 2022, the Commission adopted the Officer's findings as set out in the Report. The Commission noted that it had reviewed the Complaint form, the Report, and the submissions of the Applicant following the Report. The Commission concluded that the Applicant's submissions, that the Officer was biased and did not undertake a thorough investigation, were unfounded.

[19] In addition to adopting the Report's conclusion, recommendation and reasons, the Commission provided the following analysis:

> The Complainant has been given a number of opportunities, both through the grievance process and the present Complaint, to dispute the approach taken by the Respondent to accommodate him and the decision to terminate his employment. He may not agree with the conclusions reached through these processes, but that does not make them wrong. Apparently, the Complainant is awaiting a hearing on some of the grievances that were referred to the Federal Public Service Labour Relations and Employment Board. He will have additional opportunities there to advance his argument.
>
> As the Report for Decision notes, the Respondent accommodated the Complainant's medical needs in the workplace until he went on an unpaid leave of absence in June of 2017. In February of 2019, the Respondent acknowledged the Complainant's intention to return to work, and requested that he provide additional information about his limitations and restrictions. That information was not limited to the Health Canada assessment. However, the Complainant himself had previously requested a Health Canada assessment be undertaken, although he later stated that he did not understand why this was being requested. The Respondent needed additional information about the Complainant's fitness to return to work in the foreseeable future and his limitations upon return, especially in light of the decision by Sun Life that the Complainant was totally and permanently incapacitated. The Complainant refused to provide the necessary information. In doing so, he failed to comply with his legal obligation to cooperate in the accommodation process [footnoting to *Central Okanagan School District No. 23 v Renaud*, [1992] 2 SCR 970 at 994]. At that point, the Respondent's duty to accommodate ceased.

[20] For these reasons and those in the Report, Commission decided to dismiss the Complaint pursuant to subparagraph 44(3)(b)(i) of the Act because, having regard to all the circumstances of the Complaint, further inquiry was not warranted.

IV. **Procedural Background to this Hearing**

[21] On April 1, 2022, the Applicant filed a Notice of Application, commencing this application seeking judicial review of the Decision. On May 12, 2022, he swore an affidavit in support of his application [First Affidavit], which the Respondent acknowledges is properly before the Court. However, when the Applicant served the First Affidavit, he also provided to the Respondent 47 documents labelled as exhibits but not introduced or marked in the First Affidavit or containing commissioned exhibit stamps.

[22] The Applicant's Application Record also includes a second affidavit of the Applicant, which is undated and which the Respondent asserts was served out of time [Second Affidavit]. In early August 2022, the Applicant attempted to file a motion seeking leave to file the Second Affidavit and a number of accompanying documents. On August 8, 2022, Associate Judge Aalto directed that the Applicant's Motion Record would not be accepted for filing, because of a number of procedural defects including the fact that it did not contain properly identified exhibits.

[23] As such, the Respondent takes the position that the Second Affidavit and the documents that accompanied both affidavits are not properly before the Court and should be disregarded in adjudicating this application.

[24] On November 9, 2022, the Court received a letter from the Applicant stating that he wished to present a motion for interlocutory relief at the hearing of his application for judicial review, scheduled for November 23, 2022. The Applicant's letter explained that the purpose of the motion was to introduce additional evidence and cure deficiencies in his Application Record.

[25] Pursuant to a Direction by the Court dated November 10, 2022, the Applicant filed his Motion Record on November 15, 2022. The Respondent opposes the motion.

V. **Issues**

[26] Based on the parties' submissions, I have identified the following issues to be addressed by the Court:

A. Who is the proper Respondent?

B. Should the Court allow the filing of the additional evidence that is the subject of the Applicant's motion?

C. What standard of review should the Court apply?

D. Applying the appropriate standard of review, did the Commission commit reviewable error?

VI. **Analysis**

A. *Who is the proper Respondent?*

[27] As a preliminary procedural and uncontroversial matter, the Respondent's counsel submits that, while the Applicant has named VAC as the Respondent in this application, the proper Respondent is the Attorney General of Canada [AGC]. The Applicant did not take a position on this submission.

[28] I agree with the Respondent's position. Rule 303 of the *Federal Courts Rules*, SOR/98-106 [Rules], provides that, where there are no persons directly affected by the order sought in an application for judicial review, other than the tribunal in respect of which the application is brought, the applicant shall name the AGC as a respondent. This is such a situation, because government departments (such as VAC) are not legal entities and therefore should not be named as parties (*Liclican v Canada (Attorney General)*, 2020 FC 24 at para 15). My Judgment will therefore provide for the change in the name of the Respondent.

B. *Should the Court allow the filing of the additional evidence that is the subject of the Applicant's motion?*

[29] The Applicant's Notice of Motion seeks leave under Rule 312(a) to file additional evidence to be considered in this application for judicial review. The additional evidence is included in the Applicant's Motion Record in the form of a sworn but undated affidavit [Third Affidavit].

[30] As a preliminary point, I note that, while the Third Affidavit introduces and attaches 57 exhibits, those exhibits were not commissioned by the notary before whom the Applicant swore the affidavit. As such, the affidavit does not comply with Rule 80(3), which requires that exhibits be accurately identified by an endorsement on the exhibit or on an attached certificate, signed by the person before whom the affidavit is sworn. However, as the Respondent has not raised Rule 80(3) in responding to the Applicant's motion, I will not find the Third Affidavit inadmissible based on this irregularity. I note that each of the exhibits is clearly identified by number.

[31] Rule 312(a) allows a party to apply to the Court for leave to file additional affidavits. In order to obtain an order under Rule 312 the Applicant must satisfy two preliminary requirements: (a) the evidence must be admissible on the application for judicial review; and (b) the evidence must be relevant to an issue that is properly before the Court (*Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 [*Forest Ethics*] at para 4).

[32] If these two preliminary requirements are met, the party seeking leave to file the additional affidavit must convince the Court that it should exercise its discretion in favour of granting the order under Rule 312 (*Forest Ethics* at para 5). The jurisprudence has set out principles that guide the Courts discretion. Specifically, the following three questions have been determined relevant to whether the granting of an order under Rule 312 is in the interests of justice (*Forest Ethics* at para 6):

A. Was the evidence sought to be adduced available when the party filed its affidavits under Rule 306 or 308, as the case may be, or could it have been available with the exercise of due diligence?

B. Will the evidence assist the Court, in the sense that it is relevant to an issue to be determined and sufficiently probative that it could affect the result?

C. Will the evidence cause substantial or serious prejudice to the other party?

[33] These three factors are not mandatory elements of a conjunctive test, such that each must be satisfied. Instead, they are factors that must be considered and balanced in the exercise of the

Court's discretion (*Smart Cloud Inc v International Business Machines Corporation*, 2021 FC 236 at para 39).

(1) Admissibility and relevance

[34] In relation to the two preliminary requirements explained in *Forest Ethics*, the Respondent argues that the Third Affidavit is neither admissible nor relevant, because the Applicant has failed to establish that the evidence therein was either before the administrative decision-maker, the Commission, or before the Officer. The Respondent relies on the principle that, subject to certain exceptions (the list of which may not be closed), evidence that was not before an administrative decision-maker and that goes to the merits of the matter is not admissible in an application for judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at paras 19-20).

[35] The Applicant does not dispute this principle but argues that the Third Affidavit falls within recognized exceptions for background information or evidence relevant to bias on the part of the decision-maker or other procedural fairness arguments (*Access Copyright* at para 20).

[36] I note that the record before the Court does not provide an evidentiary basis for the Court to understand exactly what evidence was before the Officer when she prepared her Report. I understand that the Certified Tribunal Record [CTR] provided by the Commission under Rules 317-318 includes the material that was before the Commission when it made the Decision, but not necessarily the material that was before the Officer. The Respondent's Record includes an

April 20, 2022 letter from the Commission, enclosing the CTR, which explained the Commission's objection under Rule 318(2) to producing any material that was not before the Commission but also that it was open to reconsidering its position if further particulars of additional requested material were provided. The Respondent notes that the Applicant did not take issue with the contents of the CTR.

[37] In the absence of evidence that the exhibits attached to the Third Affidavit were before the Officer, I agree with the parties' positions that their relevance and admissibility should be determined by recourse to the exceptions described in *Access Copyright*.

[38] I also agree with the Respondent's position that the Third Affidavit does not fall within the background information exception. This exception relates to general background information that might assist the Court in understanding the issues relevant to the judicial review. It does not apply to evidence relevant to the merits of the matter decided by the administrative decision-maker. As the Respondent submits, it is clear from the manner in which the exhibits are described in the Third Affidavit that the Applicant seeks to use this evidence to make arguments on the merits of the judicial review (*Access Copyright* at para 26).

[39] However, I find less merit to the Respondent's position that the exhibits to the Third Affidavit do not fall within the exception for evidence relevant to an issue of procedural fairness. One of the Applicant's principal assertions in this application is that he was deprived of procedural fairness because the Officer who investigated his Complaint failed to conduct a thorough investigation or was biased. The Respondent refers the Court to authorities explaining

that, in the context of Commission investigations, a reviewing court should intervene on the basis of procedural fairness only where investigator failed to investigate "obviously crucial evidence" or was biased in that they approached the case with a "closed mind" (*McIlvenna v Bank of Nova Scotia (Scotiabank)*, 2017 FC 699 [*McIlvenna*] at para 32; *Abi-Mansour v Canada (Revenue Agency)*, 2015 FC 883 [*Abi-Mansour*] at para 51). The Respondent submits that the new evidence does not meet these tests.

[40] I accept these principles and will apply them in considering the merits of the Applicant's procedural fairness arguments later in these Reasons. However, the Court cannot consider whether the Applicant's evidence meets the tests prescribed by the jurisprudence unless the evidence forms part of the record before the Court on this application. In particular, in relation to the Applicant's argument that the Officer failed to conduct a thorough investigation, he wishes to argue that the Officer failed to identify the evidence provided in the Third Affidavit and that this failure demonstrates a lack of thoroughness that constitutes a breach of procedural fairness. I consider the exhibits to the Third Affidavit to be relevant to the Court's determination of this procedural fairness argument and therefore admissible.

[41] I will therefore turn to the discretionary portion of the Rule 312 analysis.

(2) Earlier availability of the evidence

[42] The Respondent submits that all of the proposed additional evidence predates the filing of the Applicant's Rule 306 Affidavit in May 2022. As such, the Applicant could have adduced this evidence at that time with the exercise of due diligence. I agree with this submission. However,

the Respondent's counsel acknowledged at the hearing that much of the evidence that the Applicant seeks to introduce now was included in the documentary material that accompanied the First Affidavit that the Applicant filed under Rule 306. It appears that, because the Applicant is self-represented, he failed to identify the need to include this material as exhibits to the First Affidavit in order for it to properly form part of the record. As such, this factor of the discretionary analysis does not weigh significantly in the Respondent's favour.

[43] The Respondent also submits that the Applicant was aware of the need to file this Rule 312 motion as early as June 2022 but instead waited until less than two weeks prior to the hearing of the application. In support of this position, the Respondent has filed an affidavit attaching correspondence between the Applicant and the Respondent's counsel dating to June 2022. I agree with the Respondent's position that the Applicant has provided no compelling explanation for his delay from June to November 2022. However, in my view, this further delay is best addressed under the third factor of the discretionary analysis to which I will turn shortly, when considering prejudice resulting from the Applicant's effort to introduce evidence at this late juncture.

(3) Assistance to the Court

[44] This element of the analysis asks whether the new evidence will assist the Court, in the sense that it is relevant to an issue before the Court and sufficiently probative that it could affect the result. I have previously explained why I consider the evidence relevant. I also consider it to have sufficient probative value that this factor of the discretionary analysis favours the Applicant. In so stating, I am not expressing a conclusion that this evidence is necessarily likely

to result in a conclusion that the Applicant's procedural fairness arguments will succeed. I will conduct that analysis later in these Reasons. Rather, the new evidence has sufficient probative value to favour its admission, in the sense that the Court will be unable to assess the Applicant's thoroughness arguments in the absence of this evidence. This factor therefore favours the Applicant.

(4) Prejudice to the Respondent

[45] The Respondent does not argue that it is prejudiced by the timing of the Applicant's effort to introduce the Third Affidavit, in comparison either to when he filed his Rule 306 affidavit or to when he was alerted to the need for this motion. This therefore factor favours the Applicant.

[46] Balancing the three discretionary factors, I find that they favour admitting the Third Affidavit and its exhibits into evidence. However, I note that, consistent with the basis for my conclusion that the new evidence is relevant and admissible under one of the *Access Copyright* exception, I will consider that evidence in relation to the Applicant's procedural fairness arguments. Other than to the extent my analysis of the merits of the Report and the Decision results in a conclusion that a particular exhibit was before the Officer, the new evidence will not form part of my analysis of the parties' arguments as to whether the Decision is on its merits reasonable (if I adopt the standard of review proposed by the Respondent) or correct (if I adopt the standard proposed by the Applicant).

[47] I also note that the Third Affidavit includes a significant volume of argument, which is inappropriate for inclusion in an affidavit. The content of affidavits should be restricted to evidence and should not include argument (*Cadostin v Canada (Attorney General)*, 2019 FC 1198 at para 26, aff'd 2021 FCA 22). However, recognizing that the Applicant is self-represented and in the interest of proceeding efficiently, I will exercise my discretion not to strike the portions of the Third Affidavit that represent argument but will treat that content as argument rather than evidence.

[48] As such, the Court will treat the Applicant's Record in this application as including the First Affidavit, the Third Affidavit, and the documents described as exhibits to the Third Affidavit. The record does not include the Second Affidavit or the documents that accompanied either the First Affidavit or the Second Affidavit.

C. *What standard of review should the Court apply?*

[49] In connection with the Court's analysis of the merits of the Decision, the Respondent argues that the presumptive standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The Applicant argues that the Court should apply the correctness standard. He submits that this application involves his constitutional rights, a general question of law of central importance to the legal system as a whole, and a question regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at paras 55-64).

[50] In my view, none of these categories applies to displace the presumptive reasonableness standard in the case at hand. While the Applicant argues that the Commission or VAC infringed his constitutional rights, the issues in this application do not involve questions of constitutional interpretation that would invoke the correctness standard. Similarly, while the Court accepts the Applicant's submission that the protection against discrimination with which the Commission is tasked under the Act is of significant importance, this application does not raise any issues of legal interpretation of central importance to the legal system as a whole.

[51] Nor does this application raise questions regarding jurisdictional boundaries between administrative decision-makers. The Applicant seeks to invoke this principle based on an argument that the Officer and therefore the Commission failed to properly do their job in assessing alleged human rights violations by the VAC administration. However, this argument does not raise an issue surrounding the scope of the these administrative decision-makers' respective jurisdictions.

[52] Moreover, the Federal Court of Appeal has recently held that it is well settled that the deferential reasonableness standard applies to the merits of Commission decisions to refer, or to decline to refer, human rights complaints to the Canadian Human Right Tribunal [Tribunal] for further inquiry (*Canada (Attorney General) v. Ennis*, 2021 FCA 95 [*Ennis*] at para 46). The Act provides the Commission with a high degree of latitude in performing its screening function on receipt of an investigation report (*Ennis* at para 57). Such decisions must be afforded a high degree of deference by reviewing courts (*Ritchie v Canada (Attorney General)*, 2017 FCA 114 at para 38).

[53] The parties have no substantive disagreement on the standard of review applicable to the Applicant's procedural fairness arguments. The Applicant again seeks application of the correctness standard. The Respondent accepts that issues of procedural fairness are subject to judicial scrutiny to ensure that a fair and just process was followed, an exercise best reflected in the correctness standard even though, strictly speaking, no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47).

D. *Applying the appropriate standard of review, did the Commission commit reviewable error?*

(1) Is the Decision reasonable?

[54] I will first consider the merits of the Decision, applying the reasonableness standard of review. As a starting point, it is useful to note what is actually being judicially reviewed in this application.

[55] In cases such as this, the Commission performs a screening function to determine whether a complaint requires further inquiry by the Tribunal (*Gregg v Air Canada Pilots Association*, 2019 FCA 218 at para 7, *per* Rennie J.A. (dissenting, but not on this point); *Hoang v Canada (Attorney General)*, 2017 FCA 63 at para 27). As a screening body, the Commission may decide to send the complaint to the Tribunal for a more in-depth inquiry where witnesses may be called to testify in person. The Tribunal is then the body that decides whether or not there has been discrimination. The Commission may decide to send a complaint to the Tribunal where there is enough information to support the allegations in the complaint and/or where there is a factual or legal issue that requires further inquiry by the Tribunal.

[56] In screening complaints, the Commission relies upon the work of an investigator (subsection 43(1) of the Act; *Paul v Canadian Broadcasting* Corp, 2001 FCA 93 at para 42). The report produced by the investigator is not a decision of the Commission. Instead, its purpose is to help the Commission make a decision about what should happen next in the complaint.

[57] However, as noted by this Court in *Mulder v Canada (Attorney General)*, 2020 FC 944 at paragraph 60, in decisions made pursuant to section 44 of the Act, as is the case here, when the Commission adopts the investigator's recommendations and provides no reasons or only brief reasons, the investigator's report is deemed to be part of the Commission's reasons (see also *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37). In addition to this general principle, in the case at hand the Decision expressly adopts the Report as part of its reasons.

[58] As such, this application for judicial review concerns the Decision of the Commission and the Report underlying it. I do not understand either of the parties to disagree with this approach. Indeed, the Applicant's arguments in this application are based principally upon the contents of the Report.

[59] While the parties' arguments focus significantly upon VAC's termination of the Applicant's employment, I understand that the Applicant also seeks to impugn the Officer's conclusions (and therefore those of the Commission) surrounding other aspects of his allegations that VAC failed to accommodate his disability in the workplace. The Report analyses the Complaint under four issues articulated as follows:

A. Complainant requested to smoke and grind medical cannabis in the workplace;

B. Breaks and tracking time to medicate;

C. Paid leave (code 699) pending the HC FTWE (between February-May 2017); and

D. Events that followed the June 2017 HC FTWE.

[60] I consider this set of issues a useful structure under which to conduct the required reasonableness review.

(a) *Complainant requested to smoke and grind medical cannabis in the workplace*

[61] This portion of the Officer's analysis (paras 133-139 of the Report) addresses the Applicant's allegations of discrimination surrounding both his request to administer his medical cannabis in the workplace and his request to prepare the cannabis for administration by grinding it in the workplace.

[62] In connection with the Applicant's preferred method of administration (smoking his medical cannabis using a pipe), the Officer concluded that, because VAC eventually allowed the Applicant to smoke in the designated smoking area (with the caveat that he remain at least ten feet away from others), it appeared that this part of his allegation was remedied during the course of his grievances and the accommodation process.

[63] The Applicant argues that VAC's accommodation process was flawed, because it initially told him that he could not smoke in the designated smoking area and only later changed its

position after consulting with the Treasury Board and its HR representative. He submits that VAC should have first conducted the necessary consultations about accommodating him before taking a position on his request. The Applicant also argues that, in requiring him to remain ten feet from other smokers, he was being stigmatized and therefore was not afforded appropriate accommodation.

[64] As explained in *Vavilov*, reasonableness review is concerned with determining whether an administrative decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (at para 99). Applying those principles, the Applicant's arguments do not undermine the reasonableness of this portion of the Officer's analysis. The Court is able to understand how the Officer arrived at the conclusion that this aspect of the Applicant's allegation was addressed. The Applicant urges the Court to find that the Officer should have arrived at a different conclusion, based on VAC's process and its requirement that he distance himself from other smokers. However, this is not the Court's role in judicial review.

[65] In connection with the Applicant's request to prepare his medical cannabis for administration by grinding it in the workplace, the Officer noted that VAC acknowledged it denied the Applicant's request to grind at his desk. VAC made this decision because of the odour caused by the grinding process and because the Applicant failed to provide any evidence to demonstrate that he was required to grind at his desk rather than outside of the workplace. The Officer also referred to evidence by the Applicant's union representative that the union was prepared to allow him to trial using the union office for this purpose. However, the Applicant

never trialed this accommodation measure, because he did not return to the workplace after this idea was raised.

[66] The Officer also referred to the FTWE provided by the Applicant's doctor to VAC in June 2017 but concluded, based on information provided by the Applicant and his doctor, that it did not appear that he was medically required to grind cannabis in the workplace. The Officer therefore concluded that it was not necessary to further assess the allegation that the Applicant's request to grind medical cannabis in the workplace was denied.

[67] The Applicant argues the Officer concluded that the Applicant's physician opined it was not medically necessary for him to grind cannabis in the workplace and that this represents a conclusion that is unsupported by the evidence. However, the Officer did not state that the Applicant's physician provided such an opinion. I read the analysis as a conclusion that the information in the FTWE from the Applicant's physician did not include evidence to support the requirement for which the Applicant was advocating. There is no basis in the record to find this conclusion unreasonable.

[68] This portion of the Report concludes with an analysis of the Applicant's allegation that VAC expected him to change the type of cannabis he consumed, by telling him to use cannabis oil instead of ground cannabis buds. Based on the information provided by VAC, it appeared to the Officer that the parties agreed that they had discussed alternative methods of accommodating the Applicant's medical needs, including pre-grinding cannabis at home and bringing it to work in a container or consuming cannabis in another form. Although it was possible that VAC had

suggested that the Applicant consider using cannabis oil, it appeared to the Officer that this was within the context of exploring alternative and suitable accommodation measures.

[69] The Officer also noted that, based on medical information provided by the Applicant's doctor, it appeared that it was the doctor who suggested cannabis oil, but that the Applicant stated he could not legally obtain cannabis oil at the time.

[70] The Officer concluded that, regardless of these facts, it did not appear that the Applicant had suffered any negative consequences. Despite these discussions, he continued to smoke ground cannabis in his pipe and did not use cannabis oil.

[71] The Applicant argues that the Officer erred in finding that he did not suffer any negative consequences. He states that what he considers ill-treatment by VAC in connection with his request for accommodation of his disability ultimately caused him to suffer a nervous breakdown, which he argues is a significantly negative consequence. However, as the Respondent submits, this component of the Officer's analysis and resulting conclusion relate to whether VAC imposed or sought to impose upon the Applicant a different method for administration of his medical cannabis. Read in that manner, the analysis is intelligible and there is no basis for the Court to intervene on judicial review.

(b) *Breaks and tracking time to medicate*

[72] This portion of the Officer's analysis (paras 140-142 of the Report) addresses the Applicant's allegation that VAC did not allow him additional break time to use his prescription

(in addition to his regular breaks and lunch time). The Officer concluded that VAC allowed him additional time to prepare and smoke his medication but expected him to make up such time at the end of his shifts. The Officer also observed that the Applicant's doctor did not provide any medical information to suggest that he required more time to use his prescription than these breaks allowed. The Officer concluded that VAC had taken reasonable steps to accommodate the Applicant's request.

[73] The Applicant's arguments again refer to the process of seeking accommodation for his disability having caused him to suffer a nervous breakdown. He submits that the Officer erred in failing to consider these circumstances.

[74] At the hearing of this application, the Respondent questioned whether information of this nature was provided to VAC, in response to which the Applicant drew the Court's attention to Exhibit 35 to his Third Affidavit as evidence that he had advised VAC of his position that he was suffering from a disability that he attributed to VAC's actions. As explained earlier in these Reasons, documents attached to the Third Affidavit that were not before the decision-maker are not relevant to my reasonableness review. However, as paragraph 97 of the Report appears to quote from this particular letter, I infer that it was before the decision-maker and will consider it.

[75] While this letter is undated, the Report (at para 97) refers to it as a January 31, 2019 response from the Applicant. Similarly, the letter states that it represents the Applicant's response to a letter dated December 14, 2018, prior to a deadline of January 31, 2019. It was therefore sent well after the 2017 time period the Officer was considering when analysing

whether VAC had taken reasonable steps to accommodate the Applicant's request for breaks to administer his medication.

[76] I find no basis to conclude that this component of the Officer's analysis is unreasonable.

(c) *Paid leave (code 699) pending the HC FTWE (between February-May 2017)*

[77] In this portion of the Officer's analysis (para 143), she notes that the Applicant alleges VAC denied him paid leave of absence for "other" reasons (described as code 699 leave) between February and May 2017, while waiting for the results of a FTWE. The Officer explains that, although the VAC did not initially approve the Applicant's request for a paid leave of absence during this time, he filed a grievance on this issue and the matter was remedied, as he retroactively received paid leave for this period. Based thereon, the Officer concluded that no further assessment of this aspect of the allegations was required.

[78] This analysis is intelligible, and the Applicant has raised no compelling argument to support a finding that it is unreasonable.

(d) *Events that followed the June 2017 HC FTWE*

[79] This portion of the Report (paras 144-159) addresses the time period following VAC's receipt of the Applicant's FTWE in June 2017 and culminating with the termination of his employment in May 2019. As previously noted, the Applicant's arguments in this application focus significantly on this portion of the analysis. Before turning to those arguments, it is useful

to summarize this portion of the Report, as well as to canvass some further detail surrounding these events as provided in earlier portions of the Report.

[80] I note that, in addressing the events commencing in June 2017, the Officer refers to a "HC FTWE", which the Applicant agreed to undergo and the results of which were received by VAC in June 2017. It is common ground between the parties that the acronym "HC FTWE" is intended to reference a Health Canada Fitness-to-Work-Evaluation, i.e. an FTWE performed or administered by Health Canada. The Applicant argues, and the Respondent acknowledges, that references to the FTWE received by VAC in June 2017 as an HC FTWE are errors, as the Applicant's doctor, not Health Canada, performed that FTWE. The Applicant advances arguments as to the significance of this error, to which I will return after summarizing the events beginning in June 2017 and the Officer's analysis thereof.

[81] In canvassing the events beginning in June 2017 (at paras 82-115 of the Report), the Officer notes VAC's explanation that the Applicant and his union had redacted from the June 2017 FTWE the Applicant's doctor's answer to a question about his behaviour in the workplace. The Report recites this question as follows (at para 87):

> Mr. Beaulieu's behaviour and performance appeared to have improved following his commencement of the use of medical marijuana, in that his behaviour towards clients, […] colleagues and Departmental colleagues was less aggressive. In the past 4 or 5 weeks his behaviour has continuously declined returning to his pre-marijuana consumption state.
>
> In ensuring Mr. Beaulieu's fitness to work, we must be satisfied that he can appropriately interact with clients and colleagues in the workplace. With that said, are there any medical limitations/restrictions that the employer must consider with regards to Mr. Beaulieu's behaviour and style of communications?

[82] The Officer then refers to a June 8, 2017 meeting among the Applicant, his union representative, and VAC (including a HR representative), at which VAC confirmed to the Applicant that, based on the information contained in the FTWE medical report with respect to medical cannabis, it was willing to have him return to the workplace. However, the Applicant stated that he wanted to provide information in response to that which he had redacted in the report. The Applicant suggested that he undergo an HC FTWE so that a psychologist could provide an assessment, and he stated that he wished to remain on sick leave without pay during this process. VAC agreed, and its HR representative explained the process for an HC FTWE, including the Applicant being on leave without pay, because VAC was satisfied that he could return to work immediately it was his decision to remain on leave.

[83] The Applicant commenced leave on June 14, 2017. On July 21, 2017, the Applicant's union representative informed VAC that the Applicant would be pursuing an appointment with a psychologist on August 2, 2017, instead of the HC FTWE, but would bring the same medical questionnaire previously provided for completion by the psychologist. On July 24, 2017, the Applicant's union representative informed VAC that the Applicant wanted to receive reasons in writing why his consent for an HC FTWE was being requested. The Report cites the following excerpt from VAC's response (at para 92):

> Further to the meeting of June 8 [2017], as a response was not provided to one of the questions asked by the employer via a medical questionnaire, the employer is agreement with the employee that a HC FTWE would be an appropriate way to obtain this information. Particularly, the question was in relation to the employee's behaviour.
>
> As with any HC FTWE, the employer will be responsible for all costs associated with the assessment.
>
> […]

[84] The Applicant saw a medical specialist who provided him with a report in August 2017, but the Officer was unaware whether the Applicant communicated with VAC to notify it of the results. On September 11, 2017, the Applicant's union representative informed the VAC that a psychologist was going to assess him on November 27, 2017, and that he would likely not return to work until January 2018.

[85] The Report recites (at paragraphs 123-130) excerpts from reports from one physician dated August 24, 2017, and December 7, 2017, as well as reports from another physician dated July 11, 2019, and November 17, 2020. I note no indication in the record that either of the first two medical reports was provided to VAC. The latter two reports are dated after the termination of the Applicant's employment.

[86] On December 14, 2018, VAC sent the Applicant a letter outlining his options, because he had remained on long-term sick leave without pay since June 2017. These options included: (a) return to duty; (b) retirement on medical grounds; (c) resignation; and (d) termination for cause. In relation to the option of returning to duty, VAC's letter explained that this option applied if the Applicant considered he was recovered to the point he would be able to safely return to work. If this was the case, VAC specified that it would require medical certification from his physician certifying that he was able to return to work, corroborated by an HC FTWE or a physician of VAC's choice. VAC requested a response by January 31, 2019, as to which option the Applicant wished to pursue.

[87] The Applicant responded on January 31, 2019, by the letter referenced earlier in these Reasons that is attached as Exhibit 35 to the Third Affidavit. He stated that he did not meet the requirements for medical retirement and refused to resign. He also objected to the possibility that VAC would terminate him because of a disability that he asserted VAC had caused. The Officer observed that, although the Applicant indicated in the letter that he intended to return to work, he did not provide VAC with any medical information to confirm his ability to do so.

[88] The Applicant's union representative also wrote to VAC on February 4, 2019, in response to VAC's December 14, 2018 letter. The Report recites an excerpt from the union's letter stating that, while the Applicant was currently incapable of returning to work because of ongoing treatment for his illness, he remained committed to completing his treatment in a timely manner and returning to work in the short-term. On February 26, 2019, VAC replied, indicating that, as the Applicant intended to return to work, VAC would appreciate receiving more information to understand his fitness to work, including information regarding any restrictions or limitations.

[89] On March 20, 2019, Sun Life informed VAC that the Applicant was totally and permanently incapacitated (disabled) and was approved for disability insurance until November 2052. On March 21, 2019, VAC sent the Applicant a letter confirming that it had learned he was in receipt of disability benefits and asking him to apply for medical retirement. VAC requested a response by May 3, 2019.

[90] Following multiple further communications among the Applicant, his union representative, and VAC in March and April 2019, the union representative sent a message to VAC on May 4, 2019, asking that it provide in writing the purpose of the HC FTWE assessment process, including the reasons for the referral. The union represent stated that the Applicant would sign the consent forms once that information was received. VAC replied on May 6, 2019, indicating that: (a) the reasons for the referral had been provided along with the consent forms and employee guide; and (b) unless the forms were sent by May 10, 2019, a recommendation for termination of employment for reasons of incapacity would be made to the Assistant Deputy Minister.

[91] On May 10, 2019, the Applicant sent a message to VAC and to his union representative, attaching the completed consent forms. However, the Applicant had altered the forms, stating that the reasons for the referral had not been fully explained to him as his employer insisted that this was not required. On May 14, 2019, Health Canada informed VAC that the HC FTWE forms could not be altered and must be filled out accurately for them to be accepted.

[92] On May 15, 2019, VAC replied to the Applicant, stating that Health Canada would not accept the altered consent forms, that the reasons for the evaluation had been provided to him, and that a recommendation for termination of his employment would be made if VAC did not receive a properly completed form by May 17, 2019.

[93] The Report notes that VAC states that, between May 15 and 22, 2019, the Applicant sent it multiple hostile messages, disagreeing that VAC had explained the HC FTWE process to him. The Applicant repeated this assertion during a May 17, 2019 call with VAC management.

[94] On May 22, 2019, VAC sent the Applicant and his union representative a letter by registered mail informing him that it was terminating his employment for reasons of incapacity. As the Applicant did not receive the registered mail, VAC sent the termination letter to him via email on May 27, 2019. Excerpts of the termination letter are cited in the Report and include the following points (at para 114):

A. Although the Applicant had expressed his intent to return to work and participate in an HC FTWE, he had not cooperated with providing the required consent.

B. The most recent medical information VAC had was that which was provided by Sun Life on March 20, 2019. This information stated Sun Life's conclusion that the Applicant continued to be considered totally disabled from any occupation, that Sun Life did not foresee he would be able to return to work in any capacity for the foreseeable future, and that disability insurance benefits were supported to November 22, 2052.

C. While leave without pay is granted in order to provide continuity of employment while the Applicant is unable to work, it cannot be granted indefinitely. Further leave without pay would not be approved, and the Applicant's employment was being terminated for cause for non-disciplinary reasons effective May 22, 2019.

[95] Against the backdrop of these events, the Officer begins her analysis (at paras 144-149 of the Report) by noting that, following receipt of the results of what she refers to as the June 2017 HC FTWE, VAC confirmed that it was willing to have the Applicant return to work and that it could accommodate his medical needs regarding the use of medical cannabis based on the information contained in the HC FTWE. (As previously noted, despite the acronym employed, these references relate to the FTWE completed by the Applicant's doctor in June 2017.)

[96] Although VAC confirmed that the Applicant could return to work and that it could accommodate his medical needs, he asked to undergo what the Officer refers to as a subsequent HC FTWE to allow a psychologist to provide more information regarding the answer that he had redacted in the initial FTWE. As noted above, this relates to the fact that the Applicant and his union had redacted from the June 2017 FTWE the Applicant's doctor's answer to the question about his behaviour in the workplace.

[97] The Officer explains that the Applicant asked to remain on sick leave without pay during the HC FTWE process, and VAC agreed. Based on information provided by the Applicant's union representative to VAC, it appeared to the Officer that the Applicant intended to meet with his psychologist in January 2018. The Officer states that that the Applicant did not provide any information to suggest that he actually met with a psychologist and/or that he did not provide VAC with any medical information following his appointment with the psychologist.

[98] The Officer then refers to: (a) VAC's December 2018 letter inviting the Applicant to consider options to resolve his unpaid leave status, (b) the resulting communications between the

Applicant's union representative and VAC, (c) VAC's receipt of information from Sun Life in March 2019, and (d) subsequent communications among the Applicant, his union representative and VAC.

[99] The Officer states her conclusion that, based on information provided by the Applicant, it did not appear that he required any additional accommodation following the information provided to VAC by Sun Life. The Officer reasons that, although the Applicant stated that he disagreed with Sun Life's assessment, he did not provide any medical information to support his position. The Officer provides the following further explanation of her reasoning (at para 154 of the Report):

> In May 2019, the complainant asked the respondent to confirm the reasons he was being asked to undergo a FC FTWE (in June 2017). In around this time, the complainant refused to sign the required consent form to start the HC FTWE process. The Officer notes that based on the information provided by the parties, it appears that it was the complainant who requested a second HC FTWE in June 2017 even though the respondent confirmed to him that it was satisfied that it could accommodate his request to use medical cannabis in the workplace. In short, the complainant did not cooperate in the search for accommodation when he did not sign the required consent to undergo the second HC FTWE that he requested in June 2017.

[100] The Officer concluded that VAC's decision to terminate the Applicant's employment was based on this lack of cooperation and the information it had received from Sun Life. After referencing authorities as to the dimensions of an employer's duty to accommodate, including the point that the search for accommodation is a multi-party responsibility involving both employer and employee, the Officer found that the Applicant had not met his responsibility in this process. The Officer therefore recommended that the Commission dismiss the Complaint.

[101] The Decision itself provides a brief analysis consistent with that of the Officer but does not materially add to this analysis and, as previously observed, adopts the reasons in the Report.

[102] Turning to the Applicant's arguments, as previously noted, they include a submission that the Officer's error, in conflating the FTWE performed by his doctor in June 2017 with a Health Canada FTWE, results in a confusing foundation for the Commission when subsequently basing its decision on the Report. Indeed, the Applicant's procedural fairness arguments include a submission that this conflation represents a deliberate effort by the Officer to confuse the Commission, an argument I will address later in these Reasons.

[103] For purposes of the reasonableness analysis, I agree that the Report contains factual errors when referring to the June 2017 FTWE as a HC FTWE, as it is clear that the Applicant's doctor, not by Health Canada, performed this FTWE. However, I do not find these errors in any way material to the analyses in the Report or the Decision. As the Respondent submits, the content of the Report demonstrates that the Officer understood that the Applicant's doctor had performed the June 2017 FTWE. When summarizing the content of the resulting medical report (at paragraph 86 of the Report), the Officer describes it as written by the Applicant's doctor.

[104] The Applicant also asserts that VAC failed to discharge its responsibility to provide him with information related to the FTWE that VAC was seeking following receipt of the FTWE from his physician in June 2017. The record before the Court demonstrates that, in the period between the June 2017 meeting and the termination of his employment in May 2019, the Applicant and his union representative asked on multiple occasions that VAC provide an

explanation in writing why his consent for an HC FTWE was being requested. The Applicant took the position that receipt of such an explanation was a precondition to his provision of the required consent.

[105] However, it is also clear that the Officer was aware of these facts, as they are clearly identified in the Report. Indeed, the Report states (at para 92) that VAC provided the Applicant a reason, despite the fact that it was the Applicant who had asked to initiate this process at the June 8, 2017 meeting. The Report then provides an excerpt from VAC's response in which, referencing the June 8, 2017 meeting, VAC explained that it agreed with the Applicant that an HC FTWE would be an appropriate way to obtain the information that the June 2017 FTWE did not provide in relation to the Applicant's behaviour.

[106] In her analysis (at para 154 of the Report), the Officer again notes the Applicant's request that VAC confirm the reasons he was being asked to undergo an HC FTWE and his resulting refusal to sign the required consent form. The Officer again observes that it was the Applicant who requested this FTWE (at the June 2017 meeting) and therefore concludes that it was he who failed to cooperate in the search for accommodation.

[107] As I understand the Officer's reasoning, it is that the Applicant understood the reason for the subsequent FTWE, because it was he who requested it in the context of the information surrounding his workplace behaviour that had been redacted from the FTWE report provided by his doctor. This analysis is intelligible and consistent with the facts, and there is no basis for the Court to find it unreasonable.

[108] The Applicant also takes issue with the period of time VAC afforded him to obtain medical evidence that he was, or would eventually be, fit to return to work. He submits that the Decision fails to take into account the fact that he could not control how quickly his doctor could see him and produce a medical report.

[109] This argument does not undermine the reasonableness of the Decision. The Report demonstrates that the Officer was aware of the relevant time frames and, in my view reasonably, considered the entire period from June 2017 to May 2019 that VAC was awaiting the Applicant's cooperation. I also note that, towards the end of this time period, when VAC afforded the Applicant finite time periods for cooperation before ultimately terminating his employment, it was not insisting that he provide a medical report, only a properly completed consent form.

[110] I have considered the arguments raised by the Applicant in challenging the merits of the Decision and find no basis to conclude that it is unreasonable.

(2) Is the Decision procedurally fair?

[111] The Applicant argues that he was deprived of procedural fairness both because the Officer was not thorough in her investigation and because her Report demonstrates bias on her part.

[112] As previously explained, in order for the Applicant to succeed in his assertion that the Officer did not conduct a sufficiently thorough investigation, he must establish that the Officer

failed to investigate obviously crucial evidence (*McIlvenna* at para 32). In applying this test, I have considered the Third Affidavit and its exhibits. In its written representations opposing the Applicant Rule 312 motion, the Respondent characterizes these 57 exhibits as falling into the following categories (which broad categorization appears accurate) :

A. Communications between the Applicant and/or his union representative and/or VAC from 2017;

B. Communications between the Applicant and/or his union representative and/or VAC from 2018-2019;

C. Excerpts from the Applicant's Collective Agreement;

D. Health Canada FTWE form and Applicant's correspondence with Health Canada from February 2022

E. Applicant's medical note re: cannabis from July 2021;

F. Photos of a VAC Commissionaire;

G. Various federal government policies;

H. Federal government employment data;

I. Medical articles related to chemical and odour sensitivity;

J. Reports on workplace mental health;

K. Legal authority (Human Rights Tribunal of Ontario); and

L. CTR excerpts not included in the Applicant's record.

[113] The body of the Third Affidavit is almost 50 pages, in the course of which the Applicant introduces each of the 57 exhibits, often with a substantial volume of argument in support of his challenge to the Decision. I have reviewed this material and agree with the Respondent's submission that the Applicant has not established that any of this evidence is obviously crucial, such that the Officer could have breached a duty of fairness by not collecting it.

[114] I also agree with the Respondent's position that the Report and Decision demonstrate that the Applicant was provided opportunities to make submissions including documentary evidence both to the Officer and, following receipt of the Report, to the Commission. The Applicant has not demonstrated that any of the exhibits to the Third Affidavit could not have been shared with the Officer. While he made assertions during the hearing of this application to the effect that the Officer was not interested in receiving evidence that he was prepared to provide, there is no evidence before the Court to support this assertion.

[115] The circumstances of this case are therefore very different from those in *McIlvenna*, in which the Court found that a human rights investigator failed to conduct a thorough investigation. The outcome of that case was based on the investigator's failure to meaningfully engage with what the Court concluded was obviously crucial evidence (at paras 38-43) that the applicant was unable to address during the investigation, because he was unaware of the

evidence until it was provided by the Commission in the course of the application for judicial review (see para 35).

[116] Turning to the allegation of bias on the part of the Officer, *Abi-Mansour* explains that the burden of demonstrating bias rests on the party making the allegation. Such an allegation is a very serious one, as it challenges the integrity of the decision-maker whose decision is at issue. The burden is therefore very high, with the applicable test in assessing bias on the part of a human rights investigator being whether the investigator approached the case with a closed mind (at para 51).

[117] Similar to the conclusion in *Abi-Mansour* (at para 52), I find that the evidence and argument on which the Applicant relies do not provide support for even a suspicion of bias. For the most part, the Applicant simply disagrees with the manner in which the Officer describes relevant events or the findings at which she arrives through her investigation and analysis.

[118] The Applicant also identifies errors in the Report that he says demonstrate bias by the Officer. As noted earlier in these Reasons, the Applicant asserts that the Officer's conflation of the FTWE performed by his doctor in June 2017 with a Health Canada FTWE represents a deliberate effort by the Officer to confuse the Commission. As previously explained, I do not find these errors in any way material to the analyses in the Report or the Decision and, in any event, find no basis to conclude that such errors represent an effort by the Officer to cause the Commission confusion.

[119] Similarly, the Applicant relies on a number of errors in the Officer's recitation in the Report (at para 97 or in Appendix D) of extracts from Exhibit 35 to the Third Affidavit. As explained above, this exhibit is the letter from the Applicant to VAC, apparently written in January 2019, in response to VAC's December 2018 letter advising as to the Applicant's options to resolve his unpaid leave status. The Applicant draws the Court's attention to the following errors (my emphasis):

A. Where the Applicant wrote, "... sent a vague letter that is meant to intimidate a disabled person, whose disability is directly attributable to your actions", the Officer wrote, "… sent a vague letter that is meant to intimate a disabled person, who disability is directly attributable to your actions."

B. Where the Applicant wrote, "At no point has anyone indicated that I would not be returning to work, and as far as I am aware you have not sought to collect this information via an updated FTWE as I have indicated has been required for a very long time in absence of information the employer had previously indicated they required", the Officer wrote, "At not point has anyone indicated that I would not be returning to work, and as far as I am aware you have not sought to collect this information via an updated FTWE as I have indicated has been required for a very long time in absence of information they employer had previously indicated they required."

C. Where the Applicant wrote, "I believe that a return to duty will be exercised, once my accommodation needs have been determined by the appropriate healthcare teams and the toxins have been removed from the workplace", the Officer wrote,

"I believe that a return to duty will be excised, once my accommodation needs have been determined by the appropriate healthcare teams and the toxins have been removed from the workplace."

D. Where the Applicant wrote, "I do not meet the requirements for medical retirement and refuse to resign. The final option you advise that I have to select from is that you will fire me for a disability you caused through your inability to do your jobs in an appropriate manner", the Officer wrote, "I do not meet the requirements for medical retirement and refuse to resign. The final option you advise that I have to select from is that you will fire me for a disability you caused through you inability to do your jobs in an appropriate manner"

[120] When asked at the hearing to explain how he considered these errors to demonstrate bias on the part of the Officer, the Applicant stated that VAC's concerns with his workplace behaviour included concerns about his communication skills and that the Officer's errors were intended to support an adverse conclusion as to his ability to communicate in writing. I agree with the Respondent's submission that these errors are of a typographical nature and do not demonstrate bias on the part of the Officer.

[121] I note that, in his submissions to the Commission following receipt of the Report, the Applicant asserted that the Officer was biased. I agree with the Commission's conclusion that the Report reflects not only a thorough, but also an even-handed, review of the evidence before the Officer. I find no breach of procedural fairness in the process leading to the Decision.

VII. **Conclusion**

[122] Having found no reviewable error in the Decision, this application for judicial review must be dismissed.

VIII. **Costs**

[123] The Respondent seeks costs and proposes a modest lump-sum figure of $1000.00 in relation to the combination of the motion and application. The Applicant objects to the Respondent's request for costs, principally based on what he considers to be the merits of his application.

[124] The Respondent did not prevail on the motion and is therefore not entitled to costs for that component of the litigation. Although the Applicant prevailed on the motion, it would not have been necessary had the exhibits included with the Third Affidavit been properly introduced in accordance with Rule 306. As such, I award no costs on the motion.

[125] Having prevailed on the application, the Respondent is entitled to costs related thereto. Taking into account the $1000.00 figure the Respondent proposes for the combination of the application and the motion, and the relative amounts of written material produced and oral argument time consumed in relation to the application and the motion, I will award the Respondent lump-sum costs of $600.00.

JUDGMENT IN T-683-22

THIS COURT'S JUDGMENT is that:

1. The style of cause in this matter is changed to read as set out above, with the Attorney General of Canada as the Respondent.

2. The Applicant's motion under Rule 312 is granted.

3. The Applicant's application for judicial review is dismissed.

4. The Respondent is awarded costs of $600.00 in this application.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-683-22
STYLE OF CAUSE:	JOSHAUA BEAULIEU v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 23, 2022
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	DECEMBER 5, 2022

APPEARANCES:

Joshaua Beaulieu	FOR THE APPLICANT
Marshall Jeske	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Self-represented Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT