

**Date: 20081016**

**Docket: T-1743-06**

**Citation: 2008 FC 1163**

**Ottawa, Ontario, October 16, 2008**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**VICTOR KWONG**

**Applicant**

**and**

**THE MINISTER OF HUMAN RESOURCES  
AND SOCIAL DEVELOPMENT**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Victor Kwong seeks to overturn a decision of the Canadian Human Rights Commission dismissing his complaint of discrimination on the basis of disability. Mr. Kwong felt he was discharged from a government-sponsored self-employment assistance program after the organizers failed to accommodate his disability. However, the Commission concluded, after an investigation, that the evidence did not support Mr. Kwong's complaint. In addition, it found that Mr. Kwong had been dismissed from the program, not because of discrimination, but because he had failed both to comply with its requirements and to support his requests for accommodation with adequate medical information.

[2] Mr. Kwong compiled considerable documentation to support his application for judicial review, for which he is to be commended, especially since he acted for himself. I have reviewed all of his materials. However, I cannot find any basis for overturning the Commission's decision and must, therefore, deny this application for judicial review.

[3] Mr. Kwong's application raises the following questions:

1. Did the Commission fail to treat him fairly?
2. Was the Commission's decision reasonable in light of the evidence?

I. Factual Background

[4] Mr. Kwong is unable to work long hours because of persistent migraines and lower back pain. The migraines are often triggered by florescent lighting or certain kinds of computer monitors. They cause his vision to become blurred.

[5] In 2003, Mr. Kwong applied for income support under the respondent's Self-Employment Benefits Program. The Program, delivered by a third party called the Toronto Business Development Centre (TBDC), normally provides 52 weeks of income support while the participants receive help in developing plans to become successfully self-employed. The program can be extended to 78 weeks for persons with disabilities. Also, the weekly work hours can be reduced from 35 to 20.

[6] Mr. Kwong was accepted into the program in October 2003 for a 52-week period, at 35 hours a week, to develop a plan to set up a business as a computer consultant. He signed a contribution agreement confirming these arrangements and left blank the portions of the agreement relating to disabilities. However, Mr. Kwong had previously notified officials of his circumstances and requested an LCD computer monitor and an ergonomic chair, both of which, after some delays, were provided to him. Some discussion of a possible extension of the program took place soon after the agreement was signed, but no steps were taken at that point either by Mr. Kwong or TBDC to change it. The agreement stipulated that the respondent could terminate it if Mr. Kwong failed to comply with its requirements, including timely submission of an acceptable business plan.

[7] Mr. Kwong's business plan was due in December 2003. TBDC notified him in January 2004 that his plan was late, and granted him an extension to the end of January. At that point, Mr. Kwong reiterated his request for reduced hours and an extension of the program to 78 weeks. A series of e-mails between Mr. Kwong and officials involved in the program over the ensuing months made clear that the respondent was willing to accommodate Mr. Kwong's request so long as it was made in writing and supported by a medical opinion. The respondent also made clear that the extension was contingent on Mr. Kwong's submission of his business plan.

[8] The parties finally reached an impasse in June 2004. Mr. Kwong had submitted some documentation supporting his request but nothing that indicated that he needed more time to complete the program. The respondent continued to insist that Mr. Kwong submit his business plan

before his request for an extension could be granted. Mr. Kwong refused. On June 16, 2004, the respondent terminated Mr. Kwong's involvement in the program. Even so, the respondent encouraged Mr. Kwong to re-enroll in another program before his eligibility for benefits expired, and offered to assist him in doing so. Mr. Kwong was not interested because he would have had to repeat portions of the program he had already completed. He continued to request an extension of the initial program. When that did not materialize, he made his complaint of discrimination to the Commission.

## II. The Commission's Decision

[9] An investigator for the Commission reviewed the evidence and concluded that Mr. Kwong's involvement in the program had been terminated because he had failed to comply with its requirements, not because of discrimination. In particular, the investigator noted that officials seemed willing to provide Mr. Kwong the extension and reduction of hours he desired, so long as he made his request in writing and provided some medical documentation to support it. Mr. Kwong finally made a written request in May 2004, to which he attached Occupational Therapist Assessments from 1999 and 2000, neither of which indicated that Mr. Kwong could not work full-time. Mr. Kwong also provided a doctor's note dated April 30, 2004 that simply stated that Mr. Kwong's migraines were accompanied by "visual symptoms".

[10] In the circumstances, the investigator concluded that the evidence did not support Mr. Kwong's complaint that he had been terminated from the program because of his request for

accommodation. Rather, the evidence showed that Mr. Kwong had been terminated because of his failure to provide a business plan.

[11] After reviewing the investigator's report and Mr. Kwong's comments on it (the respondent had none), the Commission accepted the investigator's conclusion. It dismissed Mr. Kwong's complaint because a further inquiry was not warranted (*Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 44(3)(b)(i); see Annex).

### III. Did the Commission fail to treat Mr. Kwong fairly?

[12] Mr. Kwong argues that the investigator overlooked an important issue – whether the respondent's accommodation policy was adequate. In particular, Mr. Kwong argues that there was no clear application procedure for disability accommodations and, therefore, he did not know when or how he was supposed to make his request. Given that the Commission relied on the investigator's conclusion, it had failed to give fair consideration to his complaint.

[13] The respondent submits that the investigator properly considered the facts and correctly concluded that there was no evidence that Mr. Kwong had been treated differentially because of his disability. In light of that finding, the investigator did not have to go on to consider whether the respondent's accommodation policy was adequate. Further, the respondent submits that Mr. Kwong was fairly treated throughout the proceedings, having been given ample opportunities to provide evidence to the investigator and make submissions to the Commission.

[14] In my view, the investigator thoroughly reviewed the relevant facts and explained his conclusion that Mr. Kwong's complaint of discrimination was unsupported by the evidence. I see no basis for Mr. Kwong's suggestion that the investigator overlooked an important issue or that the investigator treated him unfairly.

IV. Was the Commission's decision reasonable in light of the evidence?

[15] Mr. Kwong expresses considerable frustration at the manner in which he had been treated by the respondent and submits that the Commission failed to appreciate his circumstances. In particular, he notes that the respondent expected him to raise the issue of an extension at the beginning of the program yet, when he did so (in October 2003), he was told to bring it up later. Further, while the respondent points to the fact that Mr. Kwong signed an agreement to participate in a 52-week program at 35 hours a week, it had no mechanism in place by which he could have requested an extension of the program before he signed the agreement. Mr. Kwong also questions why the respondent insisted on submission of his business plan before granting his extension. He explained to me that he needed to build a disability accommodation plan into his business plan because he knew that when he was self-employed his ability to work long hours at a computer terminal would be limited. In other words, his business plan and his accommodation plan were intertwined. He needed the respondent to permit him to adapt to the program requirements according to his needs and to allow him to address those needs in his business plan. In effect, by demanding that he submit his business plan, Mr. Kwong suggests that the respondent required him

to show that he did not need any accommodation of his disability before granting him the accommodation he required. As he explained it to me, he felt that he got “into a loop” that he could not get out of.

[16] Before me, Mr. Kwong also alleged that he did submit a business plan in January 2004 but, because it addressed issues relating to his disability, it was rejected. He provided a portion of the business plan to me but nothing that would support his allegation that it had been rejected because it contained references to his disability. Nor does it appear that any evidence to this effect was provided to the investigator. The partial draft business plan contains the examiner’s notes, some of which indicate that he or she was uncertain why Mr. Kwong had included general statements about his disability but had omitted details about how he would get his business off the ground. I cannot see a basis for Mr. Kwong’s claim that his business plan was rejected because he wished to include in it a strategy for coping with his disability.

[17] Mr. Kwong suggests that the requirement to submit a business plan, in itself, created a barrier for him. He did not receive the LCD monitor he required until March 2004. At some point, the ergonomic chair was, apparently, stolen. In the circumstances, Mr. Kwong says he should have been granted an extension simply on his request and should not have been required to submit a business plan until later, if at all. In fact, he suggests that it would have been reasonable for the respondent to prepare a business plan for him. However, I see nothing in the record suggesting that Mr. Kwong’s difficulties in submitting a business plan were connected to the delays in delivering the monitor and chair. He did not make that claim at the time the business plan was due.

[18] Mr. Kwong disputes the respondent's assertion that its decision to terminate the agreement was due to his failure to submit a business plan. Rather, he says that the decision to dismiss him from the program was taken in March 2004 (not June), even before he was asked to provide medical support for his request for an extension. Further, he suggests that the demand for medical documentation violated his right to privacy. Again, I do not see evidence in the record to support Mr. Kwong's claim about when the decision to terminate the agreement was taken. Further, I do not regard the request for medical information as being offensive to Mr. Kwong's privacy rights.

[19] It seems obvious to me that there was a failure of communication here – on both sides. The respondent could have made clearer the process for obtaining an extension of the program at reduced hours. Mr. Kwong could have made clearer his personal circumstances and, as he saw it, the relationship between his request for accommodation in the form of an extension and his business plan. And he could have supported his request with proper documentation.

[20] The question for me, however, is whether the Commission unreasonably concluded that an inquiry into Mr. Kwong's complaint was unwarranted. In my view, in light of the evidence before it, the Commission's conclusion was reasonable. The evidence canvassed by the investigator indicated that the respondent was willing to accept Mr. Kwong's business plan up until June 14, 2004 which, in itself, amounted to an extension of 26 weeks. The respondent seemed willing to extend Mr. Kwong's involvement in the program so long as he provided proper medical documentation for his request and, by submitting his business plan, showed that he could complete



the program successfully. The respondent was also willing to help Mr. Kwong enroll in another program before his eligibility for benefits expired. Given this evidence, it was reasonable for the Commission to conclude that Mr. Kwong's complaint of discrimination was unsupported by the evidence and did not warrant an inquiry.

#### V. Conclusion

[21] Mr. Kwong's application for judicial review is dismissed. I am not persuaded that the Commission's conclusion - that his involvement in the program had been terminated because of his failure to comply with the program's requirements and to submit medical information supporting his request for an extension - was unreasonable. There is no order relating to costs.

**JUDGMENT**

**THIS COURT's JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no order relating to costs.

\_\_\_\_\_  
"James W. O'Reilly"  
Judge

Annexe "A"

*Canadian Human Rights Act*, R.S.C. 1985, c. H-6,

*Loi canadienne sur les droits de la personne*, L.R., 1985, ch. H-6

Report

Rapport

**44.** (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

**44.** (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

[...]

...

Idem

Idem

(3) On receipt of a report referred to in subsection (1), the Commission

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :

...

(b) shall dismiss the complaint to which the report relates if it is satisfied

[...]

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted,

b) rejette la plainte, si elle est convaincue :

(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T- 1743-06

**STYLE OF CAUSE:** VICTOR KWONG v. MINISTER OF HUMAN  
RESOURCES AND SOCIAL DEVELOPMENT

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 21, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** October 16, 2008

**APPEARANCES:**

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