

Federal Court



Cour fédérale

Date: 20110525

Docket: T-1387-10

Citation: 2011 FC 616

Ottawa, Ontario, May 25, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

MARION BUTLIN

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review concerns a decision made by the Canada Revenue Agency (CRA), denying the Applicant's request to have her penalties and interests waived because her post-traumatic stress disorder prevented her from filing her tax returns on time.

[2] For reasons that follow, I am dismissing this application for judicial review.

Background

[3] On February 1, 2003, during the time when she was preparing her income tax returns for tax year 2002, Ms. Marion Butlin was injured in a bus accident. After this event, she began to suffer from post-traumatic stress disorder (PTSD), which caused her to experience anxiety regarding events and activities associated with the accident, including filing her tax returns. Although she was able to file her tax returns for 2002, she did not file subsequent tax returns on time for several years. As of June 24, 2010, the Applicant owed tax penalties of \$15,686.10, and interest of \$16,671.79.

[4] On July 22, 2009 Dr. Virginia Simonds, the Applicant's doctor, filed for Taxpayer's Relief on behalf of the Applicant, requesting the cancellation or waiver of her penalty and interest. This included a medical note from Dr. Simonds dated August 27, 2009, confirming the Applicant's PTSD diagnosis and her therapy commencing in spring 2007. Dr. Simonds wrote:

One year ago in August 2008 Marion revealed to me that she has not been able to do her taxes since the accident in 2003. At the time of the accident, Marion was in the middle of preparing her financial records for filing 2003 income taxes. After the accident when she tried to return to preparing her tax return, she experienced intense cognitive and physical symptoms of anxiety. Although this may seem unusual, it is not uncommon for symptoms of PTSD to generalize to events surrounding or related to the primary event that caused the trauma in the first place. The Diagnostic and Statistical Manual for Mental Disorders (DSM-IV) states as part of the criteria for PTSD "intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event" and "physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event". The DSM also states as part of the criteria for PTSD "persistent avoidance of stimuli associated with the trauma."

[5] This request was denied by the CRA on March 23, 2010. The CRA observed that the Applicant's 2002 taxation return had been submitted on time, a few months after the accident, and that the 2004 and 2005 income tax returns were filed in 2007 after enforcement measures were taken but before therapy had been commenced. The 2003, 2006, 2007 and 2008 income tax returns were filed in 2009. The CRA therefore concluded that this was not a case that would permit the cancellation of the interest and penalty.

[6] The Applicant then made a request for reconsideration on April 26, 2010. In this application, she described further her PTSD symptoms and explained that her daughter helped her file her 2004 and 2005 taxes. However, once her daughter began university, she could no longer assist the Applicant with her taxes. The Applicant assured the CRA that she has been working on this problem with Dr. Simonds, putting aside time to work on her taxes and regularly paying \$400 per week for her back taxes. She also included a list of physicians and specialists she had seen in 2006. Dr. Simonds also wrote a letter, affirming that the Applicant had been "completely immobilized when trying to approach her tax obligations" but has made "great gains in therapy and has since completed all of her returns."

[7] This second request was rejected by the CRA on August 3, 2010, and is the subject of this application for judicial review.

Decision Under Review

[8] In its letter dated August 3, 2010, the CRA did not find that the medical condition the Applicant was being treated for prohibited her from filing her taxes on time.

[9] The CRA noted that the Applicant had been able to file the 2002 tax return, just four months after the accident. The CRA also noted the Applicant had the services of an accountant who could prepare and file her tax returns, and the Applicant had continued with her business during the relevant tax years with increases in income, allowing her to contribute to a Registered Retirement Savings Plan (RRSP) every year. As such, the CRA denied the Applicant's request for cancellation of the penalties and interest.

Legislation

[10] *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1.

220 (3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period,

220 (3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi

and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

Issues

[11] I would frame the issues as follows:

- a. Was there a breach of procedural fairness?
- b. Was the CRA's decision to deny the Applicant's request for taxpayer relief reasonable?

Standard of Review

[12] The standard of review of the CRA's decision not to exercise its discretion is reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9; *Telfer v Canada (Canada Revenue Agency)*, 2009 FCA 23 at para 24.

[13] The standard of review for breaches of procedural fairness is correctness: *Ugro v Minister of National Revenue*, 2009 FC 826 at para 35 (*Ugro*).

Analysis

Procedural Fairness

[14] The Applicant submits that the “Summary Sheet” provided to the decision maker would suggest that more factors were taken into consideration than indicated in the August 3, 2010 decision letter. These factors include the fact that in the early 1990s, if the Applicant owed for a tax year, she would wait until she filed the next year’s taxes and the refund was allocated for the previous year; that in the opinion of the reviewer there was an excess of time granted for filing the delinquent returns; and that the 2003 return was not filed until August 4, 2009, over five years after the original due date, despite the fact that the Applicant had originally indicated that it would be filed by 2005. The Applicant says that if these other factors were considered, they should have been disclosed to her in order to allow her the opportunity to respond to the issue. The CRA also should have considered the fact that the Applicant had been making payments of \$400 per week to address the outstanding debt.

[15] The Respondent submits that the CRA was not required to seek further information, documents, or submissions from the Applicant before rendering a final decision. The Respondent says that the Applicant had the opportunity to present documents and information to support her requests for relief. Therefore the Respondent submits that there was no breach of procedural fairness.

[16] The Applicant is inviting me to speculate on what factors the CRA relied on for its decision other than what was outlined in its letter of August 3, 2010. The CRA does not refer to this Summary Sheet or these other factors in its letter. I do not find there is enough evidence to find there was a breach of procedural fairness.

The reasonableness of the CRA's decision

[17] The Applicant submits that even when presented with medical evidence, the CRA failed to appreciate the seriousness and severity of her medical condition as well as the effects of such a condition, and in the absence of any contradictory medical opinion, chose not to accept Dr. Simonds' medical evidence, preferring its own opinion instead. Specifically, the Applicant points out that she had explained in her own letter as confirmed in Dr. Simonds' letter that she had been in the middle of preparing for her tax returns for that year at the time of the accident. The Applicant also explains that while she did have an accountant, her accountant could only take direction from her, and her condition made it difficult for her to discuss the matter with anyone other than her daughter.

[18] The Applicant also submits that the CRA erred in concluding that her medical condition did not prohibit her from filing her income taxes, based partly on her ability to continue to work and to contribute to her RRSPs. The Applicant argues that this would mean anyone seeking a waiver due to a medical condition would be unsuccessful if they were able to continue working.

[19] The Respondent takes the position that it was within a range of possible acceptable outcomes for the CRA to determine that no extraordinary circumstances existed, and the Applicant's medical condition did not prevent her from filing her tax returns on time. The Respondent points out that Dr. Simonds' assertion that the Applicant had not been able to file her tax returns since her accident in 2003 was incorrect, as the returns for some of the tax years had been filed. The Respondent submits that jurisprudence has established that where a taxpayer has health problems but is still able to operate a business, it is reasonable for the CRA to conclude that those health problems do not prevent a taxpayer from dealing with his tax obligations: *Ugro*, at para 77.

[20] I find that the CRA did consider the evidence put forward by the Applicant. In her second application, the Applicant offered an explanation for how she had her 2004 and 2005 taxes filed and as such the CRA does not mention the 2004/2005 tax returns in its second decision letter. Instead, the CRA highlights the fact that the Applicant had been able to file the 2002 tax return on time, despite the accident. The Applicant had emphasized she was in the process of preparing her financial records at the time when the accident occurred but it was open to the CRA to find that she did not adequately explain how she was able to complete her tax return after the accident.

[21] The CRA also noted that the Applicant had the services of an accountant who could have prepared and filed her tax returns. Although the Applicant now submits that her accountant could not do so without taking direction from her, this submission was not before the CRA. The Applicant had two opportunities to put forward the necessary additional information to support her submissions on why she was not able to file her tax returns on time. In her letter of April 26, 2010,

she mentions that it was “beyond embarrassing and extremely difficult to discuss” the fact that she had received a call from the CRA regarding her interest charges and penalties. However, her letter does not mention her inability to give instructions to her accountant. The Applicant cannot now reproach the CRA for failing to consider a matter that was not submitted to the CRA before the decision was made.

[22] It was within the CRA’s discretion to conclude that it did not find that the Applicant’s medical condition prohibited her from filing her taxes on time. The CRA was entitled to weigh the Applicant’s actions, both in filing her 2002 return after the accident and continuing to successfully operate her business, against the medical opinion about the PTSD claimed. The CRA provided its reasons for denying the Applicant’s request for cancellation of penalties and interest under extraordinary circumstances, and I see no need to interfere with its decision.

Conclusion

[23] For these reasons, I therefore dismiss this application for judicial review.

[24] I make no order for costs.

JUDGMENT

THIS COURT ORDERS and adjudges that:

1. The application for judicial review is dismissed.
2. I make no order for costs.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1387-10

STYLE OF CAUSE: MARION BUTLIN and CANADA (ATTORNEY GENERAL)

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 1, 2011

REASONS FOR JUDGMENT AND JUDGMENT: MANDAMIN J.

DATED: MAY 25, 2011

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