

Federal Court



Cour fédérale

Date: 20201109

Docket: T-375-20

Citation: 2020 FC 1041

Ottawa, Ontario, November 9, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

PAMELA TESLUCK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of a decision by a Delegate of the Minister of Transport to cancel her security clearance. She represented herself in this application and submitted in her written argument that the decision is unreasonable and that she was denied procedural fairness.

[2] The Court heard the Applicant and counsel for the Respondent by videoconference.

[3] While the Court is sympathetic to the Applicant's situation, there are no grounds to interfere with the decision. The application is dismissed for the following reasons.

II. **Background**

[4] Ms. Tesluck is a flight attendant who was dismissed from WestJet in February 2020 for failing to retain her security clearance. A clearance is necessary for airline employees to access restricted areas of airports. As part of what appears to have been a routine screening process for renewal of her clearance, which Ms. Tesluck had held for almost a decade, her file was identified as requiring additional verification. On January 22, 2019, the Royal Canadian Mounted Police (RCMP) notified Transport Canada's Safety and Security Department of adverse findings regarding the Applicant.

[5] The findings relate to events that occurred between 2010 and 2012 when the Applicant was living in Vancouver. Her partner at the time introduced her to a friend who offered her a part-time position with a new company he had formed with the aid of a lawyer. She was told she would have some papers to sign and file. The Applicant was named as Chief Executive Officer of the corporation and received a few paychecks, which totalled \$10,000.

[6] In October 2010, the Applicant was offered a flight attendant position with Canjet Airlines, which she accepted. The Applicant was required to apply for security clearance as part of her employment. In her application, the Applicant did not disclose her employment with the

corporation. Her security clearance was granted. In 2012, the Applicant was interviewed by the RCMP who questioned her on her involvement with the corporation. She was never charged.

[7] The letter received by Transport Canada from the RCMP in January 2019 states the following:

In March 2012, the RCMP Vancouver Integrated Market Enforcement Team began an investigation into business fraud. Police investigated a company called Georgetown Corporation. The CEO of the business was identified as the applicant. Police learned that she had no business or capital market experience. She told police that she had been introduced to an individual in 2008. The individual paid the applicant \$10,000 to act as the CEO of the company. The applicant had no knowledge of the company's operations and was strictly a nominee. On the instructions of a second individual, the applicant received and signed materially false documents with the Securities and Exchange Commission (SEC) which allowed the company to trade publicly. Both individuals mentioned above were associated to organized crime and money laundering. The applicant was not charged. The matter is still under investigation.

[8] On June 28, 2019, Transport Canada sent a letter to the Applicant, which described the adverse findings and indicated that they raise concerns as to her suitability to retain a clearance. She was advised that her security clearance would be reviewed by the Transportation Security Clearance Advisory Body and was granted twenty (20) days, from the day she received the letter, to provide additional information outlining the circumstances surrounding the adverse information and any other relevant information or explanation, including any extenuating circumstances.

[9] The Applicant received the letter on July 17, 2019. In an email dated July 18, 2019, she provided a brief response to the request for additional information.

[10] On October 30, 2019, the Transportation Security Clearance Advisory Body discussed the matter. The Advisory Body noted that if the Applicant was not directly involved or knowledgeable of the false documents, she was likely willfully blind to what was happening, given that she accepted \$10,000 to act as the CEO of a company for which she seemingly had no prior knowledge or experience. The Advisory Body also noted concerns regarding the Applicant's failure to disclose this employment on her security clearance application. The Advisory Body reviewed the Applicant's written submissions and noted they had serious concerns that the Applicant admitted she was taken advantage of by other individuals. The Applicant's brief submissions were insufficient to alleviate the Advisory Body's concerns.

[11] In the result, the Advisory Body recommended cancelling the Applicant's security clearance on the basis that, on a balance of probabilities, the Applicant may be prone to or induced to commit an act, or assist or abet any person to commit an act that may unlawfully interfere with civil aviation.

[12] The decision by the Minister's Delegate to cancel the Applicant's security clearance was communicated by letter dated February 18, 2020. Through an error on the part of Transport Canada or her employer WestJet, the letter was initially sent to the wrong address. The Applicant learned of it when her supervisor informed her, on February 20, 2020, that she would be suspended as a result of the cancellation of her clearance.

III. **Issues**

[13] Two preliminary matters were dealt with at the hearing.

[14] First, the Applicant named Transport Canada as the Respondent in her materials. The Attorney General of Canada is the appropriate named Respondent in accordance with Rule 303(2) of the *Federal Courts Rules*. That change to the style of cause will be ordered in this judgment.

[15] Second, the Applicant's affidavit and written argument contained new information that was not before the Delegate when the decision was made. As set out in the Respondent's Memorandum of Argument and explained to the Applicant during the hearing, subject to certain limited exceptions, judicial review is directed at the legality of the decision of the administrative decision maker. It does not allow for an improvement of the factual matrix of the record before the decision maker since that would be changing the fundamental nature of the proceeding (*Henri v Canada (Attorney General)*, 2014 FC 1141 at para 21 [*Henri*]). There are no applicable exceptions to this principle that would allow the Court to rely on such evidence in this matter.

[16] The remaining issues are whether the decision was reasonable and whether the Applicant was afforded procedural fairness.

IV. **Analysis**

A. *Standard of Review*

[17] As held by Justice Gleeson in *FGH v Canada (Citizenship and Immigration)*, 2020 FC 54, the standard of review to be applied in considering a procedural fairness issue is the correctness standard. However, the nature of this analysis is a consideration of whether the

procedure was fair, having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, also see *Diallo v Canada (Citizenship and Immigration)*, 2019 FC 1324 at paras 14 and 15).

[18] In the event that the Applicant was afforded procedural fairness, the decision to cancel the Applicant's transportation security clearance is reviewable on the standard of reasonableness. Subject to exceptions which do not arise in this case, reasonableness is the presumptive standard for most categories of questions on judicial review: *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 30.

B. *Was the Applicant afforded procedural fairness?*

[19] The Applicant argues that she was not afforded procedural fairness because she was not informed of the specific nature of Transport Canada's concerns and was not provided with sufficient time to respond.

[20] In a number of cases in recent years, this Court has considered the scope of the duty to act fairly in the context of security clearances in relation to air safety, an issue of substantial importance. The content of the duty of fairness is at the lower end of the spectrum. Access to restricted areas of designated airports is a privilege and not a right. The Minister's power to grant, refuse to grant, suspend or cancel a security clearance is discretionary and specialized. This authority relies on prediction. It does not require that the Minister be convinced that the individual whose security clearance is under review will commit, aid or abet the commission of an act that will unlawfully interfere with civil aviation. The Minister need only to reasonably

believe, on a balance of probabilities, that the individual may commit such an act. See the cases summarized by Justice LeBlanc in *Henri v Canada (Attorney General)*, 2014 FC 1141 at para 27.

[21] To satisfy the duty of fairness in this context, it is sufficient that the applicant be put on notice of the range of factors, considerations and criteria that Transport Canada may consider in making its decision as to his or her suitability to obtain or retain a security clearance and given an adequate opportunity to respond.

[22] Here, the Applicant was provided with the exact information received from the RCMP and was provided the range of factors, considerations and criteria that Transport Canada may consider in making its decision. Additionally, she was provided with a phone number if she needed to seek clarifications and a Frequently Asked Questions sheet. Her response was to send a brief email message.

[23] It was open to the Applicant to seek more time in which to collect and submit additional information. However, she did not take advantage of the contact information she was provided with until after she was informed that her clearance had been cancelled by her supervisor. By then, the final decision had been made by the Minister's Delegate. At that point, as she was informed, her only option under Part II.45 of the Transportation Security Clearance Program Policy was to seek judicial review of the decision.

[24] In the circumstances, I am satisfied that the Applicant was afforded procedural fairness.

C. Was the decision to cancel the Applicant's security clearance reasonable?

[25] The granting of security clearance is a privilege rather than a right. A single case of conduct casting doubt on an individual's judgment, reliability and honesty can, in light of the low threshold, suffice to justify the revocation of a security clearance (*Dorélas v Canada (Transport)*, 2019 FC 257 at para 35 citing *Sargeant v Canada (Attorney General)*, 2016 FC 893 at para 34).

[26] The Court understands that the Applicant considers that the decision to cancel her clearance was unreasonable because she was not charged as a result of the RCMP interview in 2012, nor has she ever been convicted of a criminal offence. She considers that she was a victim of the fraudulent conduct of two individuals, one of them a lawyer, in whom she had placed her trust because they were friends or associates of her then boyfriend. The Applicant had no further contact with them following the RCMP interview. She acknowledges, however, not having disclosed her involvement with the corporation when she applied for a clearance and failed to provide sufficient information to alleviate Transport Canada's concerns in response to the 2019 letter.

[27] While it may seem harsh, the standard is not whether the Applicant has committed an unlawful act but rather whether the Applicant may be induced or prone to commit an act that may lawfully interfere with civil aviation. This requires an assessment of a person's character and propensities (*Kazcor v Canada (Minister of Transport)*, 2015 FC 698 at para 30).

[28] In coming to her decision to cancel the Applicant's security clearance, the Minister's Delegate considered the RCMP Report, Transport Canada's Letter to the Applicant dated June 28, 2019, the Applicant's written submissions, the Advisory Body's recommendation, and the Transportation Security Clearance Program Policy.

[29] The RCMP Report raised concerns as to the Applicant's prior involvement as the nominal CEO of a company that was being investigated for business fraud and her related association with individuals allegedly involved with money laundering and organized crime.

[30] In my view, it was reasonable for the Delegate to be concerned about the Applicant's judgment, trustworthiness and reliability and to conclude, based on all of the available information at the time the decision was made, that the Applicant may be prone to or induced to commit an act that may unlawfully interfere with civil aviation.

V. **Conclusion**

[31] The Applicant was afforded procedural fairness. She was presented with the facts alleged against her and with a meaningful opportunity to respond to them. While the Applicant responded to the allegations contained in the RCMP Report, the information she provided in her email was insufficient to alleviate the concerns of Transport Canada. It was clear from the correspondence that she received that her clearance was in jeopardy; and with it, her employment with the airline. As the Applicant acknowledged at the hearing, she did not act diligently in response to that letter.

[32] It is not for the Court to speculate whether the submission of the additional information, which the Applicant sought to introduce on this hearing, would have made a difference in the Delegate's decision. But I am unable to find that the Delegate's decision was unreasonable given the information that was before her at the time.

[33] Accordingly, this application will be dismissed. The Respondent did not seek costs nor would I award them in the circumstances.

JUDGMENT IN T-375-20

THIS COURT'S JUDGMENT is that:

1. The style of cause of this application is amended to substitute the Attorney General of Canada as the named Respondent;
2. The application is dismissed; and
3. No costs are awarded.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-375-20

STYLE OF CAUSE: PAMELA TESLUCK V TRANSPORT CANADA

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE OTTAWA-
WINNIPEG

DATE OF HEARING: OCTOBER 15, 2020

JUDGMENT AND REASONS: MOSLEY J.

DATED: NOVEMBER 9, 2020

APPEARANCES:

Pamela Tesluck SELF-REPRESENTED APPLICANT

Sydney Pilek FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba