

Federal Court



Cour fédérale

Date: 20110629

Docket: T-2061-10

Citation: 2011 FC 799

Toronto, Ontario, June 29, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ALLAN GEORGE GROSVENOR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] George Grosvenor seeks judicial review of a decision by Service Canada which found that he had not established that he had received erroneous advice regarding his entitlement to Old Age Security benefits.

[2] For the reasons that follow, Mr. Grosvenor has not persuaded me that the decision was unreasonable or that he was treated unfairly in the processing of his complaint. As a consequence, his application for judicial review will be dismissed.

Background

[3] By letter dated August 25, 2004, Mr. Grosvenor was advised by Human Resources and Development Canada (HRDC) that he may be eligible for benefits under the Canada Pension Plan (CPP) and/or the Old Age Security (OAS) Plan. At the same time, Mr. Grosvenor was provided with information sheets for both CPP and OAS benefits which explained the eligibility criteria for each type of benefit.

[4] The letter cautioned Mr. Grosvenor that if he were to defer applying for benefits, recent changes to the legislation could affect the period for which benefits could be paid retroactively.

[5] Mr. Grosvenor applied for CPP benefits on February 28, 2005, and began receiving benefits after he turned 65 in August of 2005. Although Mr. Grosvenor claimed in a May 9, 2008 letter that he applied for his OAS benefits at the same time as he applied for his CPP benefits, I understand him to now acknowledge that he did not actually apply for OAS benefits until 2007. His application for OAS benefits was received by the Department on April 27, 2007.

[6] In accordance with the rules regarding the payment of retroactive benefits, Mr. Grosvenor was also paid OAS benefits for the 11 months preceding the date of receipt of his application. Mr. Grosvenor has not received any OAS benefits for the period between September of 2005 and May of 2006.

[7] Mr. Grosvenor says that upon receiving the August 25, 2004 letter from HRDC, he went to the Service Canada Centre in Newmarket, Ontario for advice regarding his entitlement to both OAS

and CPP benefits. He contends that he was told by an agent that he was not eligible for OAS because he was still working. Relying upon this erroneous advice, Mr. Grosvenor did not apply for OAS benefits at that time.

[8] Mr. Grosvenor subsequently sought recovery of OAS benefits for the period after his 65th birthday to May of 2006 under section 32 of the *Old Age Security Act*, S.C., 1985, c. O-9, which provides that:

32. Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

32. S'il est convaincu qu'une personne s'est vu refuser tout ou partie d'une prestation à laquelle elle avait droit par suite d'un avis erroné ou d'une erreur administrative survenus dans le cadre de la présente loi, le ministre prend les mesures qu'il juge de nature à replacer l'intéressé dans la situation où il serait s'il n'y avait pas eu faute de l'administration.

[9] The matter was investigated by the Department, and Mr. Grosvenor was invited to provide whatever information he felt appropriate in support of his claim that he received erroneous advice. Mr. Grosvenor took advantage of this opportunity and provided what he says was “five pounds” of documents in response to this letter. Many of these documents relate to a dispute between Mr. Grosvenor and the Canada Revenue Agency, and do not appear to have any relevance to his claim to have received erroneous advice from Service Canada.

[10] In a decision dated November 1, 2010, a Minister's Delegate found that Mr. Grosvenor had failed to provide any evidence to support his claim that he had received erroneous advice from the Newmarket Service Canada Centre in 2004, which led to his late application for OAS benefits. As a result, his claim for unpaid retroactive benefits was rejected. It is this decision that is under review by this Court.

Standard of Review

[11] A finding as to whether erroneous advice has been provided is a purely factual determination. As a consequence, I agree with the respondent that the Minister's Delegate's decision is to be reviewed on the standard of reasonableness.

[12] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47, and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59.

[13] Where an issue of procedural fairness arises, the task for the Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Khosa*, at para. 43.

Analysis

[14] Mr. Grosvenor provided additional information during his oral submissions regarding the circumstances surrounding the advice allegedly provided to him in the course of his visit to the Service Canada Centre in Newmarket in 2004.

[15] Mr. Grosvenor now says that when he visited the Service Canada offices, the person working on the front desk told him that he or she did not handle OAS matters. Mr. Grosvenor was then taken to the back office, where the person working there called a number in Ottawa. Mr. Grosvenor says that he then spoke to a person by the name of “Elizabeth” on the telephone, and that it was Elizabeth who provided him with the erroneous advice.

[16] This information was not before the Minister’s delegate when he made his decision on November 1, 2010. Moreover, most of this information does not appear in the affidavit filed by Mr. Grosvenor in support of his application for judicial review. As such, it is not evidence properly before the Court.

[17] As I explained to Mr. Grosvenor during the hearing, my role in an application such as this is not to simply substitute my own decision for that of the Minister’s delegate. Rather, my task is to examine the record that was before the Minister’s delegate and determine whether, based upon the information before him, the decision was reasonable.

[18] Having carefully reviewed the record, I am satisfied that the decision of the Minister’s delegate was indeed reasonable.

[19] In coming to this conclusion I note the following:

1. The information sheet for CPP benefits provided to Mr. Grosvenor in August of 2004 clearly explained that in order to be eligible for CPP benefits, the applicant had to either have stopped working, or have monthly earnings below a specified threshold. The information sheet for OAS benefits lists the eligibility requirements for benefits and did not mention any requirement that an applicant had to have stopped working in order to be eligible for OAS benefits.
2. HRDC's investigation of Mr. Grosvenor's complaint of erroneous advice disclosed that the Newmarket Service Canada Centre did not provide information regarding OAS benefits in 2004. There is nothing in the record that was before the Minister's delegate to suggest that the Minister's delegate was ever told that Mr. Grosvenor had actually received the advice by telephone from an HRDC representative in Ottawa by the name of Elizabeth.
3. While an entry would not necessarily have been created, the HRDC database did not contain any record of Mr. Grosvenor having visited the Newmarket Service Canada Centre in 2004.

[20] The onus was on Mr. Grosvenor to satisfy the Minister's delegate that he had received erroneous information regarding his entitlement to OAS benefits, and that he had relied upon this information to his detriment. The Minister's delegate concluded that Mr. Grosvenor had not established on a balance of probabilities that erroneous advice had in fact been provided. In light of the evidence before him, this conclusion was one that was reasonably open to the Minister's delegate.

[21] Although not squarely raised as an issue of fairness, Mr. Grosvenor suggested for the first time in his oral submissions that the August 4, 2010 letter inviting him to provide evidence in support of his claim to have been given erroneous advice was misleading, as the letter did not expressly indicate that what was being sought was information regarding the erroneous advice. Having reviewed the letter, I am satisfied that it was clear and that Mr. Grosvenor was given a fair opportunity to produce whatever supporting evidence he may have wanted to provide in support of his claim to have received erroneous information.

[22] Before leaving this matter, I would like to note that I recognize that Mr. Grosvenor has become very frustrated in dealing with this matter over the last seven years. I understand that frustration, particularly given the fact that he did not receive a response to at least one of his letters to HRDC for some 27 months. However, sympathy alone does not provide a sufficient basis for allowing the application.

Costs

[23] In a matter such as this, the losing party will usually be ordered to contribute to the legal costs of the winning party. Counsel for the respondent has advised the Court that his client is not seeking an award of costs in this matter, and no order of costs will be made.

Style of Cause

[24] Counsel for the respondent submits that the Attorney General of Canada is the proper respondent in this case. Mr. Grosvenor has no objection to the style of cause being amended to reflect this and the style of cause will be amended accordingly.

Conclusion

[25] For these reasons, the application for judicial review is dismissed, without costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed, without costs; and
2. The style of cause is amended to substitute the Attorney General of Canada for “Minister Human Resources and Skills Development”.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2061-10

STYLE OF CAUSE: ALLAN GEORGE GROSVENOR v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 28, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MACTAVISH J.

DATED: June 29, 2011

APPEARANCES:

Allan George Grosvenor

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Martin Kreuser

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nil

FOR THE APPLICANT

MYLES J. KIRVAN
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT