Federal Court Cour fédérale

Date: 20130607

Docket: T-120-13

Citation: 2013 FC 615

Ottawa, Ontario, June 7, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

RANJIT GILL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Ranjit Gill [the Applicant] applies for judicial review of a decision of the Appeal Division of the Parole Board of Canada [the Appeal Division], dated December 17, 2012 [the Decision], made pursuant to the *Corrections and Conditional Release Act*, SC 1992, c 20, upholding the Parole Board of Canada's [the Board] decision to revoke the Applicant's parole.

[2] For the following reasons the application will be dismissed.

I. <u>Background</u>

[3] The Applicant is a 52-year old Canadian citizen who, on November 24, 1988, began serving a life sentence for second-degree murder committed while intoxicated. He was released from Ferndale Institution in British Columbia on full parole on February 14, 2001 and thereafter worked as a longshoreman.

[4] The suspension of parole at issue occurred on May 7, 2012, when the police responded to a report that an impaired driver had parked his car and stumbled into a restaurant. In its decision, the Board said that the police described the Applicant as "appearing to be intoxicated". They also noted the smell of alcohol on his breath and observed that he had just ordered a beer even though his parole conditions precluded the consumption of intoxicants. This event will be described as the "Incident". The Applicant was arrested and returned to Ferndale Institution. He explained to the police that his symptoms were caused by the fact that he had taken Tylenol 3 tablets.

[5] The Applicant's parole had previously been suspended four times: once in 2003, once in 2005, and twice in 2011 [the Earlier Suspensions]. They all involved a concern about the consumption of alcohol, but each time parole was reinstated.

[6] Before its hearing, the Board was provided with an Assessment for Decision from the Applicant's parole officer [PO] dated May 29, 2012 [the Assessment]. Therein, for the first time, the PO recommended revoking the Applicant's parole. She referred to his increased risk when intoxicated and the fact that recent circumstances indicated that he had been drinking and driving,

but that he continued to deny that he was drinking "despite the credulity of his denials becoming increasingly strained as the incidents pile up."

[7] In the Assessment, the PO also made the following observation: "As he is a diabetic, he seemed focused on living a healthy lifestyle involving a good diet and exercise program." There is no other reference to diabetes in the Assessment. The only other documentary evidence before the Board concerning the Applicant's diabetes predated the Assessment by five years. It is found in a Psychological/Psychiatric Assessment Report of June 22, 2007, which showed that the Applicant told the doctors during his assessment that "he was focusing on his health during this period, as he had been told by his physician that he was borderline diabetic. This had prompted him to change his eating habits and to exercise more. The result was that he had returned to his normal weight level, and his blood sugar was well controlled."

[8] At the hearing, the Board asked the Applicant to explain his demeanour during the Incident. In response, the Applicant denied stumbling and could not explain the odour of liquor on his breath. However, he did say that the parking lot had a bumpy surface and that he had taken Tylenol 3. He did not refer to diabetes.

[9] After the Board completed its questioning, the Applicant's counsel advised the Board that he suffered from diabetes and that its symptoms could mirror intoxication. She also said that the Applicant should have testified to that effect.

[10] In spite of this submission, which, in my view, served as a prompt, the Applicant merely acknowledged that he had diabetes. He did not indicate that he had been experiencing problems with his blood sugar levels on the day of the Incident or at any previous time and he did not suggest that his diabetes explained or contributed to his behaviour during the Incident.

[11] The fact that his explanation for the Incident involved only Tylenol 3 is confirmed in a memo made on June 6, 2012, at the Pacific Region's Temporary Detention Unit. This memo predated the Board's hearing and was included in the Board's record. The memo described a discussion with the Applicant about the Incident in these terms: "When asked if he had anything to drink or taken any substances, Gill said that he took a second doctor-prescribed T3 after jogging and nothing else (two T3s total)."

[12] To summarize, the Board had no documentary information to suggest that the Applicant was experiencing problems with his blood sugar levels or that he was receiving insulin or other treatment for diabetes at the time of the Incident. The Applicant's evidence was consistent throughout. He gave the police, his PO, the officials at the Temporary Detention Unit and the Board the same simple explanation and in each case it was Tylenol 3.

II. <u>The Issue</u>

[13] The central issue raised by the Applicant relates to the Board's conduct during its hearing. It is acknowledged that where the Appeal Division affirms the Board's decision, as is the case here, the Court can inquire into the lawfulness of the Board's decision (*Cartier v Canada (Attorney General)*, 2002 FCA 384 at paras 6-10).

[14] The Applicant's initial argument on judicial review was that the Board had a duty to seek out information about the Applicant's diabetes. However, during the hearing, it became clear that all the relevant documentary evidence was before the Board. The issue therefore narrowed and became a question of whether, after the Applicant stated that he had diabetes, the Board should have questioned him further about whether his blood sugar levels were fluctuating and whether this might have explained his symptoms during the Incident.

III. <u>Discussion</u>

[15] The Applicant accurately submits that in a decision of September 7, 2011 [the Earlier Decision], following one of the Earlier Suspensions, the Board concluded that diabetes was a plausible alternative explanation for the Applicant's apparent intoxication. For that reason, the Applicant says that fairness required the Board in this case to explore that possibility with the Applicant. However, in the earlier case, as in the present case, it was only the Applicant's counsel who referred to diabetes as a possible explanation for the Applicant's symptoms. The Applicant did not testify to that effect. His explanation in the earlier hearing dealt with lack of sleep and cough syrup. The Board said:

> "While suspicions that you had breached your special condition [no intoxicants] remain, a plausible alternative explanation was presented by your assistant for how you presented to your CPO."

[16] In my view, this was not a conclusive finding and was without evidentiary support. I therefore conclude that the Earlier Decision did not trigger an obligation on the Board to further question the Applicant.

[17] Accordingly, the application will be dismissed.

ORDER

THIS COURT ORDERS that the application for judicial review is hereby dismissed with costs to the Respondent under Tariff B Column III of the *Federal Court Rules*. If the parties cannot agree on a lump sum, the Registry may be contacted and arrangements will be made to fix an award.

"Sandra J. Simpson"

Judge

Federal Court Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-120-13
STYLE OF CAUSE:	RANJIT GILL v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 23, 2013
REASONS FOR ORDER AND ORDER:	SIMPSON J.
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