

Federal Court



Cour fédérale

Date: 20231018

Docket: T-2663-22

Citation: 2023 FC 1382

Ottawa, Ontario, October 18, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

SHAMAYAL HUSSAIN

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Shamayal Hussain is seeking judicial review of two decisions by the Canada Revenue Agency (the Agency) finding him ineligible to the Canada Emergency Response Benefit (CERB) and to the Canada Recovery Benefit, both part of measures the Canadian Government introduced as response to various repercussions caused by the COVID-19 pandemic.

[2] With respect to the latter decision, the Respondent concedes it was unreasonable and that it should be returned to the Agency for redetermination.

[3] However, the Respondent argued that the Applicant was ineligible to the CERB because he was unable to demonstrate that he earned at least \$5,000 of employment or self-employment income in 2019 or in the 12 months preceding the date of his application.

II. Statutory framework

[4] In order to receive the CERB, a Canadian resident had to make an application for each four-week period beginning on March 15, 2020, and ending on September 26, 2020. The four-week periods were numbered 1 to 7. Eligible individuals could receive \$2,000 (before tax withholdings) in each four-week period.

[5] Pursuant to section 4 of the *Canada Emergency Response Benefit Act*, SC 2020, ch 5, s 8 (the Act), the Minister of Employment and Social Development paid the CERB to any person who met the eligibility requirements found in sections 2 and 6 of the Act, including the above mentioned \$5,000 criteria.

[6] The Agency administers the CERB program and reviews some applications, before or after the payment of benefits. In doing so, the Agency may require from an applicant any information relevant to the application.

III. First-Level Decision

[7] Between April 6, 2020, and September 8, 2020, the Applicant applied for seven four-week periods of the CERB. The payments were initially issued without review for Periods 1 to 7, inclusively, and the Applicant received CERB payments in the amount of \$14,000.

[8] On May 13, 2022, the Agency selected the Applicant's file for an eligibility review (the First-Level Review). The file was assigned to a First-Level Review officer. The Agency's system showed the following:

- (a) The Applicant self-reported \$10,000 of other income for the 2019 taxation year;
- (b) No T4 slip was filed between 2017 and 2020;
- (c) A T4A slip was issued by the Government of Canada in the amount of \$20,000 for the 2020 taxation year, which corresponds to \$14,000 of CERB payments (box 197 of the slip) and \$6,000 of CRB payments (box 202 of the slip);
- (d) A T4A slip was issued by the Government of Canada in the amount of \$18,600 for the 2021 taxation year, which corresponds to \$18,600 of CRB payments (box 202 of the slip);
- (e) A T4 slip from 9260-0535 Québec Inc. in the amount of \$10,648 was filed for the 2021 taxation year.

[9] On May 16, 2022, the First-Level Review officer called the Applicant to obtain additional documentation in order to corroborate the Applicant's claim that he met the \$5,000 criteria, as the information in the system did not allow him to confirm.

[10] During that call, the Applicant stated that he had been working at 9260-0535 Québec Inc. as a full-time server since 2015 and the First-Level Review officer requested that the Applicant provide the following:

- (a) Cheque copies for the 2019 taxation year;
- (b) Bank statements for the 2019 taxation year; and
- (c) A copy of a T4 slip for the 2019 taxation year that the Applicant mentioned having.

[11] After considering the information available, the First-Level Review officer found that the Applicant was not eligible to the CERB, as he had failed to provide the information requested.

IV. Decision under review

[12] The Applicant applied for a second review of his eligibility to the CERB (the Second-Level Review).

[13] The Second-Level Review officer considered, in addition to the documentation that was before the First-Level Review officer, the documents provided by the Applicant on July 29, August 27 and October 24, 2022:

- (a) A copy of a notice of assessment for the 2019 taxation year;
- (b) A copy of a notice of assessment for the 2020 taxation year;
- (c) A copy of a T4 slip for the 2019 taxation year from 9260-0535 Québec Inc. for \$10,648.50;
- (d) Twenty-five pay slips with no date from 2021;
- (e) Twenty-six dated pay slips for the 2021 taxation year.

[14] The Second-Level Review officer reiterated the Agency's request to obtain invoices and bank statements from 2019 in order to confirm the \$10,000 of other income self-reported by the Applicant. The Applicant explained that he was unable to provide those documents, as he no longer had access to them.

[15] After considering the Applicant's submissions and the information before him, the Second-Level Review officer concluded that the Applicant was not eligible to the CERB because he did not provide the documents requested and, as such, the Agency could not conclude that the Applicant met the \$5,000 criteria.

[16] The Agency informed the Applicant of the Second-Level Review decision by letter dated November 9, 2022.

V. Issue and Standard of Review

[17] The sole issue raised by this Application is whether the officer made a reviewable error in finding that the Applicant did not meet the \$5,000 criteria.

[18] The standard of review applicable to the Court's analysis is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, para 16).

VI. Analysis

[19] According to the Agency's guidelines, acceptable proof of employment income includes recent pay slips, employment verification letters, records of employment, bank statements, and any other documentation that will substantiate \$5,000 in employment income. Acceptable proof of self-employment includes invoices, receipt of payment, documentation showing income, contracts, a list of expenses to support the net result of earnings, or any other documentation that will substantiate \$5,000 in self-employment income.

[20] At the time of the Second-Level Review decision, the Applicant had told the officers on the phone that he was employed as a server. However, his 2019 tax assessment instead indicates that the Applicant self-declared \$10,000 in other income.

[21] The Canadian tax system is based on the principles of self-reporting and self-assessment. A Notice of Assessment does not prove that the Applicant actually earned the income they reported in filing their income tax return (*Aryan v Canada (Attorney General)*, 2022 FC 139, para 35).

[22] This Court has also found that T4 slips indicate what counts as employment or self-employment income, but do not validate income (*Virani v Canada (The Attorney General)*, 2022 FC 1480, para 16).

[23] In his written material and during his oral submissions before the Court, the Applicant was unable to explain the source of the other income declared for the 2019 taxation year; all he could say is that in his view, he had provided sufficient proof of his income for that year, as shown by the revenue declared in precedent years.

[24] Unfortunately, that is not sufficient. If the Applicant had sources of income other than employment, he should have been able to provide some evidence and explain the nature of that income. If the Applicant was employed as a server, as he first indicated to the officers, he should have been able to provide some pay slips or bank deposits for the year 2019. As he chose to do neither, the Second-Level Review officer's decision regarding the CERB payments received by the Applicant is reasonable and should not be disturbed.

VII. Conclusion

[25] The CRB decision will be sent back to the Canada Revenue Agency for a new determination. However, since the Applicant was unable to convince the Court that the CERB decision was unreasonable, his Application for judicial review will be dismissed in that regard.

JUDGMENT in T-2663-22

THIS COURT’S JUDGMENT is that:

1. The Application for judicial review regarding the November 9, 2022 decision of the Canada Revenue Agency denying the Applicant’s eligibility for the Canada Recovery benefit is granted and that aspect of the file is sent back to the Agency for a new determination;
2. The Application for judicial review regarding the November 9, 2022, decision of the Agency denying the Applicant’s eligibility for the Canada Emergency Response Benefit is dismissed;
3. No costs are granted.

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2663-22

STYLE OF CAUSE: SHAMAYAL HUSSAIN v CANADA REVENUE AGENCY

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 5, 2023

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: OCTOBER 18, 2023

APPEARANCES:

Shamayal Hussain	ON HIS OWN BEHALF
Mathilde Romano	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montreal, QC	FOR THE RESPONDENT
--	--------------------