

Federal Court



Cour fédérale

Date: 20240426

Docket: T-1554-22

Citation: 2024 FC 641

Toronto, Ontario, April 26, 2024

PRESENT: Madam Justice Go

BETWEEN:

Ronald C Waldie

Applicant

and

ATTORNEY GENERAL CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under the *Canada Recovery Benefits Act* (S.C. 2020, c. 12, s. 2) [*CRB Act*] at paragraphs 3(1)(d) and 3(1)(e), eligible CRB recipients were required to have a minimum of \$5,000 from employment, self-employment, or certain prescribed government benefits and allowances in 2019, 2020, or in the 12 months preceding the date of their first CRB application [Income Requirement].

[2] Mr. Ronald C. Waldie [Applicant] applied for and received CRB payments for 26 two-week periods—September 27, 2020 to November 21, 2020 and December 20, 2020 to October 23, 2021.

[3] By way of letter dated January 19, 2022, a Manager of Canada Emergency Benefits Validation [First Review Officer] at the Canada Revenue Agency [CRA] informed the Applicant he was ineligible for the CRB payments he received [First Decision]. That same day, the Applicant requested a second review of his eligibility.

[4] On July 5, 2022, after a second review, a different CRA agent of Canada Emergency Benefits Validation [Second Review Officer] informed the Applicant he was ineligible for CRB for 22 two-week periods, between September 27, 2020 to November 21, 2020 and December 20, 2020 to July 31, 2021. The Second Review Officer found the Applicant was eligible for four two-week periods from August 1, 2021 to October 23, 2021, finding the Applicant earned \$5,015.42 of employment income from Statistics Canada [Decision].

[5] The Applicant seeks a judicial review of the Decision. I dismiss the application as I find the Decision reasonable and there was no procedural fairness breach.

II. Preliminary Issues

[6] As a preliminary issue, the appropriate respondent should be the Attorney General of Canada.

[7] Furthermore, at the hearing, I asked the Respondent to assist in removing all references to the Applicant's social insurance number contained in the Applicant's Affidavit and Application Record. The Court wishes to thank the Respondent for their assistance in this regard.

III. Issues

[8] The issues before me are: a) whether the Decision was reasonable and b) whether there was breach of procedural fairness.

[9] The officer's reasons about CRB eligibility is reviewable on a reasonableness standard per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. For issues of procedural fairness, no deference is owed to the decision-maker: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56.

IV. Analysis

A. *Did the Second Review Officer breach the duty of procedural fairness?*

[10] The Applicant submits that in November 2020, the CRA "red-flagged" his file and halted his CRB payments, but after he provided documentation of proof of income, the CRA resumed the CRB payments, including back pay. The Applicant submits the CRA concealed its reasons for why it paused his CRB payments, which he asserts amounted to a breach of procedural fairness because he was clueless as to why the CRA flagged his file.

[11] The Applicant's submission appears to conflate his application for CRB with his previous application for the Canada Emergency Response Benefit [CERB]—CRB's precursor.

[12] The letter that the Applicant included in the Applicant's Record was a letter from the CRA's Collections and Verification Branch dated November 26, 2020 advising the Applicant that the CRA was reassessing his eligibility for CERB. The Applicant may well have been "red-flagged" for a re-assessment of his eligibility for CERB after he applied for CRB. However, the present judicial review is concerned only with the Applicant's eligibility for CRB. As such, any decision the CRA may have made with regard to the Applicant's CERB is outside the scope of my review. In any event, there is insufficient information before me to determine whether and how the reassessment of the Applicant's CERB affects either the reasonableness of the Decision, or procedural fairness arising from the reviews of the Applicants' CRB.

[13] In addition, the Applicant submits the Decision was procedurally unfair for two reasons. First, the Applicant submits the CRA did not explain to him why he was ineligible, and it was only after he received the disclosures provided as part of this judicial review did he realize the issue was that the loan did not count as income. The Applicant submits had he known of the CRA's concern, he would have provided appropriate evidence to prove that the loan was, in fact, income, such as affidavits or copies of contracts.

[14] Second, the Applicant submits that the CRA failed to ask about other sources of evidence he could have proffered to confirm his income. That is, the Applicant asserts he provided all the

documents listed as acceptable proof of income and the CRA was obliged to ask about other evidence of income. The Applicant argues its failure to do so renders the Decision unreasonable.

[15] I am not persuaded by the Applicant's arguments.

[16] The record before me indicates that the First Review Officer and the Applicant had a phone conversation on December 24, 2021 during which the Applicant explained his work arrangement. Specifically, the Applicant stated that he worked part-time in 2019 arranging a theatre and festival tour which was shut down due to COVID-19. As part of his work arrangement, the Applicant received advancements of over \$5,000 to his personal bank account from a patron. The Applicant provided four bank statements but noted he did not have any invoices. The CRA agent advised the Applicant that it could be an issue if the Applicant did not have any invoices to prove the bank statements were work related, and that the Applicant would be contacted by mail or by phone. The Applicant indicated that he understood.

[17] The record also shows that the Second Review Officer spoke to the Applicant twice between May and June of 2022. During these conversations, the Applicant explained that he was supposed to pay back the advance payments from the tour revenue and that this was an informal, oral arrangement and was not reported in his 2019 tax return. The Applicant also confirmed he made no other income in 2020 or 2021 before his employment at Statistics Canada. In these conversations, the Second Review Officer advised the Applicant that the e-transfers in the bank statements had to be accompanied by invoices or receipts, but the Applicant explained he had no other documentation besides the bank statements.

[18] In light of the above, I agree with the Respondent that the Applicant was provided with a full and fair opportunity to provide representations and documents in the CRB eligibility process, and therefore, the process was procedurally fair: *Vavilov* at para 127 and *Higgins v Canada (Attorney General)*, 2018 FCA 49 at para 17.

[19] The Respondent further submits, and I agree, that the Applicant was aware, from the First Decision, that he was found ineligible because he had not satisfied the Income Requirement and was able to provide additional documents and letters during the second review, all of which were considered and relied upon by the Second Review Officer.

[20] Finally, the Applicant conceded at the hearing that he had no other documents he could have provided to prove his income in 2019, further undermining the Applicant's argument with respect to procedural fairness.

B. *Was the Decision reasonable?*

[21] The Applicant submits the CRA unreasonably determined his income constituted a loan, and argues he specifically explained in letters to the CRA that the advancements were payments representing the time he spent working on the tour and were meant to offset the costs of the tour planning. The Applicant argues that an advance and loan are two different things, and the former is income as set out in the Employers' Guide Tax Benefits and Allowances [CRA Employers' Guide].

[22] The Applicant further submits that whether the CRA perceived the payments to be an advance or loan, it erred by determining that the payments were not income meant to compensate him for the work completed and it made its decision without an enabling guideline or statutory basis.

[23] I reject the Applicant's arguments for the following reasons.

[24] First, the CRA Employers' Guide applies to individuals in an employer/employee relationship. The Applicant has not provided any information to indicate that he was in such a relationship with his patron.

[25] Second, as the Respondent points out, the Applicant himself told the Second Review Officer that the advance payment was used to purchase tickets and "was more like a loan or income which had to be reimbursed from the revenue of the tour." During the second phone call with the Second Review Officer on June 15, 2022, the Applicant advised that the money was "advanced to him to facilitate the tour and had to be paid back because the tour did [not] go through." By any definition, a payment that has to be returned because the work has not been accomplished cannot be considered as income.

[26] Third, regardless of whether the payment is a loan, an advance payment, or income, the fundamental issue here is that the Applicant provided no evidence, besides his bank statements, to confirm that the payment was work related. The e-transfers provided by the Applicant were unsupported by invoices, receipts or any documentation to support the e-transfers he received.

[27] As reflected in the notes, the Second Review Officer did take the Applicant's evidence and explanation into consideration. However, in view of the evidence before them, or lack thereof, it was reasonable for the Second Review Officer to conclude that the evidence did not sufficiently show that the Applicant met the Income Requirement.

V. Conclusion

[28] The application for judicial review is dismissed.

[29] There is no order as to costs.

JUDGMENT in T-1554-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. The style of cause is amended to name the Attorney General of Canada as the Respondent.
3. The Respondent shall file redacted versions of the Applicant's original Affidavit and Record within 15 days from the date of this decision.
4. The Registrar shall replace the Applicant's original Affidavit and Record with the redacted versions within 7 days after they are filed by the Respondent. The Registrar shall then publish the decision.
5. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1554-22

STYLE OF CAUSE: RONALD C WALDIE v ATTORNEY GENERAL
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 22, 2024

JUDGMENT AND REASONS: GO J.

DATED: APRIL 26, 2024

APPEARANCES:

Ronald C Waldie

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Amin Nur

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT