

Federal Court



Cour fédérale

Date: 20240606

Docket: T-524-23

Citation: 2024 FC 858

Ottawa, Ontario, June 6, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

IBRAHIM ADLY WAHBA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ibrahim Adly Wahba [the “Applicant”], brings this application for judicial review of three decisions that are subject to similar facts and were decided by the same decision-maker. The first, a decision dated February 16, 2023, was when after initial assessments by Canada Revenue Agency (“CRA”), a different officer (“**Officer**”) also found that the Applicant was not eligible to receive payments under the Canada Recovery Benefit (“**CRB**”). The second, a decision also dated February 16, 2023, on final review, the Officer also found that the Applicant

was ineligible for the Canada Worker Lockdown Benefit (“**CWLB**”). The third, a decision also dated February 16, 2023, on final review, the Officer also found that the Applicant was ineligible to receive payments under the Canada Recovery Sickness Benefit (“**CRSB**”).

[2] All decisions were made because the evidence and information provided by the Applicant had not satisfied the decision-maker that he had met the legal requirement of the respective program.

[3] The Applicant was self-represented at the judicial review I am sympathetic his situation. I have no reason to doubt that he honestly believed he was eligible for those programs. He felt that it did not make sense that payments were made in the first place if he were not eligible, and he felt betrayed that he was found to be ineligible at a later date when he had already spent the money.

[4] As I explained to him at the hearing, a judicial review is not to reassess the merit of each application. It is my duty to review the reasonableness of each of the three decisions.

[5] The Applicant agreed that the Officer has considered all of what he had communicated to them, and therefore did not raise procedural fairness as an issue. He was frustrated with the process and disagreed with the criteria. I find that the Applicant’s general frustration with the process or his disagreement with the legal criteria of each eligibility program to amount to a breach of procedural fairness, and I will therefore only deal with the reasonableness of the decisions.

[6] For reasons that follow, I find the Officer's decisions for all three programs to be reasonable and reached without a breach of procedural fairness. I therefore dismiss the Applicant's judicial review applications.

II. Preliminary Issues

[7] Section 302 of the Federal Courts Rules limits an application for judicial to a "single order in which relief is sought" unless the Court orders otherwise. As the parties agree, I find that it is in the interest of justice for the Court to hear the judicial review of the three decisions together.

[8] An exception to Rule 302 is warranted in the circumstances of this case because the decisions are closely connected, deal with similar factual situations and issues, and were made by the same Officer (*Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at paras 18-19). It would therefore be a waste of time and effort to conduct three different judicial reviews.

III. Factual Background

[9] The Applicant applied for the CRB for periods from September 27, 2020, to October 23, 2021, the CWLB for periods from December 19, 2021, to March 12, 2022, and the CRSB for seven one-week periods from October 10 to November 6, 2021, and April 10 to 30, 2022.

[10] The Applicant was mainly an Uber driver who stopped driving customers because of the outbreak of the COVID-19 pandemic. He does not contest that he did not look for any jobs or that he did not drive any customers during Covid. He alleges that as an asthmatic patient, it would be unsafe for him to work. In his communication with the CRA, he never provided any medical documentations to support this claim.

[11] The CRA reviewed his applications and requested additional documents, including pay statements from Uber and matching bank statements, to verify his \$5,000 income requirement. However, the Applicant did not submit the requested documents by the time a first review took place. As a result, the Applicant's failure to earn at least \$5,000 in 2019, 2020 or during the 12 month prior to his CRB applications was also a ground of refusal by the first reviewing officer.

[12] On May 12, 2022, the first CRA officer concluded that the Applicant was not eligible for any of the benefits based on the available information. The decisions, communicated on May 20, 2022, cited insufficient earnings of at least \$5,000 in 2019, 2020, or the 12 months preceding the applications.

[13] The Applicant was informed he could request a review of these decisions. He requested a second review on June 1, 2022, and submitted additional documents on June 1 and 5, 2022. The second CRA officer agreed that Applicant had earned at least \$5,000 in 2019 but upheld the initial decision on July 25, 2022, determining that the Applicant quit his job voluntarily, was not working due to reasons unrelated to a COVID-19 lockdown, and was not employed or self-employed the day before his first application period.

[14] Following the second decision, the Applicant requested another review, submitting further documents on August 8 and November 17, 2022. This final review was conducted by a third CRA officer, who was not involved in the previous decisions. The final review considered all documents submitted, including the initial submissions, income tax assessments, T4A statements, Uber tax summaries, and bank transaction history from 2019 to 2021.

[15] The final CRA officer concluded on February 16, 2023 that the Applicant was still ineligible for CRB, CWLB, and CRSB. The final decisions are subject to this judicial review.

[16] The CRB letter stated that the Applicant did not meet the following criteria: he quit his job voluntarily and that he was able to work but not looking for a job. As stated, the Applicant does not dispute that he was not looking for a job but holds that this was to comply with the government order to stay at home. He also stated that he quit his job because as an asthmatic, he feared getting and transmitting Covid. As stated previously, the Applicant had not substantiated his medical condition with any evidence.

[17] The CWLB letter stated that the Applicant did not meet the following criteria: that he was not working for reasons considered to be unreasonable or unrelated to a Covid-19 lockdown.

[18] The CRSB letter stated that the Applicant did not meet the following criteria: that he was not employed or self-employed on the day before his first application period. The Applicant does not dispute that he was not working then, but argued at the hearing that as an Uber driver, he could not be reasonably expected to be working every single day, and that he was entitled to a day off, including on the day before the date of the application.

IV. Judicial Review Issues and Standard of Review

[19] The Applicant raises several issues that can be summarized as follows:

- a) The reasonableness of the final decisions on CRB, CWLB and CRSB.

V. Standard of Review

[20] The standard of review applicable in this case is reasonableness ((*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] and *Aryan v Canada (Attorney General)*, 2022 FC 139 [Aryan], at paras 15-16). The parties do not dispute this.

[21] When the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to assess whether the decision was based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision-maker” (Vavilov, at para 85). The reviewing court must therefore ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (Vavilov, at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 47 and 74). It is up to the party challenging an administrative decision to show that it is unreasonable.

[22] Review on a standard of reasonableness will involve a rigorous assessment of administrative decisions. However, as part of its inquiry into the reasonableness of a decision, the reviewing court must examine the reasons provided with “respectful attention” and seek to understand the line of reasoning followed by the decision-maker to arrive at its conclusion (Vavilov, at para 84). The reviewing court will adopt a posture of restraint, intervening only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of

the administrative process” (*Vavilov*, at para 13). A decision will not be overturned on the basis of merely superficial or peripheral errors. Rather, the impugned decision will have to contain sufficiently serious shortcomings, such as internally incoherent reasoning (*Vavilov*, at paras 100–101).

VI. Legislative Framework

A. *CRB*

[23] The enabling legislation of the CRB is the Canada Recovery Benefits Act (the “CRB Act”). The aim of the CRB is to support Canada’s economic recovery in response to COVID-19. Pursuant to section 7 of the CRB Act, the Minister must pay the CRB to any person that meets the following conditions: (a) an application was made pursuant to section 4 of the CRB Act; and, (b) the eligibility requirements found in section 3 of the CRB Act are satisfied.

[24] For the purposes of this application, the relevant CRB criteria is found at ss. 3(1)(k) and (i) of the CRB Act provides that: (a) if the applicant has not previously received any benefits under this Part, they have not quit their employment or voluntarily ceased to work, unless it was reasonable to do so; (b) the applicant has not: (i) failed to return to their employment when it was reasonable to do so if their employer had made a request; (ii) failed to resume self-employment when it was reasonable to do so; or (iii) declined a reasonable offer to work in respect of work that would have started during the two-week period (the “CRB Relevant Criteria”); and (c) the applicant sought work during the two-week period, whether as an employee or in self-employment.

B. *CWLB*

[25] The enabling legislation of the CWLB is the Canada Worker Lockdown Benefit Act (“CWLB Act”). Eligible residents of Canada affected by a lockdown order could apply for the CWLB in respect of any one-week period falling within the period beginning on October 24, 2021 and ending on May 7, 2022. Pursuant to section 8 of the CWLB Act, the Minister had to pay the CWLB to any person that met the following conditions: (a) they had made an application pursuant to section 5 of the CWLB Act; and (b) they met the eligibility requirements found in section 4 of the CWLB Act.

[26] For the purposes of this application, the relevant eligibility requirements are found in s. 4(1)(h). They provide that an applicant did not quit their employment or voluntarily cease to work for reasons considered to be unreasonable or unrelated to a COVID-19 lockdown (the “CWLB Relevant Criteria”). In particular, pursuant to s. 4(1)(h) the applicant has to have not: (a) failed to return to their employment when it was reasonable to do so, if their employer had made a request, (b) failed to resume self-employment when it was reasonable to do so, or (c) declined a reasonable offer to work in respect of work that would have started during the week.

C. *CRSB*

[27] The enabling legislation of the CRSB is the CRB Act. Eligible residents of Canada could apply for the CRSB in respect of any one-week period, for up to a total of six weeks, between September 27, 2020 and May 7, 2022. Pursuant to s. 14 of the CRB Act, the Minister had to pay the CRSB to any person that met the following conditions: (a) they had made an application pursuant to section 11 of the CRB Act; and (b) they met the eligibility requirements found in section 10 of the CRB Act.

[28] For the purposes of this application, the relevant CRSB criteria is found at s. 10(1)(f) of the CRB Act. It requires that the applicant (i) as an employee, has been unable to work for at least 50% of the time the applicant would have otherwise worked in the week, or (ii) as a self-employed person, they reduced the time devoted to work by at least 50% of the time the applicant would have otherwise worked in the week (the “CRSB Relevant Criteria”).

VII. Analysis

A. *The reasonableness of the CRB decision*

[29] For the decision to be unreasonable, the Applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov*, at para 100). Not all errors or concerns about a decision will warrant intervention.

[30] The Applicant accepts that the Officer considered all of his evidence to conclude that he quit his job voluntarily and that he was able to work but not looking for a job.

[31] The Applicant does not dispute that he was not looking for a job but holds that this was to comply with the government order to stay at home.

[32] To reach its final decision, the Officer’s notes, which constitute part of the reasons, speak to a questionnaire the Applicant had completed. In it, the Applicant had self-identified as a self-employed individual and to the relevant questions on work, he had responded as follows:

8. You did not quit your job or voluntarily reduce your hours on or after September 27, 2020, unless it was reasonable to do so? YES, I QUIT DUE TO COVID

9. You were seeking work during the period for which you are applying? NO, I JUST STAYED AT HOME. I HAD KIDS AT

HOME AND MY FAMILY SO I COULD NOT GIVE THEM COVID SO I COULD NOT WORK.

10. You did not turn down reasonable offer to work? NO I NEVER

11. You were not self isolating or in quarantine due to international travel. NO I WASN'T

CRSB.

1. Were you unable to work at least 50% of your scheduled work week because you are self-isolating for one of the following reasons: THE THIRD ONE.

- You are sick with or may have Covid-19
- You were advised to self-isolate
- You have an underlying condition that puts you at greater risk of getting Covid-19

2. Did you receive paid leave from your employer for the same period? NO I NEVER

CWLB

1. Do one of the following situations apply as a result of measures imposed by a designated Covid-19 lockdown order in your region:

I WAS SELF EMPLOYED

- You lost your job and were unemployed;
- You were self-employed but unable to continue your work;
- You were employed or self-employed, but had a 50% reduction in your average weekly employment or self-employment income as compared to the previous year.

2. You did not do any of the following, unless it was reasonable to do so: NO I TRIED TO GO BACK TO WORK BUT COULDN'T BECAUSE IT'S TOO HARD ON ME, I CAN'T TAKE THE CHANCES OF GETTING COVID

- Quit your job
- Voluntarily stop working
- Turn down reasonable work
- Refuse to return to work when asked by your employer
- Fail to resume self-employment when it was possible
- Choose not to work from home, when possible

[33] As can be seen, the Officer assessed various factors raised by the questions to conclude that the Applicant had stopped working. As stated, the Applicant had not provided any medical evidence on his asthma for the Officer to assess voluntariness.

[34] In a different part of the notes, the Officer explains that he knew the Applicant was an Uber driver in 2019 who had stopped work because of Covid and government's advice, and that

he was at risk of health complications due to his asthmas and the fear of giving his kids Covid. In his reasons, the Officer weighed the totality of the evidence, which included his answers and the lack of medical information, to reach his decision. His notes also include the following:

Reason why: TP didn't meet the criteria needed for that particular benefit. TP was not working because it was his own choice. TP quit his job out of fear of catching COVID. Since the TP decided to do this on his own, this would be considered not working for reasons unrelated to COVID-19.

[35] I find that while it was the Applicant's interpretation that he had to stay at home and not work or look for any jobs. It was open to the Officer to assess whether this was voluntary or Covid-related, particularly when there was no document before them to substantiate any particular vulnerability.

[36] I find that the Officer's notes and reasons show an internally coherent and rational chain of analysis. The reasons are justifiable, intelligible and transparent. It is not for the Court to reweigh the evidence.

B. *The reasonableness of the CWLB decision*

[37] The Officer refused the CWLB application because they found that the Applicant was not working for reasons considered to be unreasonable or unrelated to a Covid-19 lockdown. This is in the context of the CWLB's objective, which was to give "temporary income support to employed and self-employed people who could not work due to a COVID-19 lockdown (as seen on the website of the Government of Canada in the "COVID-19 benefits from the CRA: Canada Worker Lockdown Benefit (CWLB)" webpage).

[38] The factual findings of the Officers were based on the same questionnaire and analysis stated above. In short, the Applicant stopped driving for Uber or be interested in any work in any capacity anywhere. The Officer's findings and analysis was responsive to the totality of the evidence before them and followed a clear chain of reasoning.

C. *The reasonableness of the CRSB decision*

[39] The Officer refused the CRSB application because the Applicant was not employed or self-employed on the day before his first application period. For context, CRSB's objective was to give "income support to employed and self-employed individuals who were unable to work because they were sick or needed to self-isolate due to COVID-19, or had an underlying health condition that had put them at greater risk of getting COVID-19 (Government of Canada, "COVID-19 benefits from the CRA: Canada Recovery Sickness Benefit (CRSB)")

[40] The factual findings of the Officers were based on the same questionnaire and analysis stated above.

[41] The Applicant did not dispute that he was not working then, but argued at the hearing that as an Uber driver, he could not be reasonably expected to be working every single day, and that he was entitled to a day off, including on the day before the date of the application.

[42] I do not find that the Officer expected the Applicant to be working every single day. However, in the context of the limited context of this application, it was reasonable to expect corroboration to substantiate an underlying condition to see whether the Applicant's asthmas would amount to the underlying health condition contemplated by the program. As the Applicant admitted at the hearing, at no time did he provide a medical document on his asthma. The Officer

therefore had nothing before him to assess an unsubstantiated allegation. The onus was on the Applicant to prove his case, and the Officer was alive and alert to all the evidence before him. I therefore find that the CRSB decision is also reasonable.

VIII. Cost

[43] Rule 400 gives the Court “full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.” The Respondent is not seeking costs in this case.

[44] I find that no award for costs is warranted in this matter.

IX. Conclusion

[45] The application for judicial review is dismissed, without costs.

JUDGMENT in T-524-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed without cost.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-524-23

STYLE OF CAUSE: IBRAHIM ADLY WAHBA v. ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 30, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: JUNE 6, 2024

APPEARANCES:

Ibrahim ADLY WAHBA ON HIS OWN BEHALF

Victoria WAN FOR THE RESPONDENT

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