

Federal Court



Cour fédérale

Date: 20240926

Docket: T-1648-22

Citation: 2024 FC 1520

Toronto, Ontario, September 26, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

MYCHEAL GRECO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mycheal Greco [the Applicant], is a self-represented litigant who seeks judicial review of a second level review decision of the Canada Revenue Agency [CRA] [the Second Decision] which found him ineligible for the Canada Recovery Benefit [CRB] under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [the *CRB Act*]. The Respondent has conceded

that the Second Decision is unreasonable, but the parties disagree over the order this Court should grant.

[2] For the reasons detailed below, I am granting this application for judicial review and remitting it back to a different decision maker for reconsideration.

II. Facts

[3] The Applicant applied for the CRB for 28 two-week periods from September 27, 2020 to October 23, 2021.

[4] The Applicant's eligibility for CRB payments was reviewed by a CRA agent on January 7, 2022 [the First Reviewer] who determined that the Applicant was not eligible [the First Decision]. The stated basis for the First Decision was that the Applicant had not earned at least \$5,000 (before taxes) of employment income or net self-employment income in 2019, 2020 or in the 12 months before the date of his first application as required by section 3 of the *CRB Act*. The internal CRA notes dated January 5, 2022 state that the Applicant did not have bank statements to support his invoices; however, the First Reviewer did not disclose this basis in the First Decision.

[5] On January 25, 2022, the Applicant requested a second review. As part of his request, the Applicant outlined the reasons why he did not agree with the First Decision and provided invoices and receipts as proof of his self-employment income for 2019, which he said

demonstrated earnings in excess of the requisite income. The Applicant expressly requested an explanation of the basis for the First Decision.

[6] On June 29, 2022, a second officer of the CRA [the Second Reviewer] independently reviewed the Applicant's eligibility. The Second Reviewer gave the identical rationale as the First Reviewer without addressing the Applicant's submissions. The background notes again reflect an undisclosed rationale for the Second Decision. According to the Second Reviewer's notes, the Applicant "does not have the proper documents to prove the income earned in 2019, 2020 or 2021 to support the Invoices sent in."

III. Issues and Standard of Review

[7] The Applicant seeks judicial review of the Second Decision on the basis that it is unreasonable and procedurally unfair. The Applicant's argument related to procedural unfairness is based on the Second Reviewer's failure to consider the contents of his letter written in support of his request for a second review. This argument is not a procedural fairness argument; rather, it goes to the decision maker's evaluation of the evidence and the merits of the decision and therefore is subject to the reasonableness standard of review (see for example *Sadeghieh v Canada (Citizenship and Immigration)*, 2024 FC 442 at paras 19-20).

IV. Analysis

[8] The Respondent has conceded that the Second Decision is not reasonable as it is unclear why the Second Reviewer determined that the Applicant's documentation was not sufficient.

The Second Reviewer asked the Applicant for bank statements after the Applicant advised that he is paid in cash. As the Applicant notes, the CRA guidance document entitled “Confirming CERB, CRB, CRSB, CRCB, and CWLB Eligibility” lists “invoice[s] for services rendered” as a type of “acceptable proof” of self-employment income.

[9] In light of the foregoing and the Respondent’s appropriate concession, I find that the Second Decision is lacking in transparency and justification (both internally and in response to the Applicant’s submissions) and is therefore unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 81, 95 and 99 and *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 74). The application for judicial review is therefore allowed.

V. Order Sought

[10] The Applicant filed a fresh Notice of Application in his Application Record dated October 23, 2023, in which he has sought relief not previously claimed in his original Notice of Application dated August 4, 2022. While his original Notice of Application asked that the Second Decision be set aside with the case referred back to the Minister for reconsideration, the Applicant’s new Notice of Application now asks the Court to declare the Second Decision to be invalid and confirm his eligibility for the CRB. The Respondent has objected to the new pleading.

[11] The Applicant did not bring a motion to amend his pleading and has therefore not complied with Rule 75 of the *Federal Courts Rules*, SOR/98-106. The Applicant's new Notice of Application is not properly before the Court and shall not be considered.

[12] I also note that the Applicant has included new evidence in the Application Record, namely receipts that were not before the Second Reviewer. In light of the Respondent's concession, I do not need to decide the admissibility of this new evidence and it is not the Court's role to direct or compel the CRA to accept certain documents as part of its assessment (*Labrosse v Canada (Attorney General)*, 2022 FC 1792 at para 41).

[13] This application for judicial review is granted and the matter shall be remitted back to a different CRA officer for redetermination.

[14] There shall be no order as to costs.

JUDGMENT in T-1648-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The matter is returned for redetermination by another decision maker; and
3. There is no order as to costs.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1648-22

STYLE OF CAUSE: MYCHEAL GRECO v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 25, 2024

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: SEPTEMBER 26, 2024

APPEARANCES:

Mycheal Greco

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Lalitha Ramachandran

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT