Federal Court  Cour fédérale

Date: 20220427

Docket: T-914-21

Citation: 2022 FC 613

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 27, 2022

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

SYLVAIN LAROCQUE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Sylvain Larocque is seeking judicial review of the decision dated May 10, 2021, by an Officer of the Canada Revenue Agency [CRA], for the Minister of Employment and Social Development [the Minister], denying his application for the Canada Emergency Response

Benefit [CERB]. The decision subject to judicial review is the one dated May 10, 2021, resulting from the second review of Mr. Larocque's CERB application.

[2] In her letter to Mr. Larocque dated May 10, 2021, the Officer indicated, among other things, that she had tried to reach him by telephone but had been unsuccessful. She stated that based on their review, Mr. Larocque was ineligible because (1) he left his job voluntarily; and (2) he did not stop working or have his hours reduced as a result of COVID-19.

[3] For the reasons set out below, Mr. Larocque's application will be dismissed.

II. Background

[4] In 2020, Mr. Larocque claimed the CERB for four separate periods covering, in total, the period from March 15 to July 4, 2020. For each of the four periods, he received an amount of $2,000. According to the evidence in the record, from 2015 to 2018, welfare was Mr. Larocque's only source of income. On June 2, 2020, Mr. Larocque filed his tax return for tax year 2019 and, in addition to his social assistance benefits, reported employment income of $6,000. For the 2020 taxation year, social assistance was Mr. Larocque's only source of income.

[5] On June 9, 2020, the CRA stopped the benefit payments requested by Mr. Larocque. On August 5 and September 29, 2020, at the request of the CRA, Mr. Larocque provided supporting documentation: (1) a receipt dated May 27, 2020, from Tregon Recycling Inc. indicating that a $6,000 cash payment was made to him in 2019 for ceramic and painting work that was performed from July 2, 2019 to July 30, 2019; (2) a letter from Mr. Larocque dated September

14, 2020, in which he noted that he is entitled to the CERB, that on or about the first week of March 2020, Tregon Recycling Inc. requested that he prepare a cost estimate for work to be done, that on or about the second week of March he submitted a verbal estimate to the company, that work began but due to his precarious health of only 50% lung capacity, he had to stop work due to COVID-19; (3) an undated letter, on letterhead from Tregon Demolition Inc, stating that Mr. Larocque gave a verbal estimate to Tregon Recycling Inc. around the first week of March 2020, that Tregon Recycling Inc. purchased the materials, that the building was shut down, and that Mr. Larocque decided not to return to work due to his health [the Letter].

[6] On November 26, 2020, the CRA issued an initial decision denying CERB payments to Mr. Larocque. This first decision noted the four above-mentioned periods for which Mr. Larocque obtained CERB, and specified that he did not meet the criteria because he left his job voluntarily, and did not stop working or have his hours reduced due to COVID-19. The CRA offered Mr. Larocque the opportunity to provide new documents or information, indicating that they would be reviewed by another officer.

[7] On December 4, 2020, Mr. Larocque wrote to the CRA and expressed his disagreement. He did not submit any additional documents or information, but instead sent the same three documents and requested that his CERB record be reviewed.

[8] On March 25, 2021, the second review began. On March 25 and 26, 2021, and on April 1, 2021, the Officer attempted to contact Mr. Larocque by telephone, but was unsuccessful. According to the notes in the CRA system, however, when the Officer called, a woman had

answered the telephone. During that April 1, 2021, call, the Officer told the woman who had answered that Mr. Larocque needed to return the call by April 23, 2021. In the CRA system, the Officer recorded that she did not receive a return call.

[9] On May 3, 2021, the Officer reviewed Mr. Larocque's record. In her report, the Officer stated that the eligibility criteria had not been met as Mr. Larocque had not stopped working due to COVID-19, and had voluntarily left his employment. The Officer noted that:

> [TRANSLATION]
> - Mr. Larocque has not demonstrated that he had a contract, a job that he lost due to COVID-19 (verbal agreement);
> - Mr. Larocque has not demonstrated that he was unable to work due to illness;
> - Mr. Larocque decided not to return to work when he could have;
> - Although I left a message with a woman on the phone, Mr. Larocque did not return our call to attempt to validate his eligibility; and
> - Mr. Larocque was on social assistance in 2020.

[10] Under the heading of additional comments or concerns, the Officer recorded that [TRANSLATION] "The gentleman left voluntarily and refused to work because he was afraid for his health. He received social assistance throughout 2020".

[11] On May 10, 2021, the Officer sent the above decision letter to Mr. Larocque, which is the subject of this judicial review.

III. Legal framework

[12] The *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [the Act] provides various criteria for determining a person's eligibility for the CERB. In particular, the person must first be a worker, as defined in section 2 of the Act, and that worker must have ceased to be employed or self-employed for reasons related to the COVID-19 pandemic.

[13] Section 2 "worker", and subsection 6(1) provide that:

worker means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least $5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:	**travailleur** Personne âgée d'au moins quinze ans qui réside au Canada et dont les revenus — pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l'article 5 — provenant des sources ci-après s'élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :
(a) employment;	**a)** un emploi;
(b) self-employment;	**b)** un travail qu'elle exécute pour son compte;
(c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*; and	**c)** des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*;
(d) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for	**d)** des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs

the purpose of adoption. (*travailleur*)

enfants placés chez elle en vue de leur adoption. (*worker*)

Eligibility

Admissibilité

6 (1) A worker is eligible for an income support payment if

6 (1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :

(a) the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and

a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;

(b) they do not receive, in respect of the consecutive days on which they have ceased working,

b) il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte :

(i) subject to the regulations, income from employment or self-employment,

(i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,

(ii) benefits, as defined in subsection 2(1) of the *Employment Insurance Act*,

(ii) de prestations, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*,

(iii) allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children or one or more children placed with them for the purpose of adoption, or

(iii) d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption,

(iv) any other income that is prescribed by regulation.

(iv) tout autre revenu prévu par règlement.

[14] The onus is on the applicant to establish, on a balance of probabilities, that he or she meets the criteria of the Act (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55).

IV. Issues

[15] In his Memorandum of Fact and Law, Mr. Larocque argued that (1) the decision was unreasonable; (2) the Officer breached procedural fairness; and (3) the Officer was biased. It is appropriate to consider the arguments under the statutory framework and standard of review applicable to each situation.

A. *Was the decision reasonable?*

[16] The Court agrees with the parties that it is appropriate to use the standard of reasonableness in assessing the Officer's decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The Court must therefore determine whether Mr. Larocque has demonstrated that the decision dated May 10, 2021, denying him the CERB, was unreasonable.

[17] The decision, to be reasonable, must be one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). In order to set aside the decision under review, this Court "must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency"

(*Vavilov* at para 100). It should first be pointed out that the report is part of the Officer's decision. Indeed, the Federal Court recently noted that "similar to Global Case Management System notes utilized by immigration officers, the Second Review Report forms part of the reasons for the Officer's decision (*Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431 at para 36; *Ezou v Canada (Immigration and Citizenship)*, 2021 FC 251 at para 17; *Clintock's Ski School & Pro Shop Inc v Canada (Attorney General)*, 2021 FC 471 at para 26; *Vavilov* at paras 94–98)" (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22).

[18] Mr. Larocque first pointed out that in paragraphs (b), (c) and (d) of her affidavit, the Officer added reasons to her decision, reasons that are not in the record and that the Court should therefore not consider. In particular, he pointed to the fact that the Officer indicated in her affidavit that the Letter was not dated and did not mention its author, which she had not indicated in her report. The Court notes that the Officer, in her report, referred to the other assertions in paragraph 13 of her affidavit, but that she did not comment on the lack of date and author of the Letter. The Court will therefore, as a matter of prudence, not consider this statement as a ground for decision (*Li v Canada (Citizenship and Immigration)*, 2021 FC 1003 at para 17).

[19] Mr. Larocque argued that the decision was patently unreasonable because (1) the Letter clearly indicated that Mr. Larocque was working given that he had prepared a submission, which constitutes work; (3) he was working as provided for in the oral agreement, which constitutes a contract and is recognized by the Court; (2) the Letter also clearly confirmed that he could not work as the building was closed due to COVID-19; (3) he did not voluntarily stop working; (4) whether or not he was justified in returning to work depended on an assessment of his health and

the potential impacts of COVID-19 on his health, and that in this regard, there was corroboration of the reason for non-return in the company's Letter; and (5) the evidence does not support the conclusion that he could have returned to work.

[20] The respondent, the Attorney General of Canada [AGC], replied that the decision was based on the evidence that was before the decision-maker and the information in the CRA's computer system, including the Letter and Mr. Larocque's reported income history. He added that the decision-maker's reasoning was consistent, based on the evidence before it, and was justified in terms of the applicable law.

[21] I agree with the AGC's position. I note that the Letter on which Mr. Larocque relies does not establish that he had a job, nor that he could not work, nor does it contain any confirmation of a contract or agreement. I further note that the Letter also confirms that Mr. Larocque had decided not to return to work.

[22] Mr. Larocque's argument as to the state of his health being corroborated by the Letter is not likely to succeed. Mr. Larocque did not file any medical evidence: the Letter on which he relies was from an unidentified person working in a construction or recycling company and not from a medical professional who could attest to Mr. Larocque's medical condition. In any event, it was up to the administrative decision-maker to assess the probative value of the evidence in relation to Mr. Larocque's medical condition, and Mr. Larocque has not convinced me that the Officer's conclusion was unreasonable.

[23] When Mr. Larocque argued that there was an employment contract or that the Letter stated that it was not a voluntary departure but rather due to COVID-19, it seems that Mr. Larocque simply disagrees with the conclusions reached by the Officer. Indeed, as Mr. Larocque pointed out, the Letter stated that a lockdown had been in effect and that the building was closed, but the Letter also stated that it was Mr. Larocque who had decided not to return to work. The Officer's conclusion that he voluntarily decided not to work was a reasonable inference from the evidence. Moreover, there is no evidence to support the conclusion that Mr. Larocque had stopped working because of COVID-19.

[24] It was reasonable to conclude that the evidence submitted by Mr. Larocque was simply insufficient to establish, on a balance of probabilities, that his application for benefits met the criteria of the Act.

B. *Was there a breach of procedural fairness?*

[25] With respect to fairness, the Federal Court of Appeal addressed the principles of procedural fairness in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 56 [*Railway*], asserting that "[p]rocedural fairness is not sacrificed on the altar of deference." The Federal Court of Appeal stated that "[n]o matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*Railway* at para 56).

[26] Mr. Larocque was aware of the evidence to be rebutted, having received the first negative decision, and he had the opportunity to submit additional documentation and information for the second review of his application before the CRA. He did not avail himself of that opportunity, choosing to re-submit the same three documents already provided.

[27] In the circumstances, there is no evidence that the Officer breached any applicable principles of procedural fairness.

C. *Did the Officer show bias?*

[28] Finally, with respect to the allegation of bias, de Grandpré J., dissenting, stated that the apprehension of bias must be a reasonable one, held by reasonable and right minded persons applying themselves to the question and obtaining thereon the required information (*Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 at p 394). More recently, the Federal Court has held that "[t]he test for reasonable apprehension of bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would think it more likely than not that the decision maker would unconsciously or consciously decide an issue unfairly" (*Binu v Canada (Citizenship and Immigration)*, 2021 FC 743 at para 19 [*Binu*]).

[29] Mr. Larocque did not substantiate his allegation and appeared merely to insinuate an argument of bias on the part of the decision maker in his memorandum. Such an argument cannot rest on insinuations or mere impressions of the applicant, as the Federal Court of Appeal explained in *Arthur v Canada (Canada (Attorney General)*, 2001 FCA 223 [*Arthur*]. Indeed, in

that decision, the Federal Court of Appeal specifically stated that an allegation of bias "cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard". Moreover, "[t]he onus of demonstrating bias lies with the person who is alleging its existence" (*R v S (RD)*, [1997] 3 SCR 484 at para 114). In this case, the applicant has not discharged his burden.

[30] The Officer made reference to Mr. Larocque's sources of income which indicated that, except for the 2019 taxation year, he had reported only social assistance income and no employment income. A reasonable and sensible person could conclude, given the criteria of the Act, that this information was useful and was not an indication of bias. Since the review of eligibility for the CERB refers in part to the individual's employment income, it is reasonable for an officer to raise aspects of the individual's tax status.

V. Conclusion

[31] The decision was not deficient in any way and exhibited the requisite degree of justification, intelligibility and transparency. Mr. Larocque did not demonstrate that the decision was unreasonable.

[32] The application for judicial review will be dismissed.

JUDGMENT in T-914-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. Costs are awarded in favour of the AGC**.**

"Martine St-Louis"
Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

SOLICITORS OF RECORD

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