

Federal Court



Cour fédérale

**Date: 20220810**

**Docket: T-1754-21**

**Citation: 2022 FC 1188**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, August 10, 2022**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**FREDERICK MATHELIER-JEANTY**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Frédéric Mathelier-Jeanty, is seeking judicial review of a decision dated October 20, 2021 (the decision), in which an officer of the Canada Revenue Agency (CRA), for the Minister of Employment and Social Development, denied his application for the Canada Emergency Response Benefit (CERB).

[2] The CERB was part of a package of measures taken by the federal government in 2020 in response to COVID-19. The CERB was a targeted monetary payment aimed at providing financial support to workers who suffered a loss of income as a result of the COVID-19 pandemic. The CERB legislative framework is set out in the *Canada Emergency Response Benefits Act* (the Act), enacted by section 8 of the *COVID-19 Emergency Response Act*, SC 2020, c 5. To be eligible for CERB payments, applicants had to demonstrate income of at least \$5,000 from prescribed sources (which included self-employment income) in 2019 or the 12 months preceding their first CERB application (paragraph 2 of the Act). In addition, applicants must have ceased working or had their hours reduced for reasons related to COVID-19 (subsection 6(1) of the Act).

[3] In the decision, the officer stated that, according to her review, the applicant was not eligible for the CERB because (1) he had not earned at least \$5,000 (before tax) in employment or self-employment income in 2019 or in the 12 months preceding his first application; and (2) he had not ceased working or his hours had not been reduced for reasons related to COVID-19.

[4] For the reasons that follow, the application for judicial review is dismissed.

I. **Background**

[5] The applicant claimed the CERB for the seven four-week periods from March 15, 2020, to September 26, 2020. He received \$2,000 for each of these periods. On April 30, 2020, the

applicant filed his income tax return for 2019, reporting that he had earned business income (child care) of \$5,250.

[6] On October 23, 2020, the applicant's file was selected for a first CERB eligibility review. The CRA officer responsible for the review requested evidence of income for the amount of self-employment income the applicant had reported. Despite the applicant's submission of some receipts and an RL-1 slip, "Employment and Other Income", the officer rendered a decision on November 17, 2020, that the applicant was not eligible for the CERB.

[7] The applicant disagreed with this first decision and sent a request for a second review to the CRA. However, in a decision dated December 30, 2020, the officer responsible for the second review confirmed that the applicant was not eligible for the CERB.

[8] On February 9, 2021, the applicant provided the CRA with additional documents: (a) for the January to December 2019 period, four receipts for child care expenses from a Ms. Julien for a total amount of \$7,770; (b) receipts for expenses dated 2019 and totaling \$3,477; and (c) an RL-1 slip, "Employment and Other Income", from Loblaw Companies Limited for 2019 in the amount of \$192.62. On February 19, 2021, the CRA issued a reassessment for the applicant's 2019 taxation year, establishing his net income at \$8,649. On March 24, 2021, the applicant sent the CRA the same receipts from Ms. Julien and the same expense receipts again.

[9] On October 12, 2021, the applicant's application file was assigned to Isabelle Perron (the Officer), a benefit compliance officer with the CRA, for a second review.

[10] On October 15, 2021, the Officer called the applicant. During the call, the applicant stated that he had worked as a child care provider in a private home in 2019. However, also in 2019, his employer had lost his job, and that is how he had found himself unemployed. The applicant looked for work, but to no avail. With respect to the evidence for his employment income in 2019, he explained to the Officer that he was paid in cash and that he did not deposit that money into a bank account. In addition, the applicant explained that he had reported a T4 of \$3,420 for 2019, but in fact he only had a T4 of \$190.01.

[11] After searching the CRA's electronic system, the Officer found that the applicant had reported a net income of \$14,000 for the 2020 taxation year and that his income for the year included only the CERB. She therefore concluded that the applicant had not reported any self-employment income for 2020.

[12] The Officer prepared a review report (the Report) summarizing the above facts and concluding that the applicant had been unable to prove that he had earned at least \$5,000 of self-employment income prior to his first CERB application, that he had not worked in 2020 and that he had not ceased working for reasons related to COVID-19.

[13] The Officer then rendered her second-level review decision confirming the first and second review decisions and denying the applicant's CERB application.

## II. The decision under review

[14] The main paragraphs of the October 20, 2021, decision read as follows:

[TRANSLATION]

According to our review, you are not eligible. You do not meet the following eligibility criteria:

- You did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of your first application.
- You did not cease working or your hours were not reduced for reasons related to COVID-19.

[15] On November 17, 2021, the applicant submitted this application for judicial review of the decision.

## III. Analysis

[16] This application raises a single issue: is the decision that the applicant was not eligible for the CERB unreasonable?

[17] The decision is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23-17 [*Vavilov*]; *Laroque v Canada (Attorney General)*, 2022 FC 613 at para 16 (*Laroque*)).

[18] When the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and to determine whether the decision “is 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 burden is on the party challenging the decision to show that it is unreasonable, and the court “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

[19] Pursuant to section 2 and subsection 6(1) of the Act, the applicant had to meet two conjunctive criteria in order to be eligible for the CERB: (1) have received at least \$5,000 in self-employment income in 2019 or in the 12 months preceding his first application for benefits; and (2) have ceased working or had his hours reduced for reasons related to COVID-19. section 10 of the Act provides that the Minister may “for any purpose related to verifying compliance or preventing non-compliance with this Act . . . require that any person provide any information or document within the reasonable time that is stated in the notice”.

[20] In the Report which is part of the decision under review (*Larocque* at para 17; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22 (*Aryan*)), the Officer explained that:

[TRANSLATION]

the applicant does not have documentation to support the invoices submitted or a bank statement, since he was paid in cash and did not deposit the amounts paid. Therefore, he is unable to prove that he earned at least \$5,000 in self-employment income prior to his first application for benefits.

the applicant was working in 2019 and his employment was terminated because his employer had lost his job. However, COVID-19 was not yet an issue in 2019, so the applicant did not lose his job for reasons related to COVID-19.

[21] The applicant argues that the CRA based its decision on an erroneous finding of fact because he lost his job for reasons related to COVID-19 in 2020, not in 2019. He also submits

that he had income of more than \$5,000 in 2019, as shown by his tax return for that year and the evidence he filed in support of his CERB application.

[22] Having carefully considered the evidence in the record, I am not persuaded by the applicant's arguments. He did not identify any material errors or omissions in the decision warranting the intervention of the Court. The Officer's reasons for rejecting the CERB application are intelligible and justified in light of the evidence and the statutory scheme of the CERB. I therefore conclude that the Officer could reasonably determine that the applicant did not meet his burden of proof to establish, on a balance of probabilities, that he met the two criteria set out in the Act (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55).

[23] The Officer first reviewed the receipts issued by Ms. Julien for 2019 and the information in the CRA systems regarding the applicant's CERB applications. Although Ms. Julien's receipts totaled \$7,770, the Officer concluded that the evidence submitted by the applicant was insufficient: this is a highly factual finding. Furthermore, when one adds up the amounts of the invoices submitted, the amount does not match the total amount that was first reported (\$5,250). Even when these amounts are compared to the reassessment, the amounts are not the same. In addition, the applicant explained in the telephone call on October 15, 2021, that he had reported a T4 of \$3,420, but in reality he only had a T4 of \$190.01.

[24] The applicant's evidence raises contradictions and created a reasonable doubt for the CRA regarding the applicant's income for 2019. As a result, the additional evidence to support

his claims became crucial (section 10 of the Act). The applicant was paid in cash and did not deposit that money. I agree with the respondent's argument that a taxpayer who wishes to be paid in cash must be particularly concerned about being able to prove payments in order to obtain a benefit under the Act (*Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15). It was up to the Officer to assess the sufficiency of the evidence, and, in this case, she was not satisfied with the evidence the applicant provided. In light of the evidence on the record, namely, the handwritten invoices and receipts without evidence to support them, the T4 and the telephone call between the Officer and the applicant, the Officer's conclusions are reasonable (*Hayat v Canada (Attorney General)*, 2022 FC 131 at para 20).

[25] The applicant pointed out that the CRA had issued a notice of assessment for his 2019 taxation year showing income in excess of \$5,000, but a notice of assessment is not evidence that that income was earned (*Aryan* at para 35).

[26] Regarding the second ground for denial, the Officer found that the applicant did not lose his job in 2020 for reasons related to COVID-19. This finding is coherent and sufficiently based on the evidence on the record.

[27] During the October 15, 2021, call, the applicant informed the Officer that he had lost his job as a child care provider in 2019 because Ms. Julien had lost her own job. In addition, the income invoices he submitted to the CRA are all dated 2019. He did not submit invoices dated 2020, which is consistent with the version of the facts that he lost his job in 2019. The Officer also noted that the applicant's income in 2020 consisted solely of CERB payments. It was clear



that the applicant did not report any independent child care income in 2020. I therefore conclude that it was open to the Officer to determine that the applicant did not lose his job for reasons related to the COVID-19 pandemic.

IV. **Conclusion**

[28] In summary, I conclude that the decision has no flaws and meets the requirements of justification, intelligibility and transparency. The applicant failed to demonstrate that the decision is unreasonable, and this application for judicial review is dismissed.

[29] With the parties' consent, the style of cause is amended to reflect the correct respondent, the Attorney General of Canada.

[30] The respondent has not sought any costs in this matter, and I will not award any.

**JUDGMENT in T-1754-21**

**THIS COURT’S JUDGMENT is as follows:**

- The application for judicial review is dismissed.
- The style of cause is amended to reflect the Attorney General of Canada as the respondent.
- No costs.

“Elizabeth Walker”

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Judge

Certified true translation  
Janna Balkwill

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1754-21

**STYLE OF CAUSE:** FRÉDÉRIK MATHÉLIER-JEANTY v ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 2, 2022

**JUDGMENT AND REASONS  
BY:** WALKER J.

**DATED:** AUGUST 10, 2022

**APPEARANCES:**

Frederick Mathelier-Jeanty

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Amelia Fink

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT