

Federal Court



Cour fédérale

Date: 20220923

Docket: T-1661-21

Citation: 2022 FC 1323

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, September 23, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

SAFWAT ATTARA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Attara is seeking judicial review of the decision by the Canada Revenue Agency [the Agency] that he is not eligible for the Canada Emergency Response Benefit [CERB] or the Canada Recovery Benefit [CRB]. I am dismissing the application for judicial review because Mr. Attara has failed to show in what respect the Agency's decision was unreasonable.

[2] In 2017, Mr. Attara stopped working as a licensed real estate broker because of his asthma. Aside from his brief employment with Elections Canada in 2019, Mr. Attara has not been able to find another job. In January 2020, when his mother's physician recommended that she have someone to care for her at home, Mr. Attara agreed with his other family members that he would care for their mother, Ms. Sourial, for a wage of \$400 per week.

[3] In March 2020, the federal government set up the CERB to assist those who could no longer work because of the COVID-19 pandemic. Mr. Attara applied for and received the CERB from March 15, 2020, to August 29, 2020, in the amount of \$12,000. He then received a CRB payment of \$900 for September 27, 2020, to October 10, 2020.

[4] On November 6, 2020, the Agency reviewed Mr. Attara's eligibility for the CERB and the CRB after having telephoned Mr. Attara and explained the eligibility criteria to him. On December 18, 2020, the Agency sent Mr. Attara a letter stating that he was not eligible for the CERB or the CRB because he had not earned at least \$5,000 (before taxes) in employment or self-employment income in the 12 months before the date he applied, and because his work hours had not been reduced as a result of COVID-19. He was therefore required to repay the money he had received. On December 30, 2020, Mr. Attara requested that these decisions be reviewed.

[5] On September 21, 2021, the review officer telephoned Mr. Attara to obtain his version of the facts. The officer also had an explanatory letter from Mr. Attara dated December 30, 2020, and his 2019 and 2020 tax returns.

[6] On September 29, 2021, the officer confirmed the two previous decisions, that Mr. Attara was not eligible to receive the CERB or the CRB for the two reasons stated in the December 18, 2020 letter, namely that Mr. Attara had not shown that he had earned at least \$5,000 in employment income in the 12 months before he applied and that his work hours had not been reduced. Those decisions are the subject of this application for judicial review.

[7] Mr. Attara claims that the officer's decisions were unreasonable because the officer disregarded his statements regarding the income he had earned from caring for Ms. Sourial and did not give him the opportunity to provide written evidence. However, judicial review must be based on the evidence before the officer. Mr. Attara does not dispute that the officer had no written evidence of this income when making the decision. Evidence obtained subsequently in this regard is irrelevant.

[8] Moreover, the officer noted that Mr. Attara's 2020 tax return did not show the income he allegedly earned from caring for Ms. Sourial. At the hearing, Mr. Attara stated that this was an omission by his accountant but, again, this explanation was not provided to the officer and was not part of the record on which the decision had to be based.

[9] I find that the officer's decision was reasonably based on the evidence. The officer was entitled to require written evidence of the alleged income, and there was sufficient evidence to cast doubt on Mr. Attara's statements.

[10] Mr. Attara also submits that the officer did not require written proof of his income during the telephone conversation on September 21, 2021. Mr. Attara alleges that the officer simply told him Ms. Sourial should move to a seniors' home. However, the officer's notes regarding the conversation show that all relevant issues were addressed. Moreover, in his memorandum of fact and law, Mr. Attara noted that the official asked [TRANSLATION] "a number of questions about my work and the income earned in the 12 months before the lockdown". In any event, the notice sent to him on December 18, 2020, explicitly states that the Agency was of the opinion that he had not earned sufficient income. The onus was on him to demonstrate otherwise. I see nothing unfair in the process followed by the officer.

[11] Even if I had decided the above issues in Mr. Attara's favour, these arguments have no bearing on the second ground for refusing the CERB and the CRB, namely that Mr. Attara did not stop working because of COVID-19. Indeed, he continued to care for Ms. Sourial during the pandemic and, rather than pay him, his family asked him to apply for the CERB. The officer noted that Mr. Attara could not receive the CERB or the CRB on the grounds that his family had stopped paying him or that another person would have been entitled to them if the person had stopped working. I see nothing unreasonable in this finding.

[12] In short, given the evidence on the record, it was reasonable to conclude that Mr. Attara did not meet the eligibility criteria for the CERB and the CRB. Mr. Attara's application for judicial review will therefore be dismissed. In the circumstances, I think it is fair to order Mr. Attara to pay costs in the amount of \$500.

JUDGMENT in T-1661-21

THIS COURT’S JUDGMENT is as follows:

1. The style of cause is amended to designate the respondent as the Attorney General of Canada.
2. The application for judicial review is dismissed.
3. Costs are payable by the applicant to the respondent in the amount of \$500, including taxes and disbursements.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1661-21

STYLE OF CAUSE: SAFWAT ATTARA v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 21, 2022

JUDGMENT AND REASONS: GRAMMOND J

DATED: SEPTEMBER 23, 2022

APPEARANCES:

Safwat Attara

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Kloé Sévigny

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT