

Federal Court



Cour fédérale

Date: 20230616

Docket: T-76-22

Citation: 2023 FC 858

Toronto, Ontario, June 16, 2023

PRESENT: Madam Justice Go

BETWEEN:

TRESSA MARIE MITCHELL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Tressa Marie Mitchell [Applicant] applied for and received the Canada Emergency Response Benefit [CERB] for seven four-week periods between March 15, 2020 and September 26, 2020.

[2] The Applicant's CERB application was initially accepted and the amounts for all seven periods were paid out by the Canada Revenue Agency [CRA]. CRA subsequently reviewed the Applicant's application and by letter dated January 6, 2021, informed her that she was not eligible for the CERB as she had not earned a total income of at least \$5,000 from employment, self-employment, or certain *Employment Insurance Act*, SC 1996, c 23 benefits in 2019 or the 12 months preceding her application date [First Review Decision].

[3] The Applicant requested a review of the First Review Decision on or about April 14, 2021 and a different CRA officer [Officer] conducted a second level review of the Applicant's CERB application. On December 16, 2021, the Officer determined that the Applicant was not eligible for the CERB because she voluntarily ceased working for reasons not related to COVID-19 and therefore did not satisfy the prescribed criteria [Decision].

[4] The Applicant, who is self-represented, seeks judicial review of the Decision. For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Preliminary Issues

[5] Before this Court, the Applicant submits an affidavit attaching a statement with detailed explanations of her situation, as well as a medical note and diagnosis, which she states she was unable to obtain to provide to the Officer for several reasons, including having to take care of her ill mother and three children.

[6] In recognition of the fact that the Applicant is self-represented, I reached out to the parties before the hearing and asked for submissions with respect to the following two questions in light of the Applicant's affidavit and submissions:

- a. Whether the Applicant raised the issue of breach of procedural fairness, and if so, submissions on that issue; and
- b. Whether the Applicant's new evidence is consequently admissible.

[7] The Respondent acknowledges that the Applicant raises a procedural fairness issue in asserting that the CRA did not give her ample time to gather documents. The Respondent submits that the Applicant has not demonstrated the CRA denied her a meaningful opportunity to provide documents.

[8] Having considered the materials and the parties' submissions, I conclude that there is no breach of procedural fairness. While I acknowledge that the Applicant's very challenging personal circumstances hampered her ability to respond to the CRA's request for documents in a timely fashion, I agree with the Respondent that the Applicant did know the case to be met, and was given an opportunity to respond to the CRA's concerns.

[9] In judicial review applications, the Court generally only reviews the evidentiary record that was put before the decision-maker, in this case the CRA Officer. One of the exceptions is with respect to evidence that addresses procedural fairness issues: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA

22 at paras 19-20. On this basis, I will admit the Applicant's statement, as it relates to procedural fairness issues. I will not consider the other documents attached to the Applicant's affidavit.

III. Analysis

[10] The CERB was established under the *Canada Emergency Response Benefit Act*, SC 2020, c 5 [*CERB Act*]. Under the *CERB Act*, a person was eligible for the CERB in any four-week period between March 15, 2020 and October 3, 2020 if they satisfied the eligibility criteria which included:

- a. They had total income of at least \$5,000 from employment, self-employment or certain *Employment Insurance Act* benefits in 2019 or the 12 months preceding their application date [Income Criterion];
- b. They ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week eligibility period [COVID Criterion]; and
- c. They must not have ceased working by quitting their employment voluntarily [Involuntary Criterion].

[11] In this case, the Officer determined that the Applicant was not eligible for CERB because she did not meet the COVID Criterion or the Involuntary Criterion, as the Applicant voluntarily ceased working for reasons not related to COVID-19.

[12] The merits of the Decision are subject to review on reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[13] A reasonable decision “is 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. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, “the reviewing 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.

[14] I find that the Applicant has discharged her onus in this case.

[15] In support of her request for a second level review, the Applicant submitted a letter to explain her situation [Request for Review Letter]. In the Request for Review Letter, the Applicant explained that she fell ill in February 2020. The Applicant was given a diagnosis of Lofgren’s syndrome sarcoidosis. She went for an ultrasound in February 2020 and a CT scan in March 2020, which confirmed swelling of her lymph nodes in the lungs and inflammation of the “bilateral Hilliar [*sic*]”. The Applicant was referred to a rheumatologist for further testing and diagnosis. The rheumatologist reviewed the CT scan results with the Applicant on March 4, 2020 and ordered a lung function test but the test was postponed due to COVID-19. The Applicant was put on COVID leave status at work while she waited for a further medical appointment. The Applicant was finally cleared to return to work on July 21, 2020.

[16] In determining that the Applicant voluntarily ceased working for reasons not related to COVID-19, the Officer stated in their notes dated December 9, 2021: “I don’t believe she is eligible because she has stated that she was not looking for work because she was too ill and then because she was afraid of bringing home the virus to her children. She insisted she was justified

in this decision and should be eligible for benefits.” The Officer also noted that the Applicant wanted to send further documentation from her doctor.

[17] The Officer contacted the Applicant again on December 14, 2021 about the documents from her doctor. According to the Officer’s notes, the Applicant stated she has not been able to obtain them. The Officer noted that the Applicant reiterated that when she left work in February of 2020 it was because of pain in her joints, then there were some lung issues that prevented her from wanting to return to the workforce in fear of COVID-19. The Officer then advised the Applicant that her file would be closed and she would receive a denial letter.

[18] As stated in the Decision, the Officer determined that the Applicant was not eligible for CERB because she voluntarily ceased working for reasons not related to COVID-19 and therefore did not satisfy the prescribed criteria.

[19] The Respondent does not assert that the Applicant was fraudulent in seeking the CERB. Rather, the Respondent submits that the information before the Officer was insufficient to demonstrate the Applicant satisfied the COVID Criterion or the Involuntary Criterion. I disagree.

[20] The Decision in my view lacks the requisite transparency, accountability and justification as it does not provide any reasons as to why the Officer came to the conclusion that the Applicant “voluntarily ceased working for reasons not related to COVID-19.” The Officer had before them a statement from the Applicant that she received the diagnosis of Lofgren’s syndrome sarcoidosis, that her lungs were swollen, and that she was put on COVID leave status

at work. The Decision was silent as to why such information was insufficient to satisfy the CERB requirements.

[21] I also note that in the Officer's Second Review Report, the Officer stated in part: "[Taxpayer] told me that she quit her job voluntarily in February of 2020 due to health reasons." In reviewing the Officer's notes of their conversations with the Applicant, there was nothing to suggest that the Applicant admitted that she quit her job voluntarily. At the hearing, the Respondent conceded that there is no indication the Applicant made such a statement, but submitted that it was open to the Officer to draw this inference based on the information provided by the Applicant.

[22] I disagree. It was one thing for the Officer to conclude, based on the materials provided, that the Applicant did not "cease work for reasons related to COVID-19." It was quite another for the Officer to claim that the Applicant stated that she quit her job voluntarily if no such statement was made.

[23] I further note in the Officer's Second Review Report summarizing the Applicant's Request for Review Letter as merely "explaining her illnesses and why she didn't want to go to work." With respect, the Request for Review Letter did far more than just explain the Applicant's illnesses. Nor did the Applicant ever state in the Request for Review Letter that she "did not want to go to work." At best, the Officer mischaracterized the information provided by the Applicant. At worst, the Officer ignored the evidence altogether.

[24] On the whole, I am unable to discern from the Decision, the Officer's notes and the Officer's Second Review Report, whether or not the Officer did in fact consider the information provided by the Applicant with respect to her diagnosis and her being placed on COVID leave status at work, when finding the Applicant not eligible for CERB. Further, I find the Officer mischaracterized the information provided by the Applicant by stating that the Applicant did not want to return to work and that she "quit her job voluntarily." As such, the Decision is unreasonable.

[25] As an *obiter*, whether or not the Applicant was eligible for CERB would depend in part on the interpretation given to the COVID Criterion and the Involuntary Criterion under paragraphs 6(1)(a) and 6(2), respectively, of the *CERB Act*. It remains to be seen, as a benefit-conferring piece of legislation, whether the requirement that a person ceases working for reasons related to COVID-19 under paragraph 6(1)(a) of the *CERB Act* extends to individuals like the Applicant, who has medical conditions that compromise their health and make them particularly vulnerable during the pandemic. Whether or not the Applicant meets this and other criterion is for a different officer to determine, with additional submissions and documentation, if any, to be provided by the Applicant.

IV. Conclusion

[26] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[27] There is no order as to costs.

JUDGMENT in T-76-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision-maker.
3. There is no order as to costs.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-76-22

STYLE OF CAUSE: TRESSA MARIE MITCHELL v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 30, 2023

JUDGMENT AND REASONS: GO J.

DATED: JUNE 16, 2023

APPEARANCES:

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FOR THE APPLICANT
(ON THEIR ON BEHALF)

Melissa Nicolls

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT