

Federal Court



Cour fédérale

Date: 20240521

Docket: T-2600-22

Citation: 2024 FC 760

Ottawa, Ontario, May 21, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

DARREN LETOURNEAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a second review decision made by an officer [Officer] of the Canada Revenue Agency [CRA] dated November 9, 2022. The Officer determined that the Applicant was not eligible for the \$8,000 in Canada Emergency Response Benefit [CERB] payments he received pursuant to the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act] for the periods from June 7, 2020 to September 26, 2020 and required him to repay these amounts. Specifically, the Officer concluded that the Applicant failed to demonstrate that he had at least \$5,000 of employment or self-employment income in 2019 or the 12 months prior to

the date of the application. While the Officer also made an ineligibility determination in relation to Canada Recovery Benefit [CRB] payments the Applicant received under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, the Applicant's eligibility for CRB payments is not at issue on this application.

[2] The facts are not in dispute. All parties agree that the Applicant was injured and received wage-loss benefit payments from the Saskatchewan Workers' Compensation Board [WCB] from December 17, 2019 until May 29, 2020. For the 2019 taxation year, the Applicant had \$2,807 in employment income and no self-employment income. For the 2020 taxation year, the Applicant had no employment or self-employment income and his T5007 Statement of Benefits shows that he received \$24,094.26 in WCB payments.

[3] The sole issue before this Court is whether the Officer's determination that the Applicant failed to demonstrate that he had at least \$5,000 of employment or self-employment income during the relevant period was reasonable. The Officer's determination turned on the finding that the Applicant's WCB payments do not count towards the \$5,000 minimum income required under the *CERB Act*, which the Applicant asserts was unreasonable. The Applicant argues that the WCB payments were for his lost employment income due to a workplace injury and thus should be considered as eligible income for assessing his CERB eligibility.

[4] When a court reviews the merits of an administrative decision, the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised nor apply [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[5] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, Justice Rowe explained what is required for a reasonable decision and what is required of a court reviewing on the reasonableness standard. He stated:

[31] 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). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “...what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[6] The Applicant submits that the Officer erred in determining that his WCB payments did not satisfy the income eligibility requirement, relying on advice that he received from a tax professional who advised him that his WCB payments were taxable income, which qualified as employment income for the purpose of his CERB eligibility. Unfortunately, the advice that the Applicant received was incorrect.

[7] The CERB was available for seven four-week periods between March 15, 2020 and September 26, 2020 for eligible workers who had suffered a loss of income due to the COVID-19 pandemic. The eligibility criteria for the CERB are set out in the *CERB Act*. Pursuant to section 5(1) of the *CERB Act*, a “worker” may, in the form and manner established by the Minister, apply for an income support payment for any four-week period falling within the period beginning on March 15, 2020 and ending on October 3, 2020. Section 2 of the *CERB Act* sets out the eligibility criteria for the CERB by way of the definition of worker, which provides:

<p>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:</p>	<p>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 :</p>
<p>(a) employment;</p>	<p>a) un emploi;</p>
<p>(b) self-employment;</p>	<p>b) un travail qu’elle exécute pour son compte;</p>
<p>(c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the <i>Employment Insurance Act</i>; and</p>	<p>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 <i>Loi sur l’assurance-emploi</i>;</p>
<p>(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 the purpose of adoption.</p>	<p>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 enfants placés chez elle en vue de leur adoption.</p>

[8] Accordingly, the *CERB Act* requires workers to have earned at least \$5,000 in employment income or self-employment income in 2019 or in the 12-month period preceding their application

for the CERB from the following sources: (a) employment; (b) self-employment; (c) certain pregnancy and parental benefits paid under the *Employment Insurance Act*, SC 1996, c 23; and (d) certain payments made under a provincial payment plan because of either pregnancy, or care or adoption of a child. WCB payments do not fall within the income sources specified in section 2 of the *CERB Act*.

[9] Based on the clear wording of the *CERB Act*, I find that the Officer's determination that the Applicant failed to demonstrate that he had at least \$5,000 of employment or self-employment income during the relevant period was reasonable.

[10] Moreover, I would note that the Officer's decision is also consistent with the jurisprudence. This Court has confirmed that it is reasonable for CRA officers to conclude that income sources not listed in section 2 of the *CERB Act* do not satisfy the CERB income eligibility requirement. For example, in *Devi v Canada (Attorney General)*, 2024 FC 33 [*Devi*], Justice Gascon held that an officer's decision that Workplace Safety and Insurance Board [WSIB] payments do not fall within one of the prescribed income sources under the *CERB Act* was reasonable [see *Devi, supra* at para 24, citing *Coscarelli v Canada (Attorney General)*, 2022 FC 1659]. As noted by Justice Gascon, WSIB payments (like the Applicant's WCB payments) were not affected by the COVID-19 pandemic, unlike the employment or self-employment income of many Canadians [see *Devi, supra* at para 23].

[11] While I am sympathetic to the Applicant's circumstances, Parliament did not include any compassionate relief or fairness provisions in the *CERB Act* and the Officer had no choice but to

assess the Applicant's entitlement to benefits based on the eligibility criteria set out in the legislation [see *Devi, supra* at paras 29-30; *Flock v Canada (Attorney General)*, 2022 FCA 187 at para 7].

[12] I find that the Applicant has not demonstrated that the Officer's decision was unreasonable and, as such, the application for judicial review shall be dismissed.

[13] With respect to the costs of the application, the Respondent has not sought their costs and accordingly, no costs will be awarded.

[14] There is one final issue to address. The Respondent raised an issue regarding the admissibility of certain documents included by the Applicant in his application record, as such documents were not before the Officer when they rendered their decision. These documents included: (i) an undated letter from the Applicant's "Tax Preparer"; (ii) communications with the Saskatchewan WCB regarding the Applicant's claim; (iii) working papers prepared by the Applicant's "Tax Preparer"; and (iv) a receipt for a "Progression Fitness Rocker Board". These documents are not material to the issue before the Court, as they do not demonstrate any additional income attributable to the Applicant during the relevant period. However, having not been before the decision-maker and not falling within any of the recognized exceptions set out by the Federal Court of Appeal in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 19, I find that these documents are inadmissible and I have not considered them in reaching my decision.

JUDGMENT in T-2600-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There shall be no award of costs.

"Mandy Ayles"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2600-22

STYLE OF CAUSE: DARREN LETOURNEAU v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 16, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** AYLEN J.

DATED: MAY 21, 2024

APPEARANCES:

Darren Letourneau

FOR THE APPLICANT
(SELF-REPRESENTED)

Darren Grunau

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT