Federal Court Cour fédérale

Date: 20240528

Docket: T-2245-23

Citation: 2024 FC 809

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 28, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JOSUÉ ROUSSEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The applicant, Josué Roussel, is contesting the third review decision of a Canada Revenue Agency [CRA] validation officer, rendered on September 28, 2023, finding him ineligible for the Canadian Recovery Benefit [CRB] for periods 1 to 3. He is challenging the

decision without identifying a standard of review. He disagrees with the decision and criticizes the assistance he received from the officials who handled his case.

[2] The application for judicial review must be dismissed.

II. Preliminary remarks: “second subsequent review” or “third review”

[3] Three CRA officers each reviewed the applicant’s file. The first review decision was issued on February 19, 2021, by Clémentine Sibomona. The second review decision was issued on August 3, 2023, by Mélanie Lajoie. The third review decision was issued on September 28, 2023, by Joëlle St-Germain. However, the letter sent to the applicant on September 28, 2023, states as its subject [TRANSLATION] “Second review of your [CRB] application”. The report written in conjunction with this letter, on the other hand, was entitled [TRANSLATION] “Third Review Report”. This is because Mr. Roussel requested a reconsideration after the second decision had been rendered, by applying to the Commissioner of the Canada Revenue Agency—it is the CRA that was responsible for administering the program, even though the program fell under the jurisdiction of the Minister of Employment and Social Development. It is that reconsideration which is the subject of judicial review, given that it was the final decision.

[4] For greater clarity in this decision, I have used the term “third review decision” to describe the September 28, 2023, decision rendered by Ms. St-Germain.

III. Facts

[5] The applicant was a teacher who had ceased working on June 7, 2019. He lived on employment insurance until February 1, 2020.

[6] He applied for and received the Canada Emergency Response Benefit [CERB] for periods 1 to 7, from March 15, 2020, to September 26, 2020. This benefit became available under the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8.

[7] The applicant also applied for and received the CRB for periods 1 to 3, from September 27, 2020, to November 7, 2020. These were different benefits from the CERB, made available through a special statute, the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2. The benefit in this case is covered by Part I of that act. Its eligibility requirements are set out in section 3.

[8] The benefits were provided without prior review. But an *ex post facto* review could be conducted, and the applicant's case was selected for that purpose. Between November 27, 2020, and December 16, 2020, the applicant sent several supporting documents to the CRA (Respondent's Record, Affidavit of Joëlle St-Germain, Exhibit C, at pp 32–69; Certified Tribunal Record, Tab 14.1–14.7, at pp 89–127).

[9] On December 9, 2020, the officer responsible for the first review of the applicant's file concluded that the applicant was ineligible for the CERB.

[10] On February 19, 2021, the same officer also deemed him ineligible for the CRB, on the following grounds:

> [TRANSLATION]
> – You did not stop working, or have your hours reduced, for reasons related to COVID-19.

[11] On March 16, 2021, the applicant requested a second review of his eligibility for both the CERB and the CRB.

[12] Between March 30, 2023, and June 28, 2023, the applicant sent several supporting documents to the CRA (Respondent's Record, Affidavit of Joëlle St-Germain, Exhibit E, at pp 73–116; Certified Tribunal Record, Tab 14.8–14.9, at pp 128–171).

[13] On August 3, 2023, the second review officer concluded that the applicant was ineligible for both the CERB and the CRB for the periods in question. The following reasons were provided for the CRB decision:

> [TRANSLATION]
> – You are not employed for reasons other than COVID-19.
> – You did not have a 50% reduction in your average weekly income compared to the previous year for reasons related to COVID-19.

[14] On August 12, 2023, the applicant sent an e-mail to the Commissioner of the CRA, expressing his dissatisfaction with the review process. He included the documents he had already sent to the CRA as attachments.

[15] On September 28, 2023, the officer responsible for the third review of the applicant's file, Joëlle St-Germain, concluded that the applicant was eligible for the CERB for the periods

requested, but ineligible for the CRB. The following reasons were provided for the CRB decision:

> [TRANSLATION]
> – You are not employed for reasons other than COVID-19.
> – You were able to work but did not seek work.

[16] On October 24, 2023, the applicant filed his application for judicial review of the third review decision regarding his ineligibility for the CRB. The Attorney General did not file an application to challenge the applicant's eligibility for the CERB.

IV. Decision subject to the application for judicial review: third review decision

[17] Only Mr. Roussel's ineligibility for the CRB is before the Court. The reasons for the denial of CRB benefits were explained in the notes in the applicant's record, in the communications log system maintained by the Canada Revenue Agency. These notes are an integral part of the decision (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22 and the case law cited therein and that which followed).

[18] As for the first ground of refusal, the officer pointed out in the third review report that the applicant's last day of employment was June 7, 2019. The applicant had then applied for employment insurance, since he had accumulated enough insurable hours to qualify for it, and received employment insurance until February 1, 2020. Thus, the officer found that the applicant's termination of employment in June 2019 [TRANSLATION] "was in no way related to COVID-19" (Certified Tribunal Record, Tab 8, at p 54). The officer concluded that the applicant was not employed, but that this was for reasons other than COVID-19.

[19] Regarding the second ground of refusal, the officer noted that the applicant was unaware that he had to be seeking work in order to qualify for the CRB. He only began looking for work [TRANSLATION] "after his emergency benefits were cut off" (Certified Tribunal Record, Tab 8, at p 54). The letters concerning his job search, both dated December 15, 2020, postdated the three periods for which he applied for the CRB. Thus, the officer concluded that the applicant was capable of working, but was not seeking work.

V. Issues

[20] There are three issues:

1. What is the standard of review applicable to the third review decision?
2. Based on this standard, does the decision give rise to a ground for the judicial review sought?
3. Was the decision predetermined?

VI. Standard of review

[21] The applicant did not make any representations as to the standards of review applicable to the issues he raised. The respondent was of the view that the third review decision should be reviewed on a reasonableness standard. I agree. To my knowledge, the case law is unanimous in declaring that the standard of review on the merits of a COVID-19 decision is the reasonableness standard (*Aryan* at paras 15–16; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 14; generally, on the presumption that the standard is that of reasonableness, see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7). Thus, the role of the Court is to determine "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 [emphasis added]" while deferring to the conclusions of the administrative decision-makers (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at paras 99, 85). Moreover, it is the applicant who bears the burden of showing that the decision being challenged is unreasonable (*Vavilov* at para 100). In *Mason*, the Court summarized in a few lines the principle of deference by which the reviewing judge is bound: "Reasonableness review starts from a posture of judicial restraint and focusses on 'the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place'" (*Mason* at para 8, referring to *Vavilov* at paras 5 and 24).

[22] The applicant also suggests that the outcome of the decision was predetermined. This is a question of procedural fairness. Matters of bias on the part of decision-makers are generally reviewed on a standard of correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). To put it another way, this implies that reviewing courts show no deference to the administrative decision-maker. If procedural fairness has not been respected, the reviewing court must intervene. Recent Federal Court of Appeal jurisprudence focuses on a contextual analysis of "the nature of the rights involved and the consequences for affected parties" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55). These principles were recently helpfully enunciated by Gascon J in *Pothier v Canada (Attorney General)*, 2024 FC 478:

> [TRANSLATION]
>
> [39] The reviewing court is required to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed"

> (CPR at para 54). Thus, when an application for judicial review concerns the duty of procedural fairness and allegations of a breach of the principles of fundamental justice, the real issue is not so much whether the decision was "correct". Rather, it is whether, given the particular context and circumstances of the case, the process the administrative decision-maker followed was fair and gave the parties involved the right to be heard and a full and fair opportunity to know and respond to the case against them. Reviewing courts owe no deference to the administrative decision-maker when considering issues of procedural fairness.
>
> [Emphasis added]

VII. Relevant provisions

[23] Section 3 of the *Canada Recovery Benefits Act* sets out the eligibility criteria for the CRB. Paragraph 3(1)(f) of the Act requires applicants not to have been employed, or to have had a reduction of at least 50% in work, for reasons related to COVID-19. In addition, paragraph 3(1)(i) of the Act requires applicants to have sought work "during the two-week period" for which benefits are claimed. These are the legal requirements, which have nothing to do with discretion whatsoever.

VIII. Parties' submissions and analysis

A. *Applicant's arguments*

[24] The applicant submits that, given that he was eligible for the CERB, he should also have been eligible for the CRB, as [TRANSLATION] "[t]he CRB program flows from the CERB" (Notice of Application at para 14). He asserts that [TRANSLATION] "[t]he officer fails to take into consideration that the CRB is similar to the CERB at its core and that the CRB applied to an opening of the labour market" (Notice of Application at para 30). The applicant also maintains

that the administrative decision-makers' decisions have lost all credibility as the three officers who analyzed his file did not base their decisions on the same ineligibility grounds (Notice of Application at para 18).

[25] He also complains that he was not informed that he had to provide proof of his job search (Notice of Application at paras 15, 17). In addition, he claims that there was [TRANSLATION] "obvious disorganization" in the decision-making process, as there was confusion as to whether he should send his supporting documents to the CRA office in Sudbury or to the Jonquière office (Notice of Application at paras 16, 19).

[26] The applicant also contends that his employment contract, which ended on June 7, 2019, should not have been used as evidence of his ineligibility for the CRB, as this same fact was used to demonstrate his income for 2019 (Notice of Application at para 27).

[27] Surprisingly, the memorandum of fact and law, in which one would expect the propositions put forward in the Notice of Application to be articulated and supported by arguments, is virtually silent in this regard. Instead, it refers to the detailed affidavit, which is an amalgamation of grievances relating to the CERB and the CRB. Only the third refusal to grant the CRB is before the Court.

B. *Respondent's arguments*

[28] The respondent asserts that the third review decision was reasonable and was based on [TRANSLATION] "the entirety of the evidence that was available to the decision-maker"

(Respondent's Memorandum at para 20). The respondent points to the fact that the applicant had ceased working on June 7, 2019, and had been living on employment insurance until February 1, 2020. Thus, it was reasonable for the officer to conclude that the applicant had ceased working for reasons other than those related to COVID-19 (Respondent's Memorandum at para 21).

[29] On the second ground provided for refusing to consider the applicant eligible for the CRB, the respondent points out that the applicant only started looking for work when his file was under review, after the periods for which he had applied for the benefit program had already elapsed. Thus, the applicant [TRANSLATION] "was not aware that one of the eligibility criteria for the CRB was actively searching for work during the periods covered by the CRB applications" (Respondent's Memorandum at paras 23, 24). In light of the evidence in the record, the respondent maintains that the decision of the officer responsible for the third review was reasonable.

C. *Analysis*

[30] The Court concludes that the applicant has not demonstrated that the third review decision contained a reviewable error. An applicant must meet each of the requirements of the Act. Thus, it would be enough for one of the reasons provided by the decision-maker to be

reasonable for the judicial review to fail. In my opinion, the two reasons provided bear all of the hallmarks of reasonableness.

[31] The applicant contends that [TRANSLATION] "[t]he CRB program flows from the CERB" and therefore he should be eligible for both benefits. This misconstrues what the two statutes require. These are two distinct benefits, created by two different statutes. The CERB and the CRB do not have the same eligibility requirements. In particular, paragraph 3(1)(i) of the *Canada Recovery Benefits Act* requires a person receiving the CRB to have "sought work during the two-week period (for which they received benefits), whether as an employee or in self-employment". In contrast, the *Canada Emergency Response Benefit Act* does not include a job search requirement as a condition of eligibility for the CERB. It was therefore not unreasonable in itself for the officer responsible for the third review to have reached different conclusions as to eligibility for the two benefits.

[32] Given that the applicant complains of incongruities between the decision-makers, it is worth reiterating the reasons provided in the three CRB decisions, since, in my opinion, they do not contradict each other as the applicant claims:

> *Letter dated February 19, 2021*
> - You did not stop working, or have your hours reduced, for reasons related to COVID-19.
>
> *Letter dated August 3, 2023*
> - You are not employed for reasons other than COVID-19.
> - You did not have a 50% reduction in your average weekly income compared to the previous year for reasons related to COVID-19.
>
> *Letter dated September 28, 2023 (decision letter of which judicial review sought)*
> - You are not employed for reasons other than COVID-19.
> - You were able to work but did not seek work.

[33] The initial reasons provided by the three administrative decision-makers all expressed the notion that the cessation of work had nothing to do with COVID-19. Paragraph 3(1)(f) of the *Canada Recovery Benefits Act* expressly provides that applicants were not employed for reasons related to COVID-19. Using only slightly different wording, the three decision-makers came to the same conclusion and determined that the applicant had not ceased being employed for a reason related to COVID-19.

[34] The first two decision-makers also added that the applicant's working hours had not been reduced as a result of COVID-19. Again, paragraph 3(1)(f) of the Act specifically provides for this. It does double duty when a decision-maker stipulates that a person was not employed for reasons unrelated to COVID-19, or that the person's working hours were reduced because of COVID-19. Indeed, it goes without saying that if a person is not working for reasons unrelated to COVID-19, they will not have had a reduction of at least 50% in their average weekly employment income because of COVID-19. The wording may be somewhat awkward, but there is no inconsistency between the first two decisions. They are similar, if not identical.

[35] As for the third decision, the one for which judicial review is sought, it adds a further ground to the determination that the applicant is not eligible for the CRB. This is because the third decision-maker reviewed the file and arrived at the conclusion that the applicant had not "sought work during the two-week period, whether as an employee or in self-employment" as expressly required by paragraph 3(1)(i) of the *Canada Recovery Benefits Act*. In fact, the only letters that might indicate some kind of search postdate the three periods for which the applicant had received CRB benefits. In fact, the two letters, both dated December 15, 2020, only attest to

the lack of a teaching position on that date. It is hard to see how the decision under judicial review would be unreasonable without proof of a correlation between the job search and the period for which the recovery benefit was sought. The two letters do not demonstrate the correlation required by the Act.

[36] The applicant's argument that it was unreasonable that the reasons provided by each officer for finding him ineligible for the CRB were not identical must therefore be rejected. Each officer carried out an independent analysis of the case at hand, as required. In addition, evidence was added to the applicant's file between each of the new determinations. As a result, the file before each officer was not even identical. They were unanimous about the first reason. That in itself would be enough to dispose of the review. As for the second reason in the third review, it has not been shown to be unreasonable. It was not even challenged. It was therefore not unreasonable for the decision-makers to have reached substantially identical conclusions, with the third review providing an additional ground of refusal.

[37] In addition, the applicant suggests in his detailed affidavit that officials should have explained to him that he was required to have been seeking work in order to qualify for the CRB. This is based on the argument that ignorance of the law is a valid defence. There is no authority that would support such a proposition. As seen earlier, the *Canada Recovery Benefits Act* specifically sets out the required conditions. In an analogous context related to access to employment insurance benefits, the Federal Court of Appeal has held that ignorance of the law is no excuse for failing to meet the criteria imposed by the legislation, and that claimants have a responsibility to take reasonable steps to understand their obligations (*Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paras 13–18; *Canada (Attorney General) v Somwaru*,

2010 FCA 336 at paras 7–11). With respect to COVID-19 benefits, this Court has repeatedly held that the onus is on the claimant to inquire into the eligibility criteria for each benefit, and to prove that these criteria have been met (see *Walker v Canada (Attorney General)*, 2022 FC 381 at para 55; *Ntuer v Canada (Attorney General*, 2022 FC 1596 [*Ntuer*] at para 26; *Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at para 75; *Payette v Canada (Attorney General)*, 2023 FC 131 at para 35).

[38] The applicant's argument that the fact that his teaching contract ended on June 7, 2019, should have been used solely as a means of proving his income for 2019, and not as a means of verifying the other eligibility criteria, is without merit. The eligibility criteria for the CRB are cumulative (*Ntuer* at para 24; *Grandmont v Canada (Attorney General)*, 2023 FC 1765 at para 37). It is not unreasonable for evidence that establishes one condition of eligibility to also demonstrate non-compliance with another.

[39] The applicant alleges that the outcome of the third review decision was predetermined (Notice of Application at para 29):

> [TRANSLATION]
>
> I realized that they were preparing to make decisions that would be unfavourable to me in advance, despite tons of pleas, evidence and arguments. Despite all of the evidence, I had to explain over and over again What is clear was never clear. It was almost harassment. I was always in self-defence mode throughout the entire process. If such had not been the case, it would not have gone this far.

[40] The applicant also put forth procedural fairness arguments with regard to the process followed during the second review (Decision dated August 3, 2023). The arguments raised can be summarized briefly:

- The decision dated August 3, 2023, was made too hastily (Notice of Application at para 22).
- The CRA misrepresented itself, as the letter sent on August 3, 2023, was signed by the manager, Jean-François Perron, rather than by the officer responsible for the second review (Notice of Application at para 23).
- The decision should have been made by a committee rather than a single compliance officer, as [translation] "[a]ll angles are rarely taken into consideration if only one person is making the decisions. (Notice of Application at para 25).
- The decision of the second review officer was also predetermined (Notice of Application at para 26).

[41] The respondent has paid little heed to the allegations and asserts that they [TRANSLATION] "are not based on any evidence" (Respondent's Memorandum at para 27). He is not wrong. These allegations do not support a breach of procedural fairness. In any case, this decision is not the subject of an application for judicial review.

[42] The applicant made a comment to the effect that the officer in charge of the second review stated, during a telephone call, [TRANSLATION] "that she wasn't too sure or 'worried' about the CRB before the decision was made" (Notice of Application at para 26; Detailed Affidavit at para 27). In fact, at worst, the second decision-maker, if she made the comments reported by the applicant, was merely expressing doubts about the request for review, which, as far as the CRB was concerned, she was taking under advisement. The comments, when read in context at paragraph 27 of the affidavit, show nothing more than the fact that the second

administrative decision-maker had indicated that she was [TRANSLATION] "optimistic about the CERB because all of the supporting evidence was there," while at the same time being concerned about the CRB. This was not a demonstrated breach of impartiality, but rather a conversation about the content of the file, with its strengths and weaknesses. Here again, not only is the complaint unfounded, but that decision is not before the Court.

[43] The applicant has in no way demonstrated that the outcome of the September 28, 2023, decision for which judicial review is sought was predetermined. The burden was on him to do so. In order to assess whether there is a reasonable apprehension of bias on the part of a decision-maker, the applicable classic test is to consider "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?" (*Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at p 394, cited in *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25, [2015] 2 SCR 282 [*Yukon Francophone School Board*] at para 20). Since this issue is "inherently contextual and fact-specific", the burden on the applicant is "correspondingly high" (*Yukon Francophone School Board* at para 26. See also *Sigma Chi Canadian Foundation v Canada (National Revenue)*, 2024 FCA 59 at para 13).

[44] In this case, the applicant provided no evidence to support his allegation that the third review officer had predetermined the outcome. He simply expressed his frustration with the review process, and especially with the fact that the evidence he provided was not deemed

sufficient to find him eligible for the CRB (Notice of Application at para 33). However, he provided no direct or circumstantial evidence to demonstrate any bias on the officer's part.

[45] In fact, it was in the third review that the administrative decision-maker awarded the applicant the CERB. This is certainly not the attitude of a decision-maker who determined in advance that the applicant was wrong. She agreed with Mr. Roussel on part of his request for review. During a call with the applicant, Ms. St-Germain explained to him that she was [TRANSLATION] "the officer assigned to review [his] file," and that her [TRANSLATION] "job [was] to do a complete analysis of it so [she] would start from scratch" (Certified Tribunal Record, Tab 3, at p 31). If for some reason there had been a procedural shortcoming leading to the second decision, which I do not believe there was, it would have been remedied through the third review (see *Flock v Canada (Attorney General)*, 2022 FC 305 at paras 25–26). As in *Flock*, the applicant was provided a full opportunity to present his case by the officer who issued the decision under review. In the absence of evidence or even allegations, the applicant has failed to prove any bias on the part of the officer responsible for the third review.

[46] The applicant also complained of confusion as to which CRA office, Sudbury or Jonquière, was responsible for making the decision. The location where the decision was made is of no importance. What is important is that the administrative decision-maker had all of the documentation provided by the applicant before her. The administrative decision-maker stated in her affidavit that she had received the applicant's new submissions and the entire file. The notes confirm that the applicant did not submit any additional documents for the third review (Certified Tribunal Record, Tab 3, at pp 34–35). No objections to the record that the administrative decision-maker claimed to have consulted were submitted. As such, there is no reason to doubt

the quality of the record that was before the decision-maker. This could certainly have constituted a breach of procedural fairness had it been established that the officer responsible for the third review had not taken into account the documents submitted by the applicant. But this was not the case. The evidence was overwhelmingly to the contrary. There was no breach of procedural fairness.

IX. Conclusion

[47] The application for judicial review must therefore be dismissed. The conclusion reached at the third review, denying the applicant the CRB, was reasonable in that it is consistent with the statute that applies to this benefit. Moreover, no breach of procedural fairness has been demonstrated.

[48] The respondent requested costs in the event of a successful defence of the application for judicial review. The parties had agreed that costs in the amount of $500 should be awarded. The Court has therefore limited costs to a lump sum of $500.

JUDGMENT in T-2245-23

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. Costs in the amount of $500, including disbursements and taxes, are awarded to the respondent.

"Yvan Roy"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2245-23
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APPEARANCES:

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