Federal Court Cour fédérale

Date: 20240625

Dockets: T-558-23
T-559-23
T-560-23

Citation: 2024 FC 981

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 25, 2024

PRESENT: The Honourable Justice Roy

BETWEEN:

MOHAMED SEGHIR BEKKAI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mohamed Seghir Bekkai, has filed three applications for judicial review, as required, regarding three decisions that denied him benefits in relation to his eligibility for three income replacement programs available as a result of the COVID-19 pandemic under certain conditions:

- the Canada Emergency Response Benefit [CERB];

- the Canada Recovery Benefit [CRB]; and
- the Canada Worker Lockdown Benefit (CWLB).

[2] In all three cases, verifications conducted after the applicant collected the benefits led to the conclusions being challenged, namely that Mr. Bekkai was not eligible for these benefits.

[3] Since the facts are the same, as it were, Associate Justice Steele made a consolidation order on May 9, 2023. Judgment in the three matters is made in a single document. A copy of this judgment will be placed in each record.

[4] With respect to the CWLB, the applicant stated at the hearing that he was no longer challenging the decision that found him to be ineligible. The application for judicial review (T-559-23) is therefore dismissed.

[5] For the reasons that follow, the applicant did not discharge his burden of demonstrating that the decisions under judicial review are flawed and that the Court's intervention is necessary. The other two applications for judicial review are therefore also dismissed.

I. Facts

[6] The applicant was self-employed before the onset of the COVID-19 pandemic; he applied for and received the following benefits:

- CERB: periods 2 to 7 (April 12, 2020, to September 26, 2020);
- CRB: periods 1 to 5, 7 to 10 and 12 to 27 (September 27, 2020, to October 9, 2021);

- CWLB: periods 19 to 20 (February 27, 2022, to March 12, 2022).

The hearing revealed that the CWLB benefits were returned. The benefits in question, which each had specific eligibility conditions, were offered under programs created by legislation, namely, the following acts:

- *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8;
- *Canada Recovery Benefits Act*, SC 2020, c 12, s 2; and
- *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5.

[7] The facts put forward for the applicant are simple. Mr. Bekkai was a full-time student from July 1, 2019, before the outbreak of the COVID-19 pandemic, until June 2020. His studies required sixty hours per week. He said that he had also been self-employed in the taxi (Uber) and food home delivery industries.

[8] However, he stopped working in the taxi industry a few weeks before applying for his first CERB benefit, on April 12, 2020. He claimed that he did deliveries between April 2020 and July 2020, but the evidence of this is not very extensive.

[9] When he submitted his first application to benefit from the CRB program on September 27, 2020, Mr. Bekkai was providing his services as a self-employed delivery person.

[10] On October 12, 2022, the Canada Revenue Agency, which administered the benefit programs at issue here, notified him that he had been selected for verification of his eligibility for the abovementioned programs; the decisions regarding the reviews were made on January 19, 2023. Mr. Bekkai hired an accountant on January 22, 2023, who filed an increased income tax

return for the 2019 taxation year. The decisions from the first review concluded that Mr. Bekkai was ineligible for both the CERB and the CRB, as follows:

> [TRANSLATION]
>
> - CERB: According to our review, you are not eligible for the following reason(s):
>   - You did not stop working or have your hours reduced for reasons related to COVID-19.
> - CRB: According to our review, you are not eligible for the following reason(s):
>   - You left your job voluntarily.
>   - You are not employed for reasons not related to 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.

[11] Mr. Bekkai immediately requested a second review. This was the only decision, in each case, that could be subject to judicial review.

II. Decisions for which applicant is seeking judicial review

[12] Only two decisions remain therefore from which the applicant is seeking judicial review: the CERB decision and the CRB decision. They are second-review decisions, and they were made on February 21, 2023.

[13] The reasons given to conclude that the applicant was not eligible are as follows:

> [TRANSLATION]
>
> - We have completed our review and carefully examined the available information. We determined that you are not eligible for the Canada Emergency Response Benefit (CERB).

According to our review, you are not eligible for the following reason(s):

- You left your job voluntarily.
- You did not stop working or have your hours reduced for reasons related to COVID-19.

- We have completed our review and carefully examined the available information. We determined that you are not eligible for the Canada Recovery Benefit (CRB).

  According to our review, you are not eligible for the following reason(s):

  - You left your job voluntarily.
  - You are not employed for reasons not related to 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] The reasons that support these conclusions can be found in the notes kept by the Revenue Agency. These notes form part of the decision that was made (*Aryan v Canada (Attorney General)*, 2022 FC 139 [*Aryan*], at para 22, followed in more than 30 other judgments by this Court). In both cases, the notes include the documents submitted by the applicant in support of his argument that he was eligible for the benefits:

Date à laquelle les documents de deuxième revue ont été reçus
Documents soumis : 2022-10-14 et 2023-01-26
1. Document Skipdishes sans date
2. Récapitulatif UBER 2019
3. Document Skipdishes sans date (il parait 2020)
4. Récapitulatif UBER 2020
5. Document Skipdishes sans date
6. Récapitulatif UBER 2021 entre le 2021-01-01 et 2021-07-01
7. Demande de deuxième examen
8. Redressement T1 2019
9. T2125 2019
10. Récapitulatif UBER EATS 2019
11. Revenus Foodora 2019-2020.

Dates des appels (ou de l'appel) :
2023-02-07 : Discussion.
2023-02-06 : Message.
2023-01-31 : Message.

Est-ce que le demandeur a soumis des documents additionnels : Oui
DOCUMENTS SOUMIS 2023-02-13
1. Relevé de compte bancaire RBC [redacted] entre décembre 2018 et novembre 2021.
2. Dépenses 2019-2020.

[TRANSLATION]

Date when documents for second review received

Documents submitted: 2022-10-14 and 2023-01-26

1. Undated Skipdishes document
2. 2019 UBER summary
3. Undated Skipdishes document (appears to be 2020)
4. 2020 UBER summary
5. Undated Skipdishes document
6. 2021 UBER summary between 2021-01-01 and 2021-07-01
7. Request for second review
8. 2019 T1 adjustment
9. 2019 T2125
10. 2019 UBER EATS summary
11. 2019–20 Foodora income.

Dates of calls (or call):

2023-02-07: Discussion

2023-02-06: Message

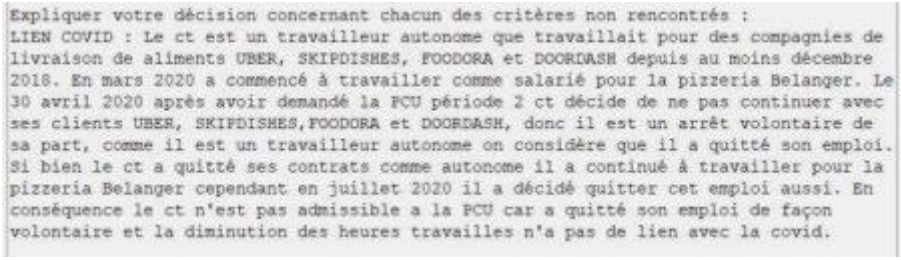
2023-01-31: Message

Has the applicant submitted additional documents: Yes

DOCUMENTS SUBMITTED 2023-02-13

1. Statement for RBC bank account --------- between December 2018 and November 2021.
2. 2019–20 expenses

With respect to the CERB, the notes read as follows:



Expliquer votre décision concernant chacun des critères non rencontrés :
LIEN COVID : Le ct est un travailleur autonome que travaillait pour des compagnies de livraison de aliments UBER, SKIPDISHES, FOODORA et DOORDASH depuis au moins décembre 2018. En mars 2020 a commencé à travailler comme salarié pour la pizzeria Belanger. Le 30 avril 2020 après avoir demandé la PCU période 2 ct décide de ne pas continuer avec ses clients UBER, SKIPDISHES,FOODORA et DOORDASH, donc il est un arrêt volontaire de sa part, comme il est un travailleur autonome on considère que il a quitté son emploi. Si bien le ct a quitté ses contrats comme autonome il a continué à travailler pour la pizzeria Belanger cependant en juillet 2020 il a décidé quitter cet emploi aussi. En conséquence le ct n'est pas admissible a la PCU car a quitté son emploi de façon volontaire et la diminution des heures travailles n'a pas de lien avec la covid.

[TRANSLATION]

Explain your decision regarding each criterion that was not met:

CONNECTION TO COVID: The TP [taxpayer] is self-employed and has worked for the UBER, SKIPDISHES, FOODORA and DOORDASH food delivery companies since at least December 2018. In March 2020, he started working as an employee for the Belanger pizzeria. On April 30, 2020, after

> applying for Period 2 of the CERB, the TP decided not to continue with his UBER, SKIPDISHES, FOODORA and DOORDASH clients, so he stopped working voluntarily, and since he is self-employed, he is considered to have left his job. While the TP left the contracts he had as a self-employed worker, he continued to work for the Belanger pizzeria; however, in July 2020, he decided to leave this job as well. As a result, the TP is not eligible for the CERB because he left his job voluntarily and the reduction in hours worked is not connected to COVID.

The reasons are similar for the CRB. Essentially, it appears that Mr. Bekkai ceased being self-employed during the pandemic, but for reasons that were not caused by or related to COVID-19. In the words of the administrative decision maker, this did not meet the eligibility conditions for the programs set out in the relevant acts. I have fully reproduced the CRB analysis below:

```
PCRE
5000$ : Selon déclaration d'impôts et relevé bancaire on peut vérifier que le ct a
les 5000$ des revenus net admissibles en 2019.
50%: Ct demande la PCRE car il aurait une diminution des revenus de plus 50%
cependant le ct oublie que la diminution des revenus doit être en lien avec la
covid-19. Le ct travaille dans le secteur de livraison d'aliments pour des cies
comme UBER, SKIPDISHES, FOODORA et DOORDASH. Après la fermeture de salles de manger
en mars 2020 la livraison de aliments a explosé. On pourrait comprendre une
diminution de revenus par des facteurs inconnus mais pas un arrêt complète des
activités, de plus dans le cas du ct, il travaille quand il veut. Par exemple en
aout 2020 le ct a décidé de travailler un peu, en septembre 2020 deux semaines, en
octobre 2020 une semaine, en novembre 2020 une semaine, décembre 2020 le mois au
complet, janvier 2021 le mois au complet, février 2021 une semaine, entre mars 2021
et novembre 2021 pas travaillé. De plus il faut ajouter que quand le ct décide de
travailler il travaille juste avec SKIPDISHES.  En conséquence la diminution de
revenus n'a pas de lien avec la covid.
LIEN COVID : Il y a de périodes dans lesquelles le ct ne travaille pas mais il est
un choix personnel donc il n'est pas admissible car il ne travaille pas pour des
raisons différents a la covid.
QUITTÉ SON EMPLOI : Comme le ct est un travailleur autonome quand il décide ne pas
travailler on considère qu'il quitte son emploi volontairement.
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> [TRANSLATION]
>
> CRB
>
> $5,000: According to the income tax return and bank statement, one can verify that the TP had $5,000 in eligible net income in 2019.
>
> 50%: TP applied for the CRB because he apparently had a reduction in income of more than 50%; however, the TP forgot that the reduction in income must be related to COVID-19. The TP worked in the food delivery business for companies like UBER, SKIPDISHES, FOODORA and DOORDASH. After in-restaurant dining closed in March 2020, food deliveries skyrocketed. One could understand a reduced income due to unknown factors, but not a complete cessation of work; in addition, in the TP's case, he

> works when he wants. For example, in August 2020, the TP decided to work a bit: two weeks in September 2020, a week in October 2020, a week in November 2020, the entire month of December 2020, the entire month of January 2021, and a week in February 2021, while between March 2021 and November 2021, he did not work. In addition, when the TP decided to work, he only worked with SKIPDISHES. As a result, the income reduction has no connection to COVID.
>
> CONNECTION TO COVID: The TP did not work during some periods, but this was a personal choice, and he is therefore not eligible because he did not work for reasons other than COVID.
>
> LEFT HIS JOB: Since the TP was self-employed when he decided not to work, he is considered to have left his job voluntarily.
>
> (Applicant's Record, p 14/28)

III. Legislation

[15] The eligibility conditions under the two programs (CERB and CRB) are set out explicitly in the applicable acts:

Canada Emergency Response Benefit Act

Eligibility	**Admissibilité**
6 (1) A worker is eligible for an income support payment if	6 (1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :
(a) the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and	a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;

…

[Emphasis added.]

…

[Je souligne.]

Canada Recovery Benefits Act

Eligibility

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

…

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

…

[Emphasis added.]

Admissibilité

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

…

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f)(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

…

[Je souligne.]

[16] Two things are important here, and I must also make a comment. First, the programs were open to self-employed workers like Mr. Bekkai. Second, the acts specifically require that the cessation of work or the reduction in weekly income must be "for reasons related to COVID-19" ("liée à la COVID-19" in French). Thus, the acts do not speak of a temporal relationship with the pandemic but of COVID-19-related reasons for the cessation or reduction. Third, the acts at issue are not particularly accessible. They have many subsections and paragraphs, such that a person who is not versed in the law may believe that the main focus is on pay reductions during the pandemic and would not necessarily look at the reasons for a cessation of work. This seems to be the error made by the applicant. For example, I reproduced a single paragraph from section 3 of the *Canada Recovery Benefits Act*, which deals with program eligibility. Section 3 alone is almost five pages long; subsection 3(1) has fourteen paragraphs, and most of these have subparagraphs. While ignorance of the law is not a recognized defence, the fact remains that one can understand that a litigant might not know each and every paragraph inside and out.

IV. Arguments and analysis

[17] In this case, the applicant paid close attention to the necessary threshold regarding the income required to qualify. However, in the first review of Mr. Bekkai's case, it was indicated that the reduction in income or hours worked had to be "for reasons related to COVID-19". The connection could not just be temporal; the reductions had to be related to COVID-19.

[18] But the administrative decision maker concluded that the applicant had ceased being self-employed for reasons that were not related to COVID-19 but rather personal reasons that likely

coincided with the replacement income he could receive under the available government programs.

[19] The applicant's argument consists of claiming that there had been a focus on the reduction in weekly income. That the applicant noted the importance of reduced income does not change the fact that not only the Act but also the decisions following the first review clearly state that the reasons must be related to COVID-19. This is an essential condition. If he had better arguments, he had to make them during the second review.

[20] The applicant could only apply for judicial review of the second review decisions. The conclusions of the administrative decision-maker are entirely coherent in my view. Essentially, they explain that the applicant ceased being self-employed voluntarily. This necessarily meant that the applicant did not work for reasons other than those related to COVID-19, and, therefore, his weekly income was not reduced for reasons related to COVID-19.

[21] This is the explanation given and reproduced at paragraphs 13 and 14 of these reasons. In fact, the evidence shows that, after he voluntarily ceased working in April 2020, when the applicant was completing his program of study at a rate of sixty hours per week and started receiving income replacement benefits, he only resumed his self-employment sporadically.

[22] When the applicant requested a second review, he relied exclusively on the reduction in his weekly income and submitted new documents. He now criticizes the administrative decision maker for not engaging in a dialogue with him about the rather glaring weakness in his benefit

applications resulting from his choice to cease or reduce his self-employment. There is no obligation for an administrative decision maker to engage in a dialogue with the applicant, which LeBlanc J, then with this Court, called a "running score" (a "résultat intermédiaire" in French) in *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 16 (see most recently *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464; *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992 at para 37; see also *Farooq v Canada (Citizenship and Immigration)*, 2013 FC 164).

[23] The applicant does not deny having a telephone conversation during which he was questioned about the connection between COVID and his reduction of work with two entities he was associated with (Exhibit L to the affidavit of Géraldine Piquion). His only explanation was that [TRANSLATION] "the web applications were not always stable". This is clearly not related to COVID, and this is the finding that the administrative decision maker made. The lockdown order apparently did not affect his self-employment further since, when asked about this, according to the notes on the record from January 17, 2023, he was asked whether the lockdown order had affected his employment, he truthfully confirmed [TRANSLATION] "that no, that he had applied for the CWLB because he had not found any work in IT [which he was studying up to 60 hours a week at the start of the pandemic]. In 2022, he decided to work only for Skip the Dishes and to drop Uber."

[24] At the hearing, Mr. Bekkai made much of his statement that the [TRANSLATION] "applications were not stable", claiming that the administrative decision maker had not considered it. This was not demonstrated. In fact, it is presumed that an administrative decision

maker has considered the evidence, unless it can be inferred otherwise. The administrative decision maker's notes mention it in fact. In any case, it could have been important if it had explained the cessation or reduction of work for a reason related to COVID. But that was not the case. Rather, the opposite was true.

[25] As the—to my knowledge—unanimous case law of this Court recognizes, the standard of review for decisions regarding benefits received under the COVID programs is reasonableness (*Roussel v Canada (Attorney General)*, 2024 FC 809 [*Roussel*]; *Aryan*; *Hayat v Canada (Attorney General)*, 2022 FC 131, and following). In *Roussel*, I described the burden on applicants in the following manner:

> [TRANSLATION]
>
> [21] ...Thus, the Court's role 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 maker *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at paras 99, 85). Moreover, the burden is on the applicant to show that the decision being challenged is unreasonable (*Vavilov* at para 100). In *Mason*, the court summarizes in a few lines the principle of deference to which the reviewing judge is held: "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).
>
> *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[26] Despite the efforts of his counsel, the applicant did not establish that the decisions made by the administrative decision maker did not meet the standard of reasonableness. As held in

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the reviewing court must be satisfied that a decision has a serious shortcoming for it not to be reasonable (para 100). This type of shortcoming is found in a failure of rationality internal to the reasoning process or in a decision that is untenable in light of the factual and legal constraints that bear on the decision. No such shortcoming was shown.

[27] Everything in this matter hinges on the applicant's voluntary decision to cease his self-employment or to reduce it. In either case, one cannot see as unreasonable that the reductions in income caused by these cessations or reductions were for reasons unrelated to COVID. This is not about judging the choices the applicant made, but of finding that this choice cannot meet the explicit criterion of the two acts: ceasing self-employment for reasons related to COVID-19.

[28] The applicant had to establish that the decisions from which he is seeking judicial review are unreasonable. Ultimately, the applicant argues that he misunderstood the requirements of the applicable acts. He states at paragraph 40 of his memorandum that [TRANSLATION] "a lacking explanation does not mean that there is no explanation". With due respect, this does not undermine the reasonableness of a decision. A person who does not meet the legal conditions cannot claim a decision was unreasonable when the administrative decision maker finds that the person failed to meet the eligibility conditions.

V. Conclusion

[29] The three applications for judicial review are therefore dismissed. In T-559-23, regarding the Canada Worker Lockdown Benefit, the application for judicial review is dismissed because

the applicant stated that he was no longer challenging the decision. In the two other cases, one regarding the Canada Emergency Response Benefit (T-560-23) and the other, the Canada Recovery Benefit (T-558-23), the applicant did not discharge his burden of demonstrating that the decisions were unreasonable. Both these applications for judicial review are therefore also dismissed.

[30] Neither the applicant nor the respondent applied for costs. Thus, no costs are awarded in the three cases.

JUDGMENT in T-558-23, T-559-23 and T-560-23

THIS COURT ORDERS that:

1. The applications for judicial review in T-558-23, T-559-23 and T-560-23 are dismissed.

2. No costs are awarded in any of the cases.

3. Copies of this judgment and its reasons will be placed in each of the three dockets.

"Yvan Roy"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-558-23, T-559-23 AND T-560-23
STYLE OF CAUSE:	MOHAMED SEGHIR BEKKAI v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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JUDGMENT AND REASONS:	ROY J
DATED:	JUNE 25, 2024

APPEARANCES:

Daniel V. Cuzmanov	FOR THE APPLICANT
Emmanuelle Rochon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Martel Cantin Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT