

Federal Court



Cour fédérale

**Date: 20220722**

**Docket: T-1734-21**

**Citation: 2022 FC 1088**

**Ottawa, Ontario, July 22, 2022**

**PRESENT: The Honourable Mr. Justice Lafrenière**

**BETWEEN:**

**JAMIE HEON LAJOIE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of an October 25, 2021 decision [Decision] of a Benefits Compliance Officer [Officer] of the Canada Revenue Agency [CRA] regarding the Applicant's eligibility for the Canada Recovery Benefit [CRB] provided under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA].

[2] The Officer determined that the Applicant was not eligible for the CRB for two separate reasons. First, the Officer concluded that during the relevant periods, the Applicant was not working for several reasons, none of which were linked to COVID-19. Second, the Officer concluded that the Applicant had received employment insurance [EI] benefits after September 27, 2020, thus overlapping with periods in which he was in receipt of the CRB.

[3] As explained below, the first finding is unassailable in light of the Applicant's own admission that he was not employed because of a back injury when the COVID-19 pandemic struck in early 2020.

[4] Given that the Applicant was required to meet all the requisite criteria for his application for CRB to be successful, including demonstrating that he was not employed for reasons related to COVID-19, it follows that the application for judicial review is dismissed.

## II. Background

[5] The Applicant applied for the CRB for a total of 16 periods between September 27, 2020 and May 8, 2021. The various applications, which spanned from September 27, 2020 to February 27, 2021, were approved by the CRA, and the Applicant received the CRB without an eligibility review of his application.

[6] On December 12, 2021, the Applicant's file was referred to an officer for an eligibility review. The first-level review officer sent a letter to the Applicant and attempted to contact him on several occasions but could not reach him.

[7] In the absence of any communication from the Applicant or receipt of any documentation from him for the purpose of the review, a decision regarding the Applicant's eligibility was made based on the information on file. It was determined that the Applicant was not eligible for the CRB as he had failed to demonstrate he met all the eligibility criteria for the CRB. The Applicant was made aware of the first-level review decision by letter dated March 18, 2021.

[8] On April 23, 2021, the Applicant requested a second-level review.

[9] The Officer who conducted the second-level review considered information found on the CRA's computer systems, documents provided by the Applicant as well as information provided by the Applicant during a conversation held on October 20, 2021. The Applicant mentioned to the Officer that:

- He was not working as of September 2019 because of a back injury;
- When COVID-19 occurred, he was not employed and therefore did not lose his employment because of COVID-19;
- He lost his job because of his back injury and was unemployed for all of the year 2020;
- He worked for Rotisseries 3066 Inc. from February 6 to February 11, 2021 and quit his job because his employer required that he arrive fifteen (15) minutes early without compensation;
- He performed snow removal work for Pro Gazon from February 16 to March 14, 2021 and ceased working because the season was over;
- In May 2021, he was working as a truck driver for a recycling company and left his job in June 2021.

[10] By Decision dated October 25, 2021, the Officer concluded that the Applicant was not eligible for the CRB because

(a) he was not working for reasons unrelated to COVID-19, the reasons being a back injury, a voluntary resignation, depression and because he became his spouse's caregiver;

(b) he received EI benefits during the same period.

[11] In his Amended Notice of Application filed on January 10, 2022, the Applicant cites the following grounds for seeking judicial review: "improper administrative review regarding covid 19 relief benefits" and "denial with consideration of all information provided." In support of the application, the Applicant filed an affidavit that includes what he describes as "missing documents" that the Officer failed to consider in assessing his file.

### III. Issues to be Determined

[12] There is no issue regarding the applicable standard of review. An officer's decision on CRB eligibility is reviewable on the reasonableness standard: *Aryan v Canada (Attorney General)*, 2022 FC 139 [Aryan] at para 16; *Walker v Canada (Attorney General)*, 2022 FC 381 [Walker] at paras 13 and 15. None of the situations that rebut the presumption of reasonableness for administrative decisions are present: *Canada (Minister of Citizenship and Immigration v Vavilov)*, 2019 SCC 65 [Vavilov] at paras 16-17.

[13] I also note the Respondent concedes the Officer erroneously concluded that the Applicant was ineligible because he had received EI benefits during the same period for which he claimed

the CRB. This error is inconsequential since the Applicant was required to meet all the requisite criteria in order to be eligible to the CRB set out in subsection 3(1) of the *CRBA*.

[14] For the purpose of the present application, the following criteria are relevant:

- During the two-week period, for reasons related to COVID-19, they were not employed or self-employed or they had a reduction of at least 50% in their average weekly employment income or self-employment income for the two-week period relative to their total average weekly employment income for the previous year or in the 12-month period preceding their application;
- They sought work during the two-week period;
- They did not place undue restrictions on their ability to work during the two-week period;
- They have not quit their employment or voluntarily ceased to work on or after September 27, 2020, unless it was reasonable to do so.

[15] There are therefore only two issues before me:

- a) Whether the “new” documents included in the Applicant’s affidavit should be admitted into evidence; and
- b) Whether the Officer’s conclusion that the Applicant was not eligible for the CRB because he was not employed for reasons related to COVID-19 is reasonable.

#### IV. Analysis

##### A. *Whether the “new” documents included in the Applicant’s affidavit should be admitted into evidence*

[16] The Applicant seeks to admit into evidence the following documents that are not referred to in the Decision or reproduced in the certified tribunal record:

- a) A chiropractor's note, dated February 8, 2020,
- b) A print-screen of his file with Service Canada detailing a past claim,
- c) A letter from the CRA dated June 12, 2020 detailing the terms of a payment agreement by which the Applicant would pay \$4,000 to the CRA, and
- d) Information relating to unemployment rates at the onset of COVID-19 and onwards.

[17] The Applicant submits that the missing documents were critical in assessing the approval and/or denial of the CRB.

[18] The Respondent objects to the admissibility of the documents based on the general rule that the evidentiary record before the reviewing court is restricted to the evidentiary record that was before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19.

[19] The Applicant states in his affidavit that the documents in question were filed with the CRA, but concedes that they may have been lost due to a "possible data-migration." It is not clear on the record before me whether the documents were properly filed by the Applicant with the CRA before the Decision was rendered. What is clear is that the documents were not received by the Officer.

[20] Be that as it may, the Applicant has failed to establish the relevance or importance of the "missing" documents or how they could have impacted the Decision. First, the chiropractor's note does not bring new information as the Officer was aware of the Applicant's back injury, which prevented him from working from September 2019 onwards. Second, the print-screen of

the Applicant's file with Service Canada detailing a past claim does not change the outcome as the Applicant failed to demonstrate he was not working for reasons related to COVID-19 and remains ineligible to the CRB. Third, contrary to the Applicant's claims, the letter from the CRA does not indicate he reimbursed EI benefits. It simply details the terms of a payment agreement by which the Applicant would pay \$4,000 to the CRA. Finally, the information relating to unemployment rates at the onset of COVID-19 does not establish the Applicant was not working because of COVID-19. The Applicant never claimed his own unemployment status was due to COVID-19.

[21] For these reasons, I conclude that the "missing" documents are irrelevant and therefore inadmissible.

B. *Whether the Officer's conclusion that the Applicant was not eligible for the CRB because he was not employed for reasons related to COVID-19 is reasonable.*

[22] The Applicant has the burden of establishing that the Officer's decision is unreasonable (*Vavilov*, at para 100). The Applicant does not identify any errors in the Officer's decision-making; he simply disagrees with the Decision.

[23] While the Applicant mentioned to the Officer that he was seeking employment in March 2020, he never indicated he was not working because of COVID-19 or left his employment for reasons related to COVID-19 during the periods for which he claimed the CRB.

[24] Upon reviewing the Officer's detailed reasons, I am satisfied that her conclusion that the Applicant was not working for reasons unrelated to COVID-19 during the relevant periods is transparent, intelligible and justified.

[25] In order to be eligible to the CRB, the Applicant had to demonstrate that during each of the CRB periods for which he had applied, he was not working for reasons related to COVID-19. The Applicant also had to demonstrate he did not quit his employment or voluntarily cease to work on or after September 27, 2020, unless it was reasonable to do so.

[26] The Officer's conclusion that the Applicant failed to meet his burden is amply supported by the evidence before her. The Officer reasonably concluded based on the Applicant's admission that, at the onset of COVID-19, the Applicant was not working because of a back injury. The Applicant further admitted that throughout 2020 and until he began working for Rotisseries 3066 Inc. on February 6, 2021, he was unable to work because of his back injury. The Applicant later quit his employment at Rotisseries 3066 Inc. for reasons unrelated to COVID-19. His Record of Employment states he left this employment voluntarily. The Applicant's employment at Pro Gazon ceased because the season was over. Finally, the Applicant quit his employment as a truck driver mid-June 2021 for medical reasons.

[27] The Applicant has not raised any valid arguments to explain how the Officer's decision was unreasonable, despite his burden to do so.



V. Conclusion

[28] The application for judicial review dismissed.

[29] The Respondent seeks costs of the application. The general rule is that costs should follow the event. However, in this particular case, I exercise my discretion not to award costs against the Applicant given that success was divided. While the Applicant did not succeed in having the Decision set aside, he did identify an error in it that needed to be corrected.

**JUDGMENT IN T-1734-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No costs are awarded.

“Roger R. Lafrenière”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1734-21

**STYLE OF CAUSE:** JAMIE HEON LAJOIE v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 19, 2022

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** JULY 22, 2022

**APPEARANCES:**

Jamie Heon Lajoie

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

M<sup>e</sup> Katherine Savoie

FOR THE RESPONDENT

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FOR THE RESPONDENT