

Federal Court



Cour fédérale

Date: March 25, 2024

Docket: T-1356-23

Citation: 2024 FC 458

Ottawa, Ontario, March 25, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

RICHARD BROWN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] On this application for judicial review, Mr. Richard Brown challenges a June 8, 2023 decision by a benefits validation officer (Officer) at the Canada Revenue Agency (CRA). The decision was a redetermination of a second review of Mr. Brown's eligibility for the Canada Recovery Caregiving Benefit (CRCB), established under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*]. The Officer found Mr. Brown was ineligible for the CRCB because his workweek had not been reduced by at least 50% to care for a family member due to COVID-19.

[2] Mr. Brown states he was required to work reduced hours at a company called The Placement Office in order to care for his children, who are under 12 years of age. Mr. Brown applied for CRCB benefits for 37 one-week periods between June 20, 2021 and May 7, 2022.

[3] In September 2021, the CRA initiated a review to validate Mr. Brown's CRCB applications. Mr. Brown received negative first level review and second level review decisions. He commenced an application for judicial review of the second level review decision, the parties settled the application, and the matter was returned to the CRA for a further second review. The decision that followed the further second review is the decision that is under review in this proceeding.

[4] The Officer's second review report summarizes the documents and information the Officer considered in assessing Mr. Brown's eligibility. The report provides the following reasons for deciding Mr. Brown was not eligible to receive the CRCB for the periods in question:

[Taxpayer (TP)] has made it very well known that they were involved in a workplace incident in February of 2021, causing them to leave the workforce. TP was dealing with the injuries for a long time to come. I had a phone conversation with TP on June 5, 2023 and TP stated that they had still not returned to the workforce and the injury is a factor in that. TP stated that they are just now feeling ready to return to a work place and that they had been going to the gym to try to make themselves ready. Though TP did send text messages showing that there was work available to the TP, they did not miss this work due to COVID-19 and having to care for a family member. Along with this the TP stated that the mother of the children was home straight through the benefit periods and that he wanted to be there for extra support for mother and children. TP sent in a number of documents regarding the daycare the child was supposed to be enrolled in and stating some issues with COVID-19. However, though the daycare was affected by the pandemic at times, this was not the main reason TP could not work. TP did not have a scheduled work week as they had not

accepted any work from The Placement Office prior or during the CRCB periods. The opportunity for work was there but they opted to not take it. Further to that, TP was injured in February of 2021 and first claimed periods 39 of CRCB starting June 20, 2021. Due to the fact that the TP had stopped working due to an injury, unrelated to COVID-19 and has not returned to work to this day, and that the mother of TP's children were home and available to take care of them, TP is not eligible for any of the CRCB periods.

[5] Mr. Brown submits the Officer's decision was procedurally unfair and unreasonable. Since this is his second judicial review application regarding his CRCB eligibility, he asks the Court to direct the CRA to deem him eligible for the CRCB.

[6] With respect to procedural fairness, Mr. Brown submits the Officer paid no attention to natural justice in making the decision. Mr. Brown argues there were delays in processing his application, the situation with COVID-19 was changing, and the Officer was unaware of the clear need for natural justice in his case. He argues the process and the explanations he was given about CRCB eligibility criteria were confusing, and the Officer overlooked information that should have been considered.

[7] Mr. Brown also submits the decision was unreasonable. Mr. Brown alleges the Officer based the decision on erroneous findings of fact without regard for the material in the record. He alleges the Officer acted without jurisdiction or refused to exercise jurisdiction, acted "by reason of fraud or perjured evidence", and erred in law.

[8] Mr. Brown submits the Officer made a number of errors in deciding whether he was eligible for the CRCB. The Officer focussed on irrelevant facts, including whether Mr. Brown's

spouse was home and able to care for the children. Mr. Brown argues that the Officer “glosses over” documents, “even going as far as perjuring the evidence” as the information in the submitted documents contradicted the Officer’s findings. Mr. Brown submits the Officer’s reasons lack transparency because it is not clear he was ineligible for the CRCB based on the reasons that were given.

[9] Mr. Brown contends the *Canada Labour Code*, RSC, 1985, c L-2 [*Labour Code*] and *Employment Standards Act, 2000*, SO 2000, c 41 [*Employment Standards Act*] should apply in determining his eligibility, and the Officer’s failure to consider them represents a refusal to exercise jurisdiction. Mr. Brown states he was granted an unpaid medical leave from his employment due to his injury in February 2021. He argues subsection 239(12) of the *Labour Code* provides that a return to employment following a medical leave is deemed to be continuous with employment before the leave for the purpose of calculating benefits. Furthermore, denying the CRCB because of a personal injury also contravenes subsection 5(1) of the *Human Rights Code*, RSO 1990, c H.19 [*Human Rights Code*]. Mr. Brown states that around August 2021, he asked for a 40-week parental leave of absence from work in order to stay home to care for his children and his rights during parental leave are governed by the *Employment Standards Act*.

[10] Whether Mr. Brown was denied procedural fairness is reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. Procedural fairness requirements depend on context. A reviewing court is required to consider whether the procedure was fair having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[11] Mr. Brown has not established that the decision should be set aside for procedural unfairness.

[12] While there was some delay due to a strike by CRA employees, the Officer conducted the review within a reasonable timeframe. Mr. Brown has not established any unfairness due to delay.

[13] It is understandable that Mr. Brown found the process and the explanations about CRCB eligibility criteria confusing at times, and I acknowledge that the validation process did not always proceed smoothly. However, the Officer was tasked with conducting a redetermination and it is the redetermination decision that is under review.

[14] From a procedural fairness perspective, Mr. Brown was aware of the case he had to meet and he was given a full and fair chance to respond: *Canadian Pacific Railway* at para 56. Mr. Brown provided over a dozen sets of documentary submissions between September 18, 2021 and May 30, 2023 and spoke with CRA benefits validation officers on at least 20 occasions. For the redetermination, the record shows the Officer ensured that he had all the relevant information and submissions from Mr. Brown's file before him. The Officer made a comprehensive list of the materials considered as part of the review, which included misdirected materials that the Officer tracked down. In addition, Mr. Brown had the opportunity to provide new documents and make additional representations. Mr. Brown provided two additional sets of documents and spoke with the Officer on three occasions before the Officer made a decision.

[15] I agree with the respondent that the record establishes that Mr. Brown was aware of the case to meet and he was afforded a full opportunity to present his case. I also agree with the respondent that the manner in which the Officer conducted the further review cured any earlier deficiency in the process: *Higgins v Canada (Attorney General)*, 2018 FCA 49 at para 17. The Officer reviewed Mr. Brown's entire file and decided his eligibility in a procedurally fair manner.

[16] Mr. Brown's other arguments do not raise issues of unfairness in the process. Rather, Mr. Brown believes he was denied natural justice because he believes the decision itself was unjust or unfair to him. These arguments are addressed in the context of the reasonableness review below.

[17] The parties agree that the reasonableness standard of review applies to the substance of the Officer's decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]; *Mahmood v Canada (Attorney General)*, 2023 FC 898 at para 14 [*Mahmood*]. In applying this standard, a reviewing court must pay careful attention to the decision maker's reasons, understood in light of the institutional context and the evidence and arguments that were before the decision maker: *Vavilov* at paras 91, 94. A reasonable decision is one that is based on an internally coherent and rational chain of analysis. The reasons for the decision must be intelligible, transparent, and justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at paras 85, 95, 99, 102.

[18] Mr. Brown has not established that the Officer's decision is unreasonable. I agree with the respondent that Mr. Brown has not established a reviewable error that would warrant setting aside the Officer's decision.

[19] Mr. Brown argues that, since he had informed the Officer he was on medical leave and then parental leave, the Officer should have applied the statutory criteria to conclude that his employment was deemed to be continuous with his employment at The Placement Office before the February 2021 incident. Mr. Brown did not make arguments to the Officer that the *Labour Code*, *Employment Standards Act*, and *Human Rights Code* supported his eligibility for the CRCB. Reviewing courts may refuse to consider new issues that should have been raised before administrative decision makers: *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 177 at para 67, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26. These arguments were raised for the first time on judicial review and I agree with the respondent that this Court should not consider them.

[20] In any event, Mr. Brown has not pointed to any evidence he provided to the CRA to establish he was on medical leave or parental leave during the relevant periods. Apart from his own statements, Mr. Brown did not provide evidence that The Placement Office had granted medical leave or parental leave, and he did not provide evidence establishing the start date or duration of either type of leave. The evidence shows Mr. Brown worked for The Placement Office from October 11, 2020 to February 18, 2021 with his last day of work being February 16, 2021. The record includes a January 2022 letter from The Placement Office stating only that Mr. Brown "is welcome to return to us for employment at anytime he is ready".

[21] Mr. Brown has not established that the Officer failed to account for any evidence in the record or that the Officer “glossed over” material information. The Officer’s second review report shows that the Officer considered all of the information in Mr. Brown’s file, including the materials Mr. Brown submitted to the CRA between 2021 and 2023. In addition, the Officer spoke to Mr. Brown to clarify information.

[22] Mr. Brown makes a number of allegations regarding the Officer’s treatment of the evidence and the Officer’s findings of fact. He argues that the Officer focussed on irrelevant facts and “perjured evidence” that did not accord with the documents in the record. I disagree.

[23] The Officer found that Mr. Brown did not have any scheduled work with The Placement Office and that Mr. Brown had not accepted any work prior to or during the CRCB periods. The Officer concluded, reasonably in my view, that the reason Mr. Brown had not been scheduled for any work was due to the injury. According to the Officer’s reasons, the Officer spoke with Mr. Brown on June 5, 2022 and Mr. Brown stated he was “just now feeling ready to return to a work place” and had been going to the gym to try to make himself ready. While his children’s daycare was affected by the pandemic at times, the Officer found this was not the main reason Mr. Brown could not work. The Officer considered the information in the record in making these findings and I am not persuaded that the findings were unreasonable.

[24] The availability of Mr. Brown’s spouse to care for the children was not irrelevant to the question of whether Mr. Brown needed to reduce his work hours in order to care for his children. In any event, this was not the only basis for the Officer’s finding that Mr. Brown was not

required to reduce his work by at least 50% in order to care for his children. The principal basis was that Mr. Brown had not been scheduled for any work since February 2021.

[25] Mr. Brown contends the Officer made contradictory findings. Mr. Brown sees the findings that he had stopped working due to an injury and that his spouse was home and available to take care of the children as contradictory because, in Mr. Brown's view, the Officer was saying he was unable to return to work due to injury, yet able to return to work because his wife could care for the children.

[26] I disagree that the Officer made contradictory findings. It was not the Officer's role to decide whether Mr. Brown could return to work. The Officer's role was to decide whether Mr. Brown met the statutory criteria for the CRCB. In Mr. Brown's case, the key criterion was whether, as an employee, he had been unable to work for at least 50% of the time he would have otherwise worked in a given week because he had to care for a child under 12 for reasons related to COVID-19. The reasons described in the *CRB Act* include that the child's school or care facility was closed due to COVID-19, that the child could not attend their school or facility because they needed to isolate or had a medical condition that put them at increased risk from COVID-19, or that the person who usually cared for the child was not available for reasons related to COVID-19: *CRB Act*, s 17. The Officer determined that Mr. Brown's workweek had not been reduced by 50% for such reasons. It was not contradictory to refer to more than one basis to support the determination.

[27] I appreciate that Mr. Brown disagrees with the Officer's findings; however, in my view, Mr. Brown has not established a reviewable error that would warrant this Court's intervention. It is not the Court's role on judicial review to reweigh and reassess the evidence: *Vavilov* at paras 125-126. In this case, the Officer determined that Mr. Brown was ineligible for the CRCB based on findings that were supported by the record. The Officer's reasons are transparent, intelligible, and justified in light of the CRCB regime and the evidence that was before the Officer.

[28] In conclusion, I must dismiss this application. Based on the record that is before me, Mr. Brown has not established that his eligibility review was procedurally unfair or that the Officer's decision was unreasonable.

[29] As a housekeeping matter, the respondent asks the Court to amend the style of cause to name the Attorney General of Canada as sole respondent: *Federal Courts Rules*, SOR/98-106, Rule 303 [*Rules*]; *Mahmood* at para 11. Mr. Brown does not oppose the request. I agree that the style of cause should be amended.

[30] The respondent requested costs, if successful, calculated in accordance with Tariff B of the *Rules*. While costs are generally awarded to a successful party, in the exercise of my discretion I decline to award costs to the respondent in this case.

JUDGMENT in T-1356-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. The style of cause is amended to name the Attorney General of Canada as the sole respondent.
3. No costs are awarded to either party.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1356-23

STYLE OF CAUSE: RICHARD BROWN v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 15, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: MARCH 25, 2024

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