Federal Court  Cour fédérale

Date: 20240702

Docket: T-1532-23

Citation: 2024 FC 1029

Ottawa, Ontario, July 2, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

GORDON A DOXSEE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Context

[1] The Applicant, Gordon Doxsee [Applicant] seeks judicial review of a decision by an officer of the Canada Revenue Agency [CRA] that he was not eligible for the Canada Recovery Benefit [CRB] and the Canada Emergency Response Benefit [CERB] [Decision]. The Applicant argues that the CRA officer [Officer] unreasonably exercised their discretion and failed to observe the principles of natural justice and procedural fairness.

[2] Although I am sympathetic to the Applicant's situation, I cannot find that the Decision was unreasonable as it meets the requirements on judicial review of being justifiable, transparent, and intelligible. Therefore, the application for judicial review is dismissed for the reasons below.

II. Facts

[3] The *Canada Recovery Benefits Act*, SC 2020, c 12, ss 4(1) [*CRB Act*] provides that a person may apply for a CRB for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021.

[4] On October 13, 2020, the Applicant applied for benefits under the CRB and received payments for twenty-one (21) two-week periods from September 27, 2020 to July 17, 2020 and six (6) two-week periods from July 18, 2021 to October 9, 2021.

[5] The *CRB Act* provides that if an application was made in respect of a two-week period beginning in 2020, a person is required to demonstrate they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least $5,000 from employment or self-employment.

[6] If an application was made in respect of a two-week period beginning in 2021, a person is required to demonstrate they had, for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application, a total income of at least $5,000 from employment or self-employment.

[7] On June 28, 2022, the CRA notified the Applicant that he was not eligible to receive CERB nor CRB benefits. The Applicant requested a second review of the decision. On September 27, 2022, the CRA confirmed that the Applicant was ineligible to both programs. The Applicant requested again another review.

[8] In response to the Applicant's request for another review, the CRA conducted a fresh second review after which the Officer decided that the Applicant was forgiven for the CERB program but he remained ineligible to the CRB program. The CRA's notes [Notes] dated June 20, 2023 clarify, that the Applicant was forgiven for the CERB benefits; and for the purpose of preventing a redetermination, the Applicant was considered "eligible." The Notes confirmed the Applicant was not eligible to the CRB program.

[9] This judicial review only addresses the decision deeming the Applicant ineligible to the CRB program.

III. Preliminary Issues – Evidence not before the Decision-Maker

[10] The Respondent objects to some evidence that the Applicant filed in his record, stating it was contrary to the *Federal Court Rules*, SOR/98-106 [*Rules*]. The Respondent states that the Applicant submitted documents that were not before the decision maker, and that the Court should not consider this evidence.

[11] In particular, the Applicant submitted evidence such as evidence related to income tax reassessments (i.e. 2019 T-1 CRA Refusal and 2020 T-1 Re-Assessment) as well as a write up

prepared by the Applicant, a notice of redetermination, a statement of account, a progress tracker, and a modified version of documents - all dated after the Decision was rendered.

[12] The Respondent also states that the reassessments would not have affected the outcome of the Decision. There is no obligation for the CRA to accept a person's tax return and subsequent assessment as conclusive proof of income, even where the assessment occurs prior to the contested decision (*Walker v Canada (Attorney General)*, 2022 FC 381 at paras 27, 30-33 [*Walker*]). Moreover, post-decision events cannot affect the reasonableness of the Decision (*Showers v Canada (Attorney General)*, 2022 FC 1183 at para 24).

[13] The general rule is that on judicial review, the Court is limited to the evidentiary record that was before the decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter before the decision maker is not admissible in an application for judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). The exceptions to this general rule are:

> (1) evidence that comprises general background in circumstances where the information might assist the reviewing court in understanding issues relevant to the proceeding;
>
> (2) evidence that brings attention to procedural defects that cannot be found in the evidentiary record; and
>
> (3) evidence that illustrates the complete absence of evidence before the decision maker when it made a particular finding
>
> (*Access Copyright* at para 20).

[14] The circumstances of this case do not demonstrate that any of the exceptions set out in *Access Copyright* apply. Accordingly, I cannot consider the documents submitted in the Applicant's Record that were not before the Officer when they rendered the Decision.

IV. Issues and Standard of Review

[15] The Applicant raises two issues in his case: whether the Decision denying the Applicant eligibility to the CRB was unreasonable; and, whether the Decision was arrived in a procedurally fair manner and in accordance with the principles of natural justice.

[16] An allegation of procedural fairness is determined on a basis that approximates a correctness review. Ultimately, the question comes down to whether the Applicant knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 56.

[17] Absent procedural fairness issues, the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). The Court has applied the standard of reasonableness on judicial review of the CRA's decisions on eligibility to the CRB program: (*Walker; Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16 [*Aryan*]; *Lai v Canada (Attorney General)*, 2023 FC 367 at para 28).

[18] To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the

particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[19] The Applicant contends that the Decision was unreasonable because the evidence demonstrated that he was eligible to the CRB. The Officer determined that the Applicant did not meet the $5,000 net income requirement for CRB. The Officer found that the Applicant reported $0.00 of net self-employment income in 2019 and -$432.00 of net self-employment income in 2020. The Applicant argues that the Officer erred in refusing to rely on the income tax returns that he had refiled to determine his eligibility. In his re-filed tax returns, he clearly met the financial threshold.

[20] The Respondent submits that there is no requirement for the CRA to bind its Decision on the most recent tax filing or assessment. In assessing whether the Applicant earned at least $5,000, the Respondent asserts that the Officer was entitled to consider other evidence. The Applicant re-filed income tax returns not because of a factual error in his original income tax filings. Rather the Applicant admitted during his phone calls with the Officer that he had the intention to alter his tax filings for the sole purpose of being eligible for the benefits.

[21] In *Aryan*, the Court clarified that an officer is not obliged to accept income tax assessments as sole and conclusive proof of income. While tax assessments are one document that could

provide income information to CRA with respect to eligibility, they do not "prove" that the Applicant actually earned the income that was reported in filing income tax returns, or that the income was earned through one of the eligible source.

[22] In accordance with the case law, I cannot accept the Applicant's argument that the Decision was unreasonable for not considering his new filings.

[23] The Applicant argues that there was much misinformation about the CRA programs. The rules for calculating gross and net income changed, which demonstrated that "the government flip flopped" causing confusion. As a result, his tax filings were not correct. The Applicant admits, like other Canadians, it was his mistake for misunderstanding the qualifying rules. He states the CRA should understand the difficult times Canadians faced, that "mistakes can be made," and that the travel industry was the "hardest hit industry."

[24] Although I understand the Applicant's argument, the Court's role on judicial review is to assess whether the Officer's Decision was unreasonable. In my review of the record and the eligibility criteria under the statute, I find that the Officer reasonably evaluated the evidence including supporting documentation submitted by the Applicant. The Officer reasonably applied the appropriate eligibility requirements set out for the CRB. Given the factual and legal constraints that bear on the decision maker, it was open to the Officer not to consider the Applicant's new tax filings in evaluating the fresh second review.

[25] The Applicant submits he was denied procedural fairness because the Officer did not consider his attempts to amend his tax returns before rendering a decision denying his eligibility to CRB.

[26] However, it is apparent from reviewing the record, including the Officer's Notes, that the Applicant was apprised of the case to be met and was given an opportunity to respond to the Officer's concerns by presenting specific documents. The Applicant received multiple reviews from CRA to assess his eligibility. The Applicant indicated his intention to amend his income tax filings to qualify for the benefits. The Applicant also admits having had the opportunity to submit his documents, and mentions submitting "almost 100 pages of proof of income." I cannot find that the Applicant was denied procedural fairness. The Applicant knew the case he had to meet and was given a fair opportunity to present his case.

[27] The Applicant submits he has a constitutional right to remove expenses from his tax returns for the purposes of qualifying for the programs. As the Respondent notes, the Applicant does not refer to a specific provision or principle of the constitution to demonstrate his right to a redetermination of his income. Therefore, this argument cannot hold.

VI. Conclusion

[28] The record demonstrates that the Officer considered the documents submitted as well as the explanations provided during the numerous interactions with the Applicant. I do not find that the Decision was unreasonable. I also do not find that there has been a breach of procedural fairness or natural justice. As such, the application for judicial review must be dismissed.

[29] The Applicant named the "Minister of National Revenue" as the Respondent. The Respondent asks that this be corrected to the "Attorney General of Canada," in accordance with rule 303 of the *Rules*. The style of cause shall be amended to "Attorney General of Canada" as the named Respondent.

[30] The parties also agreed that they would each bear their own costs in the matter. No costs shall be awarded.

JUDGMENT in T-1532-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.

2. The style of cause has been corrected to replace the "Attorney General of Canada" as the named Respondent.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1532-23
STYLE OF CAUSE:	GORDON A DOXSEE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO (Ontario)
DATE OF HEARING:	MAY 7, 2024
JUDGMENT AND RESONS:	NGO J.
DATED:	JULY 2, 2024

APPEARANCES:

Gordon Doxsee	FOR THE APPLICANT (ON HIS OWN BEHALF)
Jason Winter	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT