

Federal Court



Cour fédérale

Date: 20240923

Docket: T-957-23

Citation: 2024 FC 1486

Toronto, Ontario, September 23, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SEAN MCALLISTER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for a judicial review of two Canada Revenue Agency (“CRA”) decisions denying the Applicant the Canada Emergency Response Benefit (“CERB”) and the Canada Recovery Benefit (“CRB”) (the “Relevant Decisions”).

[2] The CRA found the Applicant ineligible for CERB and CRB because he did not demonstrate that he earned at least \$5,000 in net self-employment income or employment income.

[3] For the reasons that follow, this application for judicial review is dismissed.

II. Background

[4] The Applicant, Sean McAllister, applied for and received CERB from March 15, 2020 to September 25, 2020, and CRB from September 27, 2020 to December 5, 2020 and March 28, 2021 to July 17, 2021.

[5] In January 2024, after an inquiry from the CRA, the Applicant received two letters informing him that he was not eligible for CRB and CERB. He was found ineligible for the same reason, namely that he did not earn at least \$5,000 of employment or self-employment income in 2019 or in the 12 months before the date of his first application.

[6] The Applicant requested a review of these first decision letters and provided additional documentation in support of his position, which consisted of letters of employment from clients of the Applicant's music lesson business.

[7] The second reviewer considered the following document and information:

- A. the procedure document that instructs CRA agents on how to determine eligibility for the CERB and CRB;

- B. the prior relevant entries made by officers of the CRA on its computer systems;
- C. the Applicant's submissions dated November 15, 2022, March 17, 2023, and April 3, 2023;
- D. the Applicant's written request for a second review dated January 25, 2023;
- E. the information found on the CRA's computer system with respect to the Applicant's income and deductions for the 2019 to 2021 taxation years;
- F. the information found on the CRA's computer system with respect to the Applicant's summary of T1 data for the 2008 to 2022 taxation years;
- G. the information gathered during his phone calls with the Applicant; and
- H. the information found on the CRA's computer system with respect to the Applicant's eligibility overview.

[8] After a review of the information above, the second reviewer determined that the Applicant was not eligible for the CERB and CRB for the respective periods because he did not demonstrate that he earned at least \$5,000 in net self-employment income or employment income.

III. Preliminary Issues

[9] The Respondent raises two preliminary matters:

[10] First, the Respondent submits that the Applicant has named the incorrect Respondent in this matter. The proper Respondent is the Attorney General of Canada as the Applicant is challenging a decision made by an officer of the CRA on behalf of the Minister of Employment and Social Development (*Federal Courts Rules*, SOR/98-106 [*Rules*], s.303(1)(a); *Kleiman v Canada (Attorney General)*, 2022 FC 762 [*Kleiman*] at para 10).

[11] I agree and the style of clause is hereby amended to name the Attorney General of Canada as the Respondent.

[12] Second, the Respondent submits that this Court should grant, pursuant to Rule 302 of the *Rules*, the Applicant leave to challenge both the CRB and CERB Decisions in this application.

[13] I agree with the Respondent that this is appropriate, given that the decisions were reached by the same decision maker, based on the same record, under related statutes, and arise from the same finding.

IV. Issues

[14] The issues are:

- a) Whether the Applicant was afforded procedural fairness; and

b) Whether the Decisions are reasonable.

V. Standard of Review

[15] The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17; *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 18).

VI. Analysis

A. *Was the Applicant afforded procedural fairness?*

[16] The ultimate question before the Court regarding procedural fairness is whether the Applicant knew the case to be met and had a full and fair chance to respond.

[17] The Applicant submits that the CRA Officer erred by requiring pay slips as proof of income from Conestoga College, submitting that he was never asked for pay cheque stubs, which he says he does have. The record shows that the Applicant was asked if he had pay slips to show when the income was earned; however, it also shows that the Applicant was given multiple opportunities to provide additional documentation for his application. While the record does not indicate whether the CRA Officer or the Applicant raised the possibility of pay cheque stubs

specifically, the record shows that the Applicant was informed by way of letter dated August 15, 2022, that there were other ways of proving employment income, including “bank statements showing name, address, and payroll deposit.”

[18] Overall, I am satisfied that the Applicant was informed of the case to be met and was given a full opportunity to provide the requested documents for his CRB and CERB applications (*Virani v Canada (Attorney General)*, 2023 FC 1741 at paras 23-27).

[19] There was no procedural unfairness.

B. *Was the decision reasonable?*

[20] The Applicant has the burden of establishing that the Officer’s decision is unreasonable (*Vavilov* at para 100; *Aryan v Canada (Attorney General)*, 2022 FC 139 [Aryan] at para 45).

[21] In analyzing the reasonableness of the CRA Officer’s decision, the Court may consider the CRA’s second review report and the officer’s notes.

[22] The eligibility requirements for the CRB are set out in section 3 of the *Canada Recovery Benefits*, SC 2020, c 12, s 2 (the “Act”). Paragraphs 3(1)(d) and (e) of the Act provide that an applicant must have earned at least \$5,000 of income in prescribed periods from prescribed categories of income. For a two-week period beginning in 2020, a minimum of \$5,000 had to have been earned in 2019 or in the 12-month period preceding the day on which the person applied for the CRB. For a two-week period beginning in 2021, a minimum of \$5,000 had to

have been earned in 2019, in 2020, or in the 12-month period preceding the day on which the person applied for the CRB.

[23] Section 6 of the *Act* requires an applicant to provide the CRA Officer, acting on behalf of the Minister, with any information that the Officer may require in respect of the application.

[24] The CRA Guidelines entitled “Confirming CERB, CRB, CRSB or CRCB Eligibility” (“CRA Guidelines”) contain a list of acceptable proof of self-employment and employment income. Where an individual is unable to provide any of the documents suggested, the officers are expected to work with the applicant to see what other acceptable documents they may have (*Santaguida v Canada (Attorney General)*, 2022 FC 523 [*Santaguida*] at paras 27- 28).

[25] In this case, when calculating the Applicant’s self-employment income, the CRA Agent only included income he could validate through letters of employment from clients. Using this method, the Applicant’s max validated self-employment earnings during the relevant periods in accordance with the *Act* was \$3,450, earned from September 2019 to September 2020.

[26] In addition to the self-employment income, the Applicant reported \$2,153 in employment income in 2019 for his work for the Pharmacy Board of Canada, paid through Conestoga College. If the Applicant earned this income during September 2019 through December 2019, this would have put him over the \$5,000 threshold for the September 2019 to September 2020 time period calculation (for a total income of \$5,603). However, the CRA Agent found that because the Applicant did not provide any documentation to show that the employment income

was earned between September 2019 and December 2019, the Officer did not include it in the calculation. Consequently, the CRA Agent deemed the Applicant ineligible.

[27] The Applicant asserts that the CRA Officer erred in calculating both his self-employment income and his employment income. First, the Applicant asserts that the CRA Officer should have accepted evidence of monthly e-transfers into his account as proof of self-employment income. Second, the Applicant asserts that while he did not have pay slips from Conestoga College for his pay, he has pay cheque stubs, but was not asked for them.

[28] Having reviewed the record, I am satisfied that the Decision is reasonable. Despite not being able to produce invoices for his music lessons, the CRA Officer worked with the Applicant to find other ways to prove his self-employment income, including letters from previous students. Although the Applicant submits that he was not able to get letters from all previous students for various reasons, he provided no explanation on why he did not keep or require proof of payment for services, as is often required for tax purposes. I find it was reasonable for the CRA Agent to adhere to the CRA Guidelines for proof, and to exclude e-transfers that were not supported by evidence as payment for services in the relevant time period that the Applicant claims to have rendered (*Kleiman* at para 29).

[29] As for the employment income, the difficulty in determining when in 2019 the Applicant made the money was compounded by the fact the Applicant shares a bank account with his wife who also received employment income from Conestoga College during that time. During one of the conversations with the Applicant, the Applicant informed that CRA Officer that he had

earned the employment income in the months of March, May, September, and November, but stated that he did not have pay slips. In light of this, and the Applicant's failure to provide his alleged pay cheque stubs, despite being given multiple opportunities to adduce supporting evidence, I find it was reasonable for the Officer to exclude this income from his calculation during the relevant period of September 2019 to September 2020.

[30] While I empathize with the Applicant and the unfortunate circumstances he now finds himself in, the Officer's decision was reasonable given the evidence. It is not the role of a Court reviewing the reasonableness of a decision to reweigh the evidence in the absence of extraordinary circumstances (*Vavilov* at para 141-142). It is not enough for the Applicant to merely disagree with the conclusion of the Officer, he must show where the decision was unreasonable: that requires showing sufficiently serious shortcoming in the decision that cannot be said to exhibit the requisite degree of justification, transparency and intelligibility (*Kleinman* at para 30 citing *Vavilov* at para 100). The Applicant has failed to do so.

[31] The decision was reasonable.

VII. Conclusion

[32] The application for judicial review is dismissed.

[33] The style of cause is hereby amended to reflect the Attorney General of Canada as the appropriate Respondent, pursuant to Rule 303(2).

[34] No costs are awarded.

JUDGMENT in T-957-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-957-23

STYLE OF CAUSE: SEAN MCALLISTER v CANADA (ATTORNEY GENERAL)

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 18, 2024

JUDGMENT AND REASONS: MANSON J.

DATED: SEPTEMBER 23, 2024

APPEARANCES:

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IAN PILLAI FOR THE RESPONDENT

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