

Federal Court



Cour fédérale

**Date: 20240924**

**Docket: T-2460-23**

**Citation: 2024 FC 1495**

**Toronto, Ontario, September 24, 2024**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**ABDELRAZAG IMBEWA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Imbewa (the Applicant) seeks judicial review of a decision made by an officer (Second Reviewer) of the Canada Revenue Agency (CRA) finding that he did not have a 50% reduction in his average weekly income compared to his 2019 tax year due to the COVID-19 pandemic, pursuant to paragraph 3(1)(f) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*].

[2] The Court hearing and drafting of this decision proceeded with sensitivity to the fact that the Applicant is a self-represented litigant, and as a result the issues may not have been presented in the manner of a trained lawyer. The Court also understands that this decision may be

disappointing for the Applicant, who spoke at the hearing of his hard work and his strong belief in the erroneous nature of the decision that was made. Nevertheless, this application is dismissed because the decision is justified in light of the evidence and the *CRB Act*.

## II. Background

[3] The Applicant applied for the Canada Recovery Benefit (CRB) and in a decision dated March 7, 2023, an officer of the CRA (First Reviewer) found that the Applicant was not eligible for the CRB for four of the periods in which he believed that he was eligible.

[4] The Applicant sought a second review of the First Reviewer's decision. He provided two sets of submissions in support of this second review, dated March 9, 2023, and March 16, 2023, respectively. In the first set of submissions, he provided a detailed calculation of the CRB periods, his payment, expenses, weekly net earnings, and the period net earnings for 2020 and 2021. In the second set of submissions, he clarified this calculation.

[5] In a decision dated October 16, 2023, the Second Reviewer found that the Applicant was not eligible for the CRB for five two-week periods:

- November 22, 2020, to December 5, 2020;
- May 23, 2021, to June 5, 2021;
- June 6, 2021, to June 19, 2021;
- July 4, 2021, to July 17, 2021; and
- August 29, 2021, to September 11, 2021.

[6] The Second Reviewer's report, which forms part of the reasons for the decision (*Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 26), show that the Second Reviewer

acknowledged the Applicant's explanation letter, calculations, expenses, tax summaries, and tax returns. The Second Reviewer's explanation was that "[a]fter speaking with [the Applicant] and reviewing [the Applicant's] bank statements, Uber statements and expense report," the Applicant had not experienced a 50% reduction in his average weekly income compared to the previous year for the above five periods.

[7] The Second Reviewer's calculations differed from the Applicant's calculations in two ways: first, income was based on the date of payment for his work rather than when the work was done; and second, the Second Reviewer did not include HST in the calculation of expenses.

### III. Preliminary Issues

[8] As a preliminary matter, the Respondent requests that this Court amend the style of cause to replace the named Respondent (the CRA) with the proper Respondent (the Attorney General of Canada). That request is granted.

[9] Second, the Applicant expressed concern that the Second Reviewer's decision would raise questions about his honesty, reputation, and "clean record" in Canada. Counsel for the Respondent provided detailed assurances that the dispute between the parties centred solely on calculations related to his entitlement for CRB benefits and that the Second Reviewer's decision had no consequences beyond a repayment of CRB funds. Counsel for the Respondent indicated that the decision did not reflect in any way on the Applicant's reputation or honesty.

### IV. Main issues and standard of review

[10] In some documents before the Court, the Applicant alluded to the unfairness of the decision, however, these arguments were not described in detail in oral argument. I agree with the

Respondent that procedural fairness is not an issue before the Court. In any event, it is clear from the record that the Applicant had the opportunity to be heard and know the case before him. This is indicated by his phone calls in January, February, and March 2023 with the CRA, as well as his March 2023 submissions and October 2023 phone call with the Second Reviewer discussing how the 50% calculation would be determined. This satisfies the requirements of procedural fairness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[11] The Applicant's main challenge to the decision relates to the methods of calculation applied by the Second Reviewer.

[12] While the Applicant alluded to the Second Reviewer's decision being reviewed on a standard of correctness, the Applicant's challenge to the Second Reviewer's decision is in fact reviewed for its reasonableness (*Zhang v Canada (Attorney General)*, 2023 FC 1761 at para 15; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], affirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21).

[13] Determining whether a decision is "reasonable" does not involve a determination of whether a decision is "correct." The Court is generally restricted to the record before the decision maker, in this case the Second Reviewer, and does not look at the law and evidence to make a decision that the Court thinks is right in the circumstances. Rather, a reasonable decision is one that is transparent, intelligible, and justified in relation to the law and facts that constrain it (*Vavilov* at para 99).

V. Analysis

A. *When was income “earned?”*

[14] The first dispute in this matter is whether the Second Reviewer was reasonable in calculating the Applicant’s income based on when it was deposited into his bank account, or whether it should have been calculated when the work was actually done.

[15] The Applicant calculated his income during the eligibility periods in question based on when he worked. Thus, for example, for Period 6 of the CRB (which was December 6, 2020, to December 19, 2020), he referenced the income amounts in his bank statements for December 15, 2020, and December 22, 2020. The Second Reviewer calculated the income amounts based on when the Applicant was paid for his work, specifically from his bank statements for payments deposited on December 8, 2020, and December 15, 2020.

[16] Madam Justice Elizabeth Walker held that paragraph 3(1)(f) of the *CRB Act* “requires that, during each CRB period requested, (1) an applicant was not working or self-employed for reasons related to COVID-19, or (2) their average weekly income from employment or self-employment had declined by at least 50% compared to the previous year or 12-month period preceding the date on which they submitted the application, again for reasons related to COVID-19” (*Polonyova v Canada (Attorney General)*, 2024 FC 54 at para 24).

[17] Paragraph 3(1)(f) of the *CRB Act* “does not prescribe a precise method for calculating a taxpayer’s average weekly income” (*Saadi v Canada (Attorney General)*, 2022 FC 1195 at para 17). Section 2 of the *CRB Act* defines a “week” as “the period of seven consecutive days beginning on and including Sunday.” Subsection 3(1) and paragraph (f) provide that “[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... during the two-week period... 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” [emphasis added]. Finally, subsection 3(2) provides that “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue” for the purposes of paragraph 3(1)(f); in other words, income is revenue minus expenses incurred.

[18] Thus, the text of 3(1)(f) and 3(2), as well as online application instructions, all emphasize “income” rather than earnings. While subsection 3(2) speaks of “earning” revenue, that appears to be in reference to expenses incurred. Considering the evidence reviewed by the Second Reviewer, including the Applicant’s bank and Uber statements, as well as the text of the *CRB Act*, and acknowledging that there is no precise method for calculating income, my view is that the Second Reviewer provided reasonable calculations of the Applicant’s income.

#### B. *Calculation of Expenses*

[19] I agree with the Respondent that the Second Reviewer did not miscalculate the Applicant’s expenses. The Second Reviewer’s calculation of expenses was the same as the Applicant’s calculation, except that she did not include the HST from Uber as an “expense.” However, there does not appear to be any evidence in the record to substantiate that the Applicant claimed the HST as an “expense” for the purposes of section 3(2) of the *CRB Act* aside from his proposed calculations and aside from these “expenses” being listed on his Uber weekly statements. The Applicant had the onus to establish that he met the eligibility criteria under the *CRB Act* (*Akouz v Canada (Attorney General)*, 2023 FC 1104 at para 17).

[20] Again, there is not a precise method for calculating average weekly income for the purposes of paragraph 3(1)(f) of the *CRB Act*. In these circumstances, I find the Second Reviewer was reasonable in not including such deductions in her calculations based on the evidence provided to her.

## VI. Conclusion

[21] For these reasons, the Second Reviewer's decision was justified in light of the evidence the Applicant provided, particularly his bank statements and Uber transaction summaries, the requirement that the Applicant had to lead evidence to meet the CRB eligibility criteria, and the requirements set out in the text of the *CRB Act*.

[22] The application is dismissed. At the hearing for this matter, the Respondent withdrew their request for costs.

**JUDGMENT in T-2460-23**

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

1. The style of cause is amended to identify the Attorney General of Canada as the Respondent with immediate effect.
2. The application for judicial review is dismissed without costs.

\_\_\_\_\_  
"Michael Battista"

Judge



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

**DOCKET:** T-2460-23

**STYLE OF CAUSE:** ABDELRAZAG IMBEWA v ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 17, 2024

**JUDGMENT AND REASONS:** BATTISTA J.

**DATED:** SEPTEMBER 24, 2024

**APPEARANCES:**

Abdelrazag Imbewa	FOR THE APPLICANT ON HIS OWN BEHALF
Nian Fan (George) Lin	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT
--	--------------------