

Federal Court



Cour fédérale

Date: 20220622

Docket: T-1880-21

Citation: 2022 FC 939

[ENGLISH TRANSLATION]

Montréal, Quebec, June 22, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

ERIC CANTIN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Eric Cantin, is seeking judicial review of a decision rendered by a benefits review officer at the Jonquière Tax Centre [Officer] of the Canada Revenue Agency [CRA], for the Minister of Employment and Social Development [the Minister], denying his eligibility for the Canada Emergency Response Benefit [CERB]. The decision subject to judicial review results

from the second review of the applicant's CERB application, dated November 2, 2021 [the Decision].

[2] The applicant is challenging the Officer's decision and submits that he meets the eligibility criteria to receive the CERB. More specifically, the applicant argues that he has clearly proven that his net self-employment income was at least \$5,000 in 2019 or in the 12 months prior to the date of his first CERB application. He is of the view that the Officer based his decision on an overly narrow interpretation of the eligibility criterion.

[3] For the reasons that follow, I find that the Officer's Decision is not unreasonable and that the application should be dismissed.

II. Background

[4] The applicant received CERB benefits from the CRA on the basis of applications submitted in October 2020 for three eligibility periods between July 5 and September 26, 2020.

[5] The CERB applications were accepted without review by a benefits validation officer, and the applicant received the payments corresponding to those periods.

[6] On November 4, 2020, the applicant's file was selected for a first review of his eligibility for the CERB and was assigned to a CRA officer for this initial eligibility review.

[7] On February 9, 2021, the CRA concluded that the applicant was ineligible for the CERB for the following reasons:

[TRANSLATION]

- You did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months prior to the date of your first application.

- You did not stop working, or have your hours reduced, for reasons related to COVID-19.

[8] On April 19, 2021, the applicant requested a second review of the decision rendered on February 9, 2021.

[9] On November 2, 2021, following the second review, the Officer determined that the applicant did not meet the eligibility requirements under the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [the Act] and was ineligible for the CERB for the same reasons as those provided in the initial decision.

[10] The Decision is based primarily on the following reasons:

(a) With respect to the applicant's employment or self-employment income:

i. The applicant did not declare any self-employment income from 2012 to 2018;

ii. In his initial income tax return for 2019, the applicant did not declare any income;

iii. In his amended income tax return for 2019, the applicant reported net business income of \$5,086;

iv. The evidence provided by the applicant in support of the \$5,086 in net business income that he reported late was not convincing, in that:

1. The five invoices dated for the months of June, July and August 2019 are for a total amount of \$5,485; and

2. The applicant's bank statements for the period from April 15 to August 13, 2019, indicate that more than half of the deposits (\$2,800) were made in May and June 2019, before the dates on the invoices.

v. The deposits in the applicant's bank account do not match the amounts and dates on the invoices;

Accordingly, the applicant has not demonstrated that he earned at least \$5,000 of employment or self-employment income in 2019 or in the 12 months prior to the date of his first application.

(b) With respect to the applicant's reasons for having stopped working:

i. The applicant had an accident in 2018, for which he received benefits until January 2022;

ii. The applicant has had functional limitations since his occupational injury that prevent him from performing several types of work;

iii. The applicant stopped working in August 2019 on the grounds that his season was finished and that he did not work in the winter;

iv. The applicant has been taking carpentry training since October 2020;

Accordingly, when he submitted his CERB applications for the periods of July, August and September 2020, the applicant had not stopped working for reasons related to COVID-19, but rather because of the functional limitations caused by his occupational injury, his decision to stop working after August 2019 and his return to school.

[11] Dissatisfied with this refusal, the applicant filed an application for judicial review of the CRA's Decision denying his eligibility for the CERB.

III. Issue and standard of review

[12] There is a presumption that the standard of reasonableness is applicable in all cases: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10. I see no reason to depart from this standard in the context of a decision that essentially rests on the assessment of the evidence in the record before the Officer. The Decision will therefore be reviewed on a standard of reasonableness.

IV. Analysis

[13] The applicant submits that the Decision is unreasonable. He argues that he did indeed earn self-employment income for work performed for various personal acquaintances in 2019 and that he provided satisfactory evidence that he met all the eligibility criteria for the CERB, namely invoices and bank statements.

[14] According to the applicant, it does not matter that the deposits in his bank account were made before the dates on the invoices or that the amounts do not match the amounts and dates on the invoices. Nowhere in the Act is it stated that a taxpayer is required to deposit his income in a financial institution. And there is nothing to stop taxpayers from seeking payment in advance and in cash by their clients. However, that is not the point.

[15] Although it is not illegal to take payment in cash, a taxpayer who opts for this mode of payment must take all the more care to be able to provide proof of the payment to obtain benefits under the Act. Section 10 of the Act provides that the Minister may “for any purpose related to verifying compliance or preventing non-compliance with this Act . . . require that any person provide any information or document within the reasonable time that is stated in the notice.” The onus is on the applicant to establish for the agency responsible for administering the benefits that he meets, on a balance of probabilities, the requirements of the Act (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55.

[16] Reviewing the evidence as a whole, the Officer found inconsistencies in the applicant’s evidence that gave rise to real concerns about the reliability of the documents produced. The Officer was correct to be concerned about the discrepancies between the dates of the deposits in the applicant’s bank account and the dates of the invoices, as well as the amounts of the deposits, which did not appear to match the information in the invoices.

[17] Apart from expressing his disagreement with the Officer’s conclusion and reiterating the explanations he submitted in the context of the second review of his application, the applicant has failed to identify any error made by the Officer in his analysis of these documents. Disagreeing with a decision is not a sufficient basis for judicial review.

[18] The applicant also claims that the Decision [TRANSLATION] “is not based on the principles of natural justice of procedural fairness”. The ultimate question is whether the applicant knew the case to meet and had a full and fair chance to respond. *Canadian Pacific*

Railway Company v Canada (Attorney General), 2018 FCA 69, at para 56. The applicant admitted at the hearing that he was apprised of the case to be met and that he had had the opportunity to submit additional documentation and information for the second review of his application before the CRA. There is no evidence here that the Officer breached any applicable principles of procedural fairness.

[19] In this case, the applicant was unable to persuade the Officer that he had earned at least \$5,000 in self-employment income in 2019 or in the 12 months prior to the date of his first application.

[20] It is well established that a reviewing court must interpret written reasons in light of the record and with due sensitivity to the administrative regime in which they were given. A decision will be unreasonable “if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis” (*Vavilov*, at para 103). The Officer’s reasoning regarding the first eligibility requirement is consistent, based on the evidence before him, and justified in terms of the applicable law. The internal logic of his reasons is impeccable. It is not for the Court to substitute its preferred outcome.

[21] In light of the foregoing, it is not necessary for me to decide the issue relating to the second eligibility criterion, as the Act requires that both criteria be met for an applicant to be eligible for the CERB.

V. Conclusion

[22] In light of the file as a whole and the Officer's reasoning, I find that the Decision bears the hallmarks of reasonableness, in that it is rational, logical and justified in light of the relevant facts and law.

[23] The application for judicial review is dismissed.

[24] No submissions on costs appear in the applicant's Memorandum of Fact and Law, and no submissions on costs were made at the hearing. Accordingly, there will be no order as to costs.

JUDGMENT in T-1880-21

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

“Roger R. Lafrenière”

Judge

Certified true translation
Francie Gow

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1880-21

STYLE OF CAUSE: ERIC CANTIN v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 21, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

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APPEARANCES:

Eric Cantin SELF-REPRESENTED

Mathieu Lamontagne FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec