

Federal Court



Cour fédérale

Date: 20230124

Docket: T-1862-21

Citation: 2023 FC 114

Ottawa, Ontario, January 24, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

GIUSEPPE MONCADA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Giuseppe Moncada (“Mr. Moncada”), is challenging a decision made by a benefits validation officer (“the Officer”) at the Canada Revenue Agency [CRA]. The Officer denied Mr. Moncada’s application for the Canada Recovery Benefit [CRB] because Mr. Moncada failed to demonstrate that he met the requirements of subparagraph 3(1)(d)(ii) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act], namely that he had earned at least

\$5000 in 2019, 2020, or 12 months prior to his first application for CRB (“Income Eligibility Requirement”). Mr. Moncada argues that the Officer breached procedural fairness in refusing his application before he was able to obtain further documents requested by the Officer, and that the Officer unreasonably came to their conclusion that he did not meet the Income Eligibility Requirement.

[2] I find that the Officer failed to explain why the evidence provided by Mr. Moncada was insufficient to meet the eligibility requirements. The decision is neither transparent nor justified on this determinative issue. This is unreasonable and requires the matter to be redetermined. It is unnecessary for me to address the procedural fairness issue raised by Mr. Moncada.

II. Background

[3] In 2020, Mr. Moncada applied for and received CRB for the four two-week periods from September 27, 2020 to November 21, 2020. Upon applying for the next CRB two-week period for November 22 to December 5, 2020, the CRA notified Mr. Moncada that his application was selected to undergo the validation process.

[4] Mr. Moncada provided three sets of submissions to the CRA in December 2020 and February 2021, including three invoices for general trade and renovation work for three clients, totalling \$5,380, which is his stated income in his 2019 tax return. Upon request from the officer undertaking the first review of Mr. Moncada’s claim, he also provided a receipt and email confirmation of the work he had done for one of his clients that totalled \$1,150.

[5] In a decision dated February 19, 2021, the officer conducting the first review of Mr. Moncada's application determined that Mr. Moncada was not eligible to receive the CRB on the basis that he did not reside in Canada and did not meet the Income Eligibility Requirement. The first review officer noted that Mr. Moncada could not submit bank statements to prove his stated income of \$5,380 in 2019 because he did not have a Canadian bank account, and that his listed address was his parents' home from 1992.

[6] Mr. Moncada requested a second review on March 12, 2021. In the second review process, the Officer asked Mr. Moncada to obtain a further letter from another client (requesting a specific one in particular) to corroborate he had performed the work for them. Mr. Moncada states he was not given a deadline to provide the letter. The Officer issues a refusal decision approximately five weeks after the work verification letter was requested.

[7] The Officer refused the application on the basis that Mr. Moncada did not meet the Income Eligibility Requirement, stating that there was "insufficient doc's to support income, ie bank stmt, ltrs of work verification." The residency requirement was no longer a basis for refusal.

III. Issue and Standard of Review

[8] The determinative issue is whether the Officer's finding that Mr. Moncada did not meet the Income Eligibility Requirement was reasonable. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 confirmed that

reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[9] The CRB provided direct financial support to eligible people residing in Canada and affected by the COVID-19 pandemic for any two-week period between September 27, 2020 and October 23, 2021. Residents had to meet the eligibility requirements for each of the two-week periods. The eligibility requirement at issue in this judicial review is the Income Eligibility Requirement set out in paragraphs 3(1)(d) to (f) of the *CRB Act* requiring an applicant to demonstrate that they had at least \$5,000 in income in 2019, 2020, or in the 12 months before the date of their first application.

[10] The Officer requested that Mr. Moncada provide a further work verification letter from one of his two remaining clients for whom he did work in 2019. Section 6 of the *CRB Act* requires that an applicant provide the Minister with any required information in respect of their CRB application.

[11] Having not received a further work verification letter, the Officer refused Mr. Moncada's application because of insufficient documentation. As noted above, Mr. Moncada makes a procedural fairness argument with respect to obtaining the further work verification letter. I do not need to assess that issue because based on the information that was on file, I find the Officer's reasons to lack transparency and justification as to how the evidence was insufficient to meet the Income Eligibility Requirement.

[12] The Officer makes no mention of the three invoices filed by Mr. Moncada. Mr. Moncada's invoices state who the service was for, the name of the applicant, the type of service rendered, and the amount charged for the service. The Officer does not list these invoices among the documentation reviewed in the Officer's notes that form part of the reasons of their decision. One of the ways that the CRA guidelines "Confirming CERB, CRB, CRSB and CRCB Eligibility" [CRB Guidelines] state that a self-employed applicant may be able to show acceptable proof of income to meet the Income Eligibility Requirement is invoices for services rendered. The Officer fails to explain any concern with the invoices Mr. Moncada provided, despite invoices being one of the ways provided in the CRB Guidelines that an applicant can demonstrate fulfillment of the Income Eligibility Requirement. As this Court found in *Crook v Canada (Attorney General)*, 2022 FC 1670 at paragraph 17 and in *Sjogren v Canada (Attorney General)*, 2022 FC 951 at paragraph 28, lack of justification for rejecting a form of proof contemplated by the CRB Guidelines can render a decision unreasonable.

[13] The Respondent on judicial review has raised concerns with the nature of the handwritten invoices but these are not concerns raised by the Officer. In these circumstances, where the Officer does not reference the invoices and provides no explanation as to how they are insufficient to meet the eligibility requirements, I find that the decision is unreasonable.

[14] The application for judicial review is allowed and the matter is sent back to be redetermined. No costs are ordered.

[15] Finally, at the request of the Attorney General, and in accordance with Rule 303 of *the Federal Courts Rules*, SOR/98-106, the title of proceedings shall be amended to name the Attorney General of Canada as the Respondent in this application.

JUDGMENT IN T-1862-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The matter is sent back to be redetermined by a different decision-maker; and
3. The title of proceedings shall be amended to identify the Respondent as the Attorney General of Canada.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1862-21

STYLE OF CAUSE: GIUSEPPE MONCADA v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 3, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JANUARY 24, 2023

APPEARANCES:

Giuseppe Moncada

FOR THE APPLICANT,
OWN HIS OWN BEHALF

Gerard Westland

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT