

Federal Court



Cour fédérale

Date: 20230220

Docket: T-1079-22

Citation: 2023 FC 244

Ottawa, Ontario, February 20, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

YOUSEF ALEXANDER ZAGHLOUL

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Yousef Alexander Zaghoul (“Mr. Zaghoul”), applied for the Canada Recovery Benefit [CRB]. The Canada Revenue Agency [CRA] determined he was not eligible because he did not meet the minimum income requirement of \$5,000 in 2019, 2020, or the 12 months before the date of his first application. Mr. Zaghoul sought a second review. On April

28, 2022, the CRA second reviewer confirmed the initial decision and found Mr. Zaghoul ineligible for the CRB.

[2] Mr. Zaghoul challenges the second review decision in this judicial review. He first argues that the CRA breached procedural fairness by not informing him that he had to demonstrate that he was actually paid the amounts set out in the invoices he submitted. He argues that if he had known this was an issue for the CRA, he would have explained, as he has done on judicial review, that the invoices he submitted were accepted by the company but had not yet been paid because of the company's cash-flow difficulties.

[3] Second, Mr. Zaghoul argues that it was unreasonable for the CRA to not accept the invoices as proof of income, even where there was no proof of payment, because Canada's income tax is calculated on an accrual basis not on a payment receipt basis.

[4] Mr. Zaghoul's argument on the merits relies on his procedural fairness claim. Before the CRA, Mr. Zaghoul did not present the evidence or submissions he has presented before this Court relating to the company's financial difficulties and that income for CRB purposes ought to be calculated based on an accrual instead of a payment receipt basis. Mr. Zaghoul argues that he did not present these submissions or evidence to the CRA because the CRA had not notified him that his invoices were insufficient nor that he needed to show proof of payment.

[5] The procedural fairness issue is therefore determinative. If I find that there was no procedural fairness breach and Mr. Zaghoul knew the case he had to meet, then there is no basis

to find the decision unreasonable since the argument and evidence before me were not presented to the CRA. If, however, I find that there was a procedural fairness breach, Mr. Zaghoul should have the opportunity to make a submission to the CRA about the company's cash-flow difficulties, their promise to pay, and the need to consider his income on an accrual basis.

[6] After carefully reviewing the record, including the CRA notes of phone calls with Mr. Zaghoul, and the affidavits filed on judicial review, I am satisfied that Mr. Zaghoul knew the case he had to meet and therefore there was no breach of procedural fairness.

[7] Based on the reasons below, I dismiss the application for judicial review.

II. Background

[8] In 2019 and 2020, Mr. Zaghoul was self-employed providing technical support at NTG Clarity Networks, a data centre and telecommunications networking company. He also worked as a food delivery person for SkipTheDishes. He is a Type 1 diabetic and he is asthmatic. During the pandemic, he was unable to continue his work to the high risk associated with contracting COVID-19.

[9] Mr. Zaghoul applied for the CRB for 13 two-week periods from September 27 to October 24, 2020, from February 14 to July 3, 2021, and from September 26 to October 9, 2021. When he applied, he submitted: copies of invoices he issued to NTG Clarity Networks dated February 16, 2020 and April 1, 2020 for \$4,000 and \$3,462.91, respectively; and a copy of an account statement from SkipTheDishes showing \$1,237.09 in earnings. Mr. Zaghoul also

submitted his 2019 Tax Return, showing \$6,100 in income, and his 2020 Tax Return showing \$18,700 in income. Mr. Zaghoul submitted the same invoices and account statement again on June 26, 2021.

[10] On November 2, 2021, the CRA informed Mr. Zaghoul by letter that he was not eligible for the CRB because he did not meet the minimum income requirement of \$5,000 in 2019, 2020, or the 12 months before the date of his first application.

[11] On November 23, 2021, the Applicant requested a second review of the CRA's decision. He again enclosed the documents he submitted in June 2021. On March 30, 2022, the CRA second reviewer spoke to Mr. Zaghoul by telephone and asked him for bank statements to show whether he meets the minimum income requirement. On April 18, 2022, Mr. Zaghoul submitted his invoices again and enclosed a copy of his bank statements.

[12] In a letter dated April 28, 2022, the CRA second reviewer confirmed the initial decision, determining that Mr. Zaghoul was not eligible for the CRB because he did not meet the minimum income requirement of \$5,000 in 2019, 2020, or the 12 months before the date of his first application. The Second Review Report states that Mr. Zaghoul's bank statements showed that he earned \$2,294.48 and \$1,237 from SkipTheDishes in 2019 and 2020, respectively, but did not show payments for the invoices he submitted to NTG Clarity Networks. The CRA was therefore unable to confirm that Mr. Zaghoul met the minimum income requirement and denied his eligibility for the CRB.

III. Issues and Standard of Review

[13] The determinative issue in this judicial review is whether the CRA breached procedural fairness in not informing Mr. Zaghloul that he needed to provide proof of payment in relation to the invoices he had submitted. This issue does not relate to the merits of the decision. The general presumption of a reasonableness standard of review does not apply to procedural fairness issues (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 77). The question I need to ask is whether the procedure was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

IV. Analysis

[14] 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 *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*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.

[15] Section 6 of the *CRB Act* requires that an applicant provide the Minister with any information that the Minister may require in respect of the CRB application. The second

reviewer requested that Mr. Zaghoul provide proof of payment of his invoices and his 2019 bank statements. Mr. Zaghoul complied with this request and provided his bank statements. He did not, however, explain that NTG Clarity Networks had accepted his invoices but had not yet paid him for his work because of the company's cash-flow problems. Nor did he explain his view that proof of payment was not required because the CRA should calculate income on an accrual basis.

[16] Mr. Zaghoul argued on judicial review that he was not aware that the CRA needed proof of payment of his invoices, nor that it had any concerns with his invoices. He said that, had he known, he would have provided an affidavit from a financial officer of NTG Clarity Networks and his own affidavit explaining circumstances leading to non-payment on his invoices, as he did on judicial review.

[17] Mr. Zaghoul's assertion is difficult to reconcile with the CRA's records and requests for further information in relation to the invoices. The CRA specifically requested bank statements and Mr. Zaghoul complied with this request. The notes documenting the second reviewer's telephone call with Mr. Zaghoul on March 30, 2022 state: "recipient was requested his bank statements to confirm \$5,000.00 criteria." Similarly, the Second Review Report says that the reviewer requested Mr. Zaghoul's bank statements during the March 30, 2022 telephone call "to determine if he made at least \$5,000.00 in 2019."

[18] It is unclear for what purpose Mr. Zaghoul believed the CRA was interested in his bank statements if not to confirm his income. The request for bank statements also has to be

considered within the larger context: this was a second review where Mr. Zaghloul was already informed that the CRA did not accept that he had income of at least \$5,000 during the relevant period.

[19] I am satisfied in these circumstances that Mr. Zaghloul knew the case to meet and failed to provide the further relevant information to the CRA when asked for proof of income. There is no basis to find that there was a breach of procedural fairness. Accordingly, the judicial review is dismissed. The Respondent has not sought costs. In these circumstances, no costs are awarded.

JUDGMENT IN T-1079-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No costs are awarded.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1079-22

STYLE OF CAUSE: YOUSEF ALEXANDER ZAGHLOUL v CANADA
REVENUE AGENCY

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 18, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: FEBRUARY 20, 2023

APPEARANCES:

Yousef Alexander Zaghoul

w. Natasha Tso

FOR THE APPLICANT,
ON HIS OWN BEHALF

FOR THE RESPONDENT

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