

Federal Court



Cour fédérale

Date: 20230616

Docket: T-2304-22

Citation: 2023 FC 857

Toronto, Ontario, June 16, 2023

PRESENT: Madam Justice Go

BETWEEN:

CHARLES FENTUM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Charles Fentum, applied for the Canada Recovery Benefit [CRB] for 27 two-week periods from September 27, 2020 to October 9, 2021. The Canada Revenue Agency [CRA] reviewed the Applicant's applications and by letter dated March 8, 2022, informed him that he was not eligible for the CRB as he had not earned at least \$5,000 (before

taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of his first application [First Review Decision].

[2] The Applicant appealed the First Review Decision and a different CRA officer [Officer] conducted a second level review of the Applicant's CRB application. By letter dated October 6, 2022, the Officer determined that the Applicant is not eligible for the CRB because he was not working for reasons unrelated to COVID-19, and did not have a 50% reduction in his average weekly income compared to the previous year due to COVID-19 [Decision].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I grant the application.

II. Preliminary Issues

[4] As a preliminary point, the appropriate respondent is the Attorney General of Canada and not the CRA. The style of cause will be amended accordingly.

III. Analysis

[5] The enabling legislation of the CRB is the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act]. Pursuant to section 3 of the *CRB Act*, to be eligible for CRB, the Applicant must have:

- in respect of a CRB application for a two-week period beginning in 2020, earned at least \$5,000 of income from employment or self-employment

income in 2019 or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(d) of the *CRB Act*; and

- in respect of a CRB application for a two-week period beginning in 2021, earned at least \$5,000 of income from employment or self-employment in 2019, 2020, or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(e) of the *CRB Act*.

[6] Paragraph 3(1)(f) of the *CRB Act* further restricts eligibility to those who “for reasons related to COVID-19”, were not employed or self-employed, or had a reduction of at least 50% in their average weekly employment income or self-employment income for the two-week period relative to 2019 or in the previous 12-month period prior to the application.

[7] The Applicant submits that he was not working for reasons related to COVID-19. The Applicant states that his career is in hospitality and customer service management and these industries were severely impacted due to the pandemic. The Applicant also explains that he had applied to many job postings through 2020 and 2021 to no avail.

[8] The Applicant asserts that he made over \$5,000 in 2019, and had over a 50% reduction in average income in 2020 as compared to the previous year due to COVID-19. The Applicant further submits that he supplied the necessary proof of income, bank statements, T4s and paychecks to the CRA.

[9] The Applicant also submits that he complied with the CRA’s request for documents each time he was asked for any, and that the CRA no longer requested proof of the \$5,000 minimum

income during the second level review. The Applicant submits that he was not aware of the requirement to submit proof that he was not working due to COVID-19 reasons, or of a 50% reduction in income compared to the previous year. The Applicant alleges that he was only able to submit the additional proof through the judicial review process.

[10] In essence, the Applicant argues that there is a breach of procedural fairness and he challenges the merits of the Decision.

[11] I find that the determinative issue is the reasonableness of the Decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[12] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”: *Vavilov* at para 100.

[13] After the Applicant received CRB payments for the relevant periods, the CRA began the validation process. In January 2022, the Applicant submitted certain documents including his reassessment for the 2019 taxation year and screenshots of his banking transaction history from parts of 2019.

[14] A CRA agent spoke to the Applicant by telephone twice in February 2022 and requested additional information to show that the Applicant received \$5,000 in income within the 12-month period prior to the application. The Applicant then submitted more documents. Based on the information submitted, the Officer determined that the Applicant was not eligible to receive the CRB.

[15] After the First Review Decision, the Applicant was given additional opportunities to provide submissions, and did so on a number of occasions in April and July 2022, respectively. The Officer also spoke with the Applicant on July 7, 2022 in an interview to discuss the application. Specifically, the Officer asked the Applicant if he had any other income to report for 2019, 2020 and 2021, to which the Applicant stated no. The Applicant also advised the Officer that he was let go of a job in 2019 when he applied for Employment Insurance benefits.

[16] The Officer's Decision was based on two eligibility findings. For the 24 two-week periods from September 2020 to August 2021, the Officer found that the Applicant was not working for reasons unrelated to COVID-19. For the three two-week periods from August 2021 to October 2021, the Officer found that the Applicant did not have a 50% reduction in his average weekly income compared to the previous years due to COVID-19.

[17] The Respondent submits that the Decision was reasonable in light of the materials presented to the Officer. Pointing to the notes taken by the Officer, the Respondent argues that the Officer reviewed all the documents uploaded by the Applicant in advance of the interview with the Applicant in July 2022. The Officer asked probing questions and took copious notes of

the interviews with the Applicant. The Officer considered all the relevant information on file and conducted a thorough review of the Applicant's documents before reasonably concluding that the Applicant did not meet the income criteria, and that the Applicant was not working for reasons unrelated to COVID-19. The Respondent argues that the Applicant does not point to any shortcomings in the Decision, but merely expresses his disagreement.

[18] Despite counsel's able submission, I disagree with the Respondent.

[19] According to the interview notes taken by the Officer, when the Officer asked how the Applicant's work was affected from September 2020 until October 2021, the Applicant stated that at the start of the pandemic he was applying for new jobs at the airport and other hospitality jobs. The Applicant explained that while he stopped working in 2019, he would have worked again but for COVID-19. The Applicant further stated that just before the pandemic began, he was applying for a position at the airport; he had advanced to a third interview, but then everything shut down. As a result, he did not get the job.

[20] In light of the above-quoted explanation provided by the Applicant, I find the Officer's conclusion that the Applicant was not working for reasons unrelated to COVID-19 unintelligible. It would appear, from the Second Review Report, that the Officer came to this conclusion on the basis that the Applicant "stopped working in 2019 and did not return to work until August 2021" and that "this is before the pandemic started in March 2020" and therefore "does not have to do with COVID." The Applicant may well have stopped working in 2019 for reasons unrelated to COVID-19. However, the Officer erred in my view by making an unjustifiable leap when they

found that the Applicant's entire unemployed period from 2019 to August 2021 was for reasons unrelated to COVID-19. This conclusion did not take into account the explanation and information given by the Applicant during the interview with the Officer.

[21] The Officer may well have reasons to support their conclusion that the Applicant did not meet the income eligibility criteria for CRB periods 25 to 27; however, the Officer's error in finding the Applicant was not working for reasons unrelated to COVID-19 rendered the Decision as a whole unreasonable.

IV. Conclusion

[22] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[23] There is no order as to costs.

JUDGMENT in T-2304-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision-maker.
3. The Style of Cause shall be amended to reflect the Attorney General of Canada as the correct Respondent.
4. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2304-22

STYLE OF CAUSE: CHARLES FENTUM v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 31, 2023

JUDGMENT AND REASONS: GO J.

DATED: JUNE 16, 2023

APPEARANCES:

Charles Fentum

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Amin Nur

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT