Federal Court  Cour fédérale

Date: 20231101

Docket: T-1803-22

Citation: 2023 FC 1456

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 1, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MICHEL BOUCHARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Michel Bouchard, is seeking judicial review of a decision by a second review officer [the Officer] of the Canada Revenue Agency [CRA], dated August 4, 2022, in which the Officer concluded that the applicant was not eligible for the Canada Recovery Benefit [CRB]. The CRA denied his claim on the grounds that he had not earned at least $5,000 in

employment income or net self-employment income in 2019, 2020, or in the 12 months prior to the date of his first application, and that he had not experienced a 50% decrease in his average weekly income from the previous year for reasons related to COVID-19.

[2] The applicant is also seeking judicial review of a second decision made by the same Officer, dated August 4, 2022, in which, following a second review, she concluded that the applicant was not eligible for the Canada Emergency Response Benefit [CERB]. The CRA denied his application on the grounds that he had not earned at least $5,000 in employment income or net self-employment income in 2019 or in the 12 months prior to the day of his first application.

[3] The applicant explained to the Officer that he owns his own company, “Gestion Archimede Limitée”, and is paid in dividends as a self-employed worker. The Officer noted that the applicant has not received any income or salary since 2013. However, the Officer also noted that on March 31, 2021, the applicant filed a T5 for a dividend amount of $7,479.60 despite the fact that no dividends had been paid in the previous nine years. The Officer further noted that the applicant was unable to provide details of (i) the work he carried out, (ii) when the work was carried out, or (iii) any invoices or receipts to support the work carried out.

[4] The applicant claims that both decisions [Decisions] were unreasonable, as in his opinion the criteria of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act] and the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act] had been met. The applicant argues that, contrary to the Officer’s finding, the documentation he submitted demonstrates that

he had earned income of more than $5,000, including the T5 for the 2020 taxation year. He maintains that the T5, which is valid evidence of income, was sufficient to demonstrate that he met the criteria. In addition, he argues that the Officer should have notified him that she was assessing his tax history, and given him the opportunity to respond to or comment on it. Furthermore, he contends that an applicant's previous tax decisions are not relevant in determining eligibility for benefits.

[5] For the reasons that follow, and despite the strong and convincing argument of the applicant's counsel, the application for judicial review is dismissed. Having considered the CRA's reasons, the evidence on the record, and the applicable law, I am not persuaded that the CRA's Decisions can be characterized as being unreasonable.

II. Background

[6] The CERB and CRB were part of a package of measures introduced by the Government of Canada in response to the COVID-19 pandemic. Under subsection 5(1) of the CERB Act, the CERB was provided for any four-week period between March 15, 2020, and October 3, 2020. To be eligible for CERB benefits, applicants were required to demonstrate at least $5,000 in income from prescribed sources (which included income from self-employment) in 2019 or in the 12 months prior to their first application (*Hayat v Canada (Attorney General)*, 2022 FC 131 at para 2).

[7] The CRB was available to provide income support for any two-week period between September 27, 2020, and October 23, 2021, to eligible employed and self-employed individuals

who suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]). Eligibility criteria for the CRB are set out and explained in subsection 3(1) of the CRB Act. These criteria require, among other things, that employed or self-employed individuals earn at least $5,000 in employment income or net self-employment income in 2019, 2020, or in the 12 months prior to the date of their last application.

[8] The applicant applied for and received the CERB for seven four-week periods, namely for periods 1 to 7 (March 15, 2020, to September 26, 2020). Subsequently, the applicant applied for and received the CRB for 27 two-week periods, namely for periods 1 to 27 (September 27, 2020, to October 9, 2021).

[9] On January 20, 2022, the CRA selected the applicant's case for an initial review to determine whether the applicant met the eligibility criteria for the CERB and CRB. The applicant then submitted the Statement of Investment Income (T5) for the 2020 taxation year and banking statements for the periods ending January 17, February 17, and March 17, 2020. The first review officer issued two rulings that the applicant was ineligible for the CERB and CRB. The applicant provided additional documentation, including a letter of explanation and account statements from January 1 to March 31, 2020. He also provided his T5 for the 2020 taxation year for reconsideration.

[10] On second review, the Officer considered the new documents provided by the applicant as well as his declared income for the years 2013 to 2020. On August 4, 2022, the Officer concluded that the applicant was not eligible for The CERB and CRB.

III. Standard of review

[11] It is well established that the standard of review applicable in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Aryan* at paras 15–16).

[12] In order for a decision to be reasonable, it must be justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). A reasonable decision is one that is internally coherent, is justified in light of the relevant legal and factual constraints, and "bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at paras 85, 99; *Crook v Canada (Attorney General)*, 2022 FC 1670 at para 4).

[13] The onus is on the applicant, the party challenging the decision, to show that it is unreasonable (*Vavilov* at para 100).

[14] A reviewing court must adopt an attitude of restraint and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). To be able to intervene, a reviewing court must be convinced by the party contesting the decision 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", and that any alleged flaws or shortcomings "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[15] The Court must focus its attention on the actual decision rendered by the administrative decision maker, including its rationale, and not on the decision it would have rendered in its place. In the absence of exceptional circumstances, a court sitting in review must not interfere with the decision maker's factual findings. In addition, in the context of a judicial review application, it is not for this Court to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125; *Clark v Air Line Pilots Association*, 2022 FCA 217 at para 9).

IV. Analysis

[16] By way of preliminary matter and with the consent of the parties, the style of cause in this matter is amended to reflect the correct respondent, the Attorney General of Canada.

[17] The first issue to be addressed is which documents are admissible on judicial review. There are documents contained in the applicant's affidavit that were never submitted to the administrative decision maker, i.e. the Officer. The applicant contends that the additional documents are relevant, that they enable him to submit a full and fair defence, and that they must be reviewed by the Court. The respondent argues that the documents are not admissible and that the applicant is simply trying to supplement the evidence.

[18] As a general rule, the evidentiary record submitted to this Court on an application for judicial review of an administrative decision is limited to the evidentiary record that was before the administrative decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 86

[*Tsleil-Waututh Nation*]). While there are exceptions to the general rule (*Access Copyright* at para 20; *Tsleil-Waututh Nation* at para 98), I find that these do not apply to the new evidence adduced in this case.

[19] In any event, having reviewed the new evidence, I agree with the respondent that even if these documents had been submitted to the Officer, they would not have addressed her concerns. Similarly, if the documents were admissible in this judicial review, they would not have altered my conclusion that the Decisions were reasonable.

[20] With respect to the reasonableness of the Decisions, I agree with the respondent that it was reasonable for the Officer to conclude that the applicant had not earned at least $5,000 in income in accordance with the eligibility criteria established by the CERB Act and the CRB Act. Yes, the applicant had filed a T5 for $7,479.60 in dividends, but the Officer noted (i) that no dividends had been paid in the previous nine years; and (ii) that the applicant was unable to provide any details whatsoever of the work he had carried out.

[21] Next, the respondent argues that the Supreme Court of Canada has stated that dividends are a return on an investment and not a return in respect of work or a service that a shareholder may provide to a company (*Mcclurg v Canada*, [1990] 3 SCR 1020 at 1064). Dividends represent the return on an investment and attach to the share and not to the shareholder (*ibid*).

[22] Without evidence that the applicant carried out work and was remunerated, it was not unreasonable for the Officer to conclude that he had not met the eligibility criteria. The Officer's

notes show that after the applicant mentioned the dividends to the Officer, he was notified that he must send in his bank statements, invoices and expenses to prove that he had earned $5,000 in net income. He was aware of what was required, but nevertheless failed to provide evidence of (i) the work he carried out, (ii) when the work was carried out, or (iii) any invoices or receipts to substantiate the work carried out.

[23] Ultimately, the onus was on the applicant to show that the Decisions were unreasonable — that is, to show that the Decisions were not justified in light of the facts and law that constrained the Officer (*Vavilov* at para 85). Having examined the applicant's supporting documents and the record before the Officer, and having considered the arguments of the parties, I conclude that the Officer's Decisions ere reasonable.

[24] The applicant points out that the financial stakes in this case are substantial and that he was proactive and cooperative with the CRA's officers. While this may be true, unfortunately, this state of affairs cannot suffice to cause this Court to lose confidence in the reasonableness of the Officer's Decisions. I understand that this situation is very difficult for the applicant, but on the basis of the record and the information submitted to the Officer, I cannot conclude that the Officer made any reviewable error.

V. Conclusion

[25] The applicant has not discharged his burden of establishing that the Decisions rendered by the Officer were unreasonable. Accordingly, the judicial review application is dismissed. Given the fact that the applicant was represented by legal aid, there will be no award as to costs.

JUDGMENT in T-1803-22

THIS COURT'S JUDGMENT is as follows:

1. The applicant's application for judicial review is dismissed.
2. The style of cause is amended to reflect the Attorney General of Canada as the appropriate respondent.
3. There is no award as to costs.

"Vanessa Rochester"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1803-22
STYLE OF CAUSE:	MICHEL BOUCHARD v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
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APPEARANCES:

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