

Federal Court



Cour fédérale

Date: 20250203

**Dockets: T-1211-24
T-1212-24**

Citation: 2025 FC 216

Ottawa, Ontario, February 3, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

FARZIN TEYMOURIAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Context

[1] The Applicant, Farzin Teymourian [Applicant] seeks judicial review of two decisions by an officer of the Canada Revenue Agency [CRA] who concluded on a second-level review that he was not eligible for the Canada Recovery Benefit [CRB] and the Canada Emergency Response Benefit [CERB] [collectively, Decisions]. The Applicant argues that the CRA officer

[Officer] ignored evidence that he earned at least \$5,000 (before taxes) and that he was eligible for the benefits.

[2] As was explained to the Applicant at the hearing, the role of the Court on judicial review is to assess the reasonableness of the Decisions and to evaluate if they accord with the applicable legal principles of the CERB and CRB based on the evidence before the Officer. I am sympathetic to the Applicant's situation. However, for the reasons that follow, I cannot find that the Decisions are unreasonable. As such, the applications for judicial review are dismissed.

II. Facts

[3] The Respondent's Record included CRA officers' notes as recorded in the CRA system (identified as T1Case agency-wide notepad and T1Case case specific notepad [CRA Notes]). The CRA Notes identify, among other things, the procedural history of the Applicant's applications and submissions to the CRA as well as CRA officers' notes of their interactions with the Applicant and notes related to his case.

[4] The Applicant received CERB benefits between March 15, 2020, and September 26, 2020 (periods 1 to 7), and CRB benefits between September 27, 2020, and October 9, 2021 (periods 1 to 27). On March 29, 2023, the Applicant's file was subject to a first review to verify his eligibility for the CERB and the CRB [First-Level Review]. On April 14, 2023, the Applicant sent the CRA a cover letter dated April 11, 2023, and his Statement of Business or Professional Activities for the fiscal period of January 1, 2019, to December 31, 2019 [Statement]. During this review, an officer attempted to get further documentation from the Applicant but had

difficulty establishing contact with him. On a second attempt, an officer was able to contact the Applicant, who was reluctant to speak with him as the Applicant stated that the call was a scam. According to the CRA Notes, the officer informed the Applicant how to validate the officer's call.

[5] On June 30, 2023, the Applicant was informed in a letter that he was not eligible to receive CRB benefits because "he did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019, 2020 or in the 12 months before the date of your application". As for the CERB benefits, he "did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of your first application". Each refusal was sent in separate letters [collectively, First-Level Decisions]. The Applicant was advised that he could request a second-level review if he disagreed with their conclusions. The letters also informed the Applicant that he could submit additional information to support his challenge. More precisely, the letter explicitly stated that his request for a second review must include the reasons why he disagreed with the CRA's decision, any relevant new documents, new facts or correspondence as well as contact information.

[6] On July 20, 2023, the Applicant requested a second review of the First-Level Decisions [Second-Level Review]. On the same day, the CRA received from the Applicant a cover letter dated July 17, 2023. No new documents were submitted. Rather, the Applicant sent another copy of the Statement, which was the same document submitted in his First-Level Review. The CRA Notes indicate that during the Second-Level Review, the Officer made three unsuccessful attempts to contact the Applicant to seek additional information.

[7] The Officer proceeded with the Second-Level Review and considered the documents that were assessed during the First-Level Decisions; the Applicant's letter requesting a second review dated July 20, 2023; a copy of the Applicant's Statement documents provided on July 20, 2023; and, the information found on the CRA's systems with respect to the Applicant's income for the 2019, 2020, and 2021 taxation years.

[8] On May 1, 2024, the Officer sent to the Applicant two letters regarding the CERB and CRB Second-Level Review. The Applicant was advised that he was not eligible for the CERB nor the CRB because he did not meet the \$5,000 minimum income criterion. These Second-Level Decisions are the subject of two applications for judicial review and were heard at the same time.

III. Issues and Standard of Review

[9] The issue in this case is whether the Decisions denying the Applicant's eligibility to the CRB and CERB were unreasonable. The Court will apply the reasonableness standard of review to the merits of the Decisions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 15-16 [*Aryan*]; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 14).

[10] The Applicant has asked that the Court recognize his eligibility for CERB in 2020 and CRB in 2021. As I explained to the Applicant, the Court on judicial review cannot make a determination of his eligibility. On judicial review, a reviewing court must determine whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility

(*Vavilov* at para 99). A reasonable decision in a given case always depends on the relevant factual and legal constraints affecting the decision under review (*Vavilov* at para 90). A court applying the reasonableness standard does not ask what decision it would have made in place of the administrative decision-maker (*Vavilov* at para 13).

[11] The decision-maker may assess and evaluate the evidence before it and absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125). The party challenging the decision has the burden of showing that the decision was unreasonable (*Vavilov* at para 100).

IV. Preliminary Issues

A. *Objections to Exhibits in Applicant’s Record: Evidence not before the Officer*

[12] The Respondent objected to three exhibits (Exhibit B, C and H) in the Applicant’s Record. The documents at issue are a Notice of Assessment for 2020 dated May 28, 2021 (Exhibit B), a Notice of Assessment for 2021 dated June 13, 2022 (Exhibit C) and a Notice of Reassessment for 2019 dated May 23, 2023 (Exhibit H) [collectively, New Documents]. The Respondent submits that the New Documents were not before the Officer when they made the Decisions. As such, these New Documents are not admissible, and the Court should not consider them in assessing the merits of the Decisions.

[13] The Respondent also states that the New Documents would not have changed the outcome since they do not establish the minimum net self-employment income threshold required under the requirements for the CRB and CERB. The Respondent explains that the tax assessments and reassessments submitted by the Applicant without further explanation are not conclusive proof of income. The Respondent relies on the Court's jurisprudence that tax assessments or notices of assessment alone are not sufficient proof that self-reported income was earned (*Aryan* at para 35; *Sjogren v Canada (Attorney General)*, 2023 FC 24 at para 39).

[14] The Applicant agreed that he did not submit the New Documents to the Officer. However, he argued that they show he met the eligibility requirements. Especially with Exhibit H, a Notice of Reassessment, the CRA recognized his net income as they assessed a balance due from him. There was some discussion at the hearing that the Applicant had served an additional affidavit with new exhibits. While the affidavit was not before the Court at the hearing, the Applicant also confirmed that these new exhibits were not before the Officer.

[15] Based on the dates on the New Documents, these documents precede the Second-Level Decisions. The record also demonstrates that the Applicant was given the opportunity to provide further documentation during both reviews. There is no evidence before me to explain why he did not submit these documents before the Decisions were rendered.

[16] The general rule is that on judicial review, the Court is limited to the evidentiary record that was before the decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter before the decision maker is not admissible in an application for

judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). The exceptions to this general rule are:

- (1) evidence that comprises general background in circumstances where the information might assist the reviewing court in understanding issues relevant to the proceeding;
 - (2) evidence that brings attention to procedural defects that cannot be found in the evidentiary record; and
 - (3) evidence that illustrates the complete absence of evidence before the decision maker when it made a particular finding
- (*Access Copyright* at para 20).

[17] I agree with the Respondent's submissions that none of the exceptions in *Access Copyright* applies. Accordingly, I cannot consider Exhibits B, C and H. While the new affidavit and exhibits were not before me at the hearing, if the Applicant had filed any additional evidence in the Court record, I also cannot consider this new documentation on the same basis.

B. *New Issue Raised at the Hearing*

[18] During the hearing, the Applicant disputed the CRA Notes mentioning that the officers at both levels of review attempted to make contact with him without success. The officers "never called him".

[19] The Respondent objected to this argument, as the Applicant had not identified this issue before the hearing. The Respondent cited a recent decision of this Court, *Shrestha v Canada (Attorney General)*, 2024 FC 2099 at paragraph 12 [*Shrestha*] where the applicant in that case

brought a last-minute submission that she did not respond to calls from the CRA reviewers asking for additional information because they could be scams. In this case, the Court did not consider this last-minute submission because it was not raised in the applicant's supporting affidavit or written submissions, and the applicant had provided no reasons why the argument was not made sooner.

[20] In response to the Respondent's objection, the Applicant stated that *Shrestha* was not relevant to his case. He states that unlike the applicant in *Shrestha*, he states he never received any calls from the CRA. There was some discussion that the Respondent provided the Applicant with a copy of the *Shrestha* case a few days before the hearing. The Respondent indicated that the decision, dated December 30, 2024 was issued after the filing of their Memorandum of Argument, which is why this case was brought forward later.

[21] I note that the principle that Justice Fuhrer discussed in *Shrestha* is a well-established principle that the Court can refuse to consider an argument because it was presented for the first time at the hearing (*Beddows v Canada (Attorney General)*, 2020 FCA 166 at paras 15-16, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 22). This is a principle I must consider given that the Applicant's argument about the phone calls from CRA was indeed raised for the first time at the hearing.

[22] I also note that it is well established that notes such as those in the CRA Notes including the Officer's second review report forms part of the reasons for the Officer's Decisions (*Aryan* at

para 22, other citations omitted; *Singh v Canada (Attorney General)*, 2024 FC 51 at para 33). As such, the Court's review of the Decisions must also include the CRA Notes.

[23] The Applicant's Record and Memorandum of Argument did not challenge the CRA Notes that the officers called him but were unable to make contact with him. As such, I find that this is a last-minute submission and it would be prejudicial to the Respondent if the Court were to accept it in assessing the merits of the Decisions. Accordingly, I cannot consider the Applicant's late argument.

[24] I now turn to the reasonableness of the Decisions.

V. Analysis

[25] The issue in this case is centered on the Applicant's contention that his gross income met the \$5,000 threshold for the CRB and CERB.

[26] The CRB stems from the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act]. Section 3 of the CRB Act describes the eligibility requirements. A person is eligible if, in the case of an application in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make their application, a total income of at least \$5,000 from employment or self-employment.

[27] The CERB stems from the *Canada Emergency Response Benefits Act*, SC 2020, c 5, s 8 [CERB Act]. Section 2 of the CERB Act describes the eligibility requirements. Applications

must be made by workers who can demonstrate for 2019 or in the 12-month period preceding the day on which they make an application that they have a total income of at least \$5,000 from employment or self-employment.

[28] The Minister has the right under section 6 of the CRB Act and section 10 of the CERB Act to request any other supporting documentation.

[29] The Applicant states that he was eligible to the CERB benefits in 2020 and CRB in 2021 since he met the minimum requirement of \$5,000 before taxes. He refers the Court to his Statement and that his income “clearly indicates an amount over the minimum” requirement.

[30] On the other hand, the Respondent underlines that the Applicant has identified himself as self-employed and therefore the applicable threshold is \$5,000 in net self-employment income. The Applicant’s use of the term “\$5,000 before taxes” relates to employment income, which does not apply to him. The Respondent pointed to the CRA Notes and documents the Applicant submitted. While the Applicant did report gross income for 2019 of \$5,653.40 in his Statement, after deductions, his net income was (\$4,146.21). Similarly, his net self-employment income for 2020 was (\$1,861.00). The Respondent submits that the record supports the Officer’s conclusion that the Applicant had not met the required financial threshold.

[31] While the Applicant contends he genuinely believed he was eligible for the CRB and CERB, with respect to COVID-19 benefits, this Court has repeatedly held that the onus is on

applicants to inform themselves of the eligibility criteria for each benefit, and to prove that those criteria have been met (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 55).

[32] In the Applicant's case, the Officer applied the appropriate eligibility requirements for the CERB and CRB. The records that were before the Officer did not demonstrate a net self-employment income of at least \$5,000 for either 2020 or 2021. I cannot find that the Officer unreasonably concluded that the Applicant did not meet the CERB and CRB eligibility requirements.

[33] The Decisions meet the hallmarks of justification, intelligibility and transparency (*Vavilov* at para 100) based on the factual and legal constraints that bear on the decision maker. Both applications for judicial review must therefore be dismissed.

VI. Costs

[34] Despite the parties' agreement to a lump sum of \$500 in costs, I am of the opinion that an award of costs is not appropriate in this case. The Applicant represented himself and his written materials and oral submissions at the hearing were concise. He demonstrated civility at the hearing and I find that a costs order would be unduly punitive in the circumstances (*Caron v Canada (Attorney General)*, 2024 FC 1073 at para 31 citing *Showers v Canada (Attorney General)* 2022 FC 1183 at para 32 and *Broughton v Canada (Attorney General)* 2023 FC 1693 at para 34). Accordingly, I exercise my discretion and no costs will be awarded.

JUDGMENT in T-1211-24 and T-1212-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no award as to costs.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-1211-24 / T-1212-24

STYLE OF CAUSE: FARZIN TEYMOURIAN v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: MONTRÉAL (QUÉBEC)

DATE OF HEARING: JANUARY 29, 2025

JUDGMENT AND REASONS: NGO J.

DATED: FEBRUARY 3, 2025

APPEARANCES:

Farzin Teymourian

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Karine Deschêne

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal (Québec)

FOR THE RESPONDENT