Federal Court  Cour fédérale

Date: 20250204

Docket: T-1964-24

Citation: 2025 FC 221

Toronto, Ontario, February 4, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

YONAS ASFAWU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision of the Canada Revenue Agency [CRA] dated June 28, 2024 [the Decision], which found the Applicant ineligible for a Canada Recovery Benefit [CRB] payment previously received by the Applicant. In the Decision, the CRA found the Applicant ineligible because the Applicant had received Employment Insurance [EI] benefits during the same period.

[2] However, after the Applicant filed this application for judicial review, the CRA determined that the Applicant was eligible for the CRB payment in question and reversed the Decision. The Applicant has nonetheless continued to pursue this application for judicial review.

[3] As explained in further detail below, this application is dismissed, because the Decision of which the Applicant seeks judicial review has already been reversed by the CRA, and the Applicant is not entitled to the other categories of relief he seeks.

II. **Background**

[4] Between May 19, 2021, and August 13, 2021, the Applicant worked as a seasonal employee and received CRB payments.

[5] The CRB payment period at issue in the Decision is the period between August 1, 2021, and August 14, 2021 [the Relevant Period]. Following August 13, 2021, when the Applicant's employment ceased, he became eligible for EI benefits and ceased claiming for CRB. However, the Applicant's EI claim was incorrectly recorded as related to the previous week (and therefore overlapping with the Relevant Period for which he had claimed the CRB), despite the Applicant not receiving any EI payments for that week.

[6] On November 24, 2022, the Applicant received a Notice of Redetermination from the CRA, stating that he was ineligible for the CRB during the Relevant Period because he received benefits from Service Canada (*i.e.*, EI benefits) during the same period [the First Decision]. A second review of the First Decision was commenced on November 29, 2022, with the Applicant providing written submissions on September 11, 2023, regarding the erroneous overlap.

[7] On June 28, 2024, the CRA issued the Decision that is the subject of this application for judicial review, again finding the Applicant ineligible for the CRB during the Relevant Period.

[8] After the Applicant had filed this application for judicial review on July 31, 2024, the CRA sent the Applicant a Notice of Redetermination dated August 29, 2024, finding the Applicant eligible for the CRB during the Relevant Period and confirming that the Applicant was no longer required to repay the CRA for CRB payments received during the Relevant Period. The CRA further confirmed this finding in a letter to the Applicant dated September 3, 2024, which stated that the Applicant had not received payments from both Service Canada and the CRA during the Relevant Period.

III. **Decision under Review**

[9] In the Decision that is the subject of this application for judicial review, the CRA found the Applicant ineligible for the CRB during the Relevant Period, because the Applicant had received benefit payments from Service Canada during the same period.

[10] The Federal Court has found that entries in the "CRA Notepad" by the reviewing officer relevant to the decision at issue form part of the reasons for the decision (*Cozak v Canada (Attorney General)*, 2023 FC 1571 at paras 8–9).

[11] In an entry in the CRA Notepad entitled "Second Review for Double Claimant" dated April 22, 2024 [the Second Review Notes], an officer of the CRA [the Second Reviewer] describes the Applicant as "disputing double claimant by providing explanation for the period clashes and documents to support his claim."

[12] The Second Review Notes also state that an information request was sent to Employment and Social Development Canada [EDSC]. EDSC informed the CRA that the Applicant had received EI for one of two weeks during the Relevant Period. The Second Reviewer therefore found the Applicant ineligible for the CRB during the Relevant Period.

IV. **Issues and Standard of Review**

[13] The Applicant argues that the Decision is unreasonable (which, as is implicit in that articulation of the issue, is governed by the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17). The Applicant's materials also reference a procedural fairness issue, but the related argument appears to be that the Second Reviewer overlooked evidence, which is an argument challenging the reasonableness of the Decision.

[14] However, the Respondent argues that the principal issue for the Court's determination is the preliminary issue of whether this application for judicial review is moot, given the CRA's reversal of the Decision.

[15] The Respondent also raises a preliminary procedural issue, submitting that the Applicant has not named the correct Respondent. In its written materials, the Respondent raised additional preliminary issues, related to whether the Application Record included evidence that was not admissible on judicial review and included evidence that is subject to settlement privilege. At the hearing, the Applicant clarified that it was not necessary for the Court to address those evidentiary issues.

V. **Analysis**

A. *Preliminary issue*

[16] The Applicant's Notice of Application [NOA] names "The Canada Revenue Agency" as the Respondent in this matter. The Respondent argues that the correct Respondent is the Attorney General of Canada.

[17] While this is purely a technical point, which does not affect the outcome or effect of my decision, I agree with the Respondent. Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 [the Rules], states that the Attorney General of Canada should be named as a respondent where there are no persons that can be named as respondent under Rule 303(1), *i.e.*, a person who is directly affected by the order sought, other than a tribunal in respect of which an application for judicial review is brought, or a person who is required to be named under the statute by which the application is brought. Following Rule 303(2), the Attorney General of Canada is the properly named respondent in this case.

[18] My Judgment will therefore effect this change to the style of cause.

B. *Mootness*

[19] The Respondent argues that this application for judicial review should be dismissed, because it is moot, in that the Decision that the Applicant asks the Court to review has already been reversed by the CRA.

[20] *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), provides a two-step analysis for considering whether the Court should address a matter that is argued to be moot. The first step is to determine whether there remains a live controversy that affects or may affect the rights of the parties. If the answer is no and the proceeding is moot, the second step is for the Court to determine whether it should nonetheless exercise its discretion to hear the matter (*Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 10). The three overriding principles to be considered in the second step are: (1) the presence of an adversarial relationship; (2) the need to promote judicial economy; and (3) an awareness of the Court's adjudicative role (*0769449 BC Ltd (Kimberly Transport) v Vancouver Fraser (Port Authority)*, 2016 FC 645 at para 22).

[21] I agree with the Respondent that there is no longer a live controversy between the parties on the merits of the Decision. The CRA's reversal of the Decision and confirmation that the Applicant was eligible for CRB during the Relevant Period (as communicated August 29, 2024, and September 3, 2024) resolved the controversy between the parties that gave rise to this application. Indeed, as the Respondent points out, that result is more favourable to the Applicant than the result that would typically be achieved through a successful application for judicial review, which involves sending a matter back to the administrative decision-maker for redetermination.

[22] However, the mootness analysis is complicated by the fact that the Applicant is seeking in this application remedies other than in relation to the merits of the Decision. The relevant portion of the NOA reads as follows:

> On proving this decision to be wrong, I am applying to the court for:
>
> 1. An order for quashing or vacating this decision.
>
> 2. An order in the nature of mandamus compelling the minister to grant me the right to have my repeated request for a detailed review on this unfairly overstated matter that have [*sic*] been and still is robbing my production time and energy re-sent back to the CRA for redetermination by a different decision maker who can review this same case from a wider perspective.
>
> 3. An order on recollecting my costs of disputing this wrong decision.
>
> 4. An order on a refund of CAD159.00 as E.I. refund. Re: adjustment of first week of E.I. benefit payment from August 8 – 4, 2021 to August 22 – 28, 2021.
>
> 5. Such further and other relief as this Honourable court deems just.

[23] Further, in his Memorandum of Argument, the Applicant recasts his request for *mandamus* to read as follows:

> An order in the nature of mandamus compelling the minister to grant me the right to have my future data security and my future correspondence with this government agency treated in a fair and just manner instead of the way it is treated in the course of the handling of this case.

[24] The Applicant's Memorandum of Argument also further articulates as follows his request for recovery of costs:

> An order on recollecting my moral, time, financial and labour costs of dealing with this whole case for the past two consecutive years.

[25] As such, while there is no live controversy between the parties on the merits of the Decision, the remedies available to the Applicant remain a live issue that the Court must address. I therefore conclude that the matter is not entirely moot and will adjudicate the remedies issue.

C. *Remedies*

(1) Mandamus

[26] The request for an order of *mandamus* articulated in the Applicant's NOA simply seeks that, after quashing the Decision, the Court return the matter to the CRA for redetermination by a different decision-maker. While not technically an order in the nature of *mandamus*, this relief is what usually follows a successful application for judicial review.

[27] However, the Decision has already been reversed by the CRA, and the Applicant's Memorandum of Argument now articulates the *mandamus* request as related to the future handling of his data. At the hearing of this application, he explained (although without the benefit of any supporting evidence) that he has had negative interactions in the past with government agencies and suspects that he may have been flagged in some way for what he considers to be unfair treatment.

[28] The Court has no authority in this application to grant relief of the sort the Applicant is requesting. As the Respondent correctly notes, the modified *mandamus* request is not properly before the Court, as it was not pleaded in the NOA as required by Rule 301(d) of the Rules. Moreover, the Applicant has provided no evidence or argument in satisfaction of the requirements for issuance of an order in the nature of *mandamus* (see *Apotex Inc v Canada (Attorney General)* (1993), [1994] 1 FC 742 at 766–69, 1993 CanLII 3004 (FCA)).

[29] Accordingly, this category of relief is not available to the Applicant.

(2) Employment Insurance refund

[30] The Applicant asserts that, as a consequence of the circumstances identified in this application, his EI benefits have been negatively adjusted by $159. He seeks relief in relation to this amount.

[31] However, as the Respondent submits, this request appears to challenge a decision made by the federal government authorities that administer EI benefits. I agree with the Respondent that it appears the Applicant is seeking relief in relation to an administrative decision other than the Decision under review in this application. As contemplated by Rule 302, unless the Court otherwise orders, an application for judicial review is required to be limited to a single order in respect of which relief is sought. Moreover, the NOA identifies only the Decision by the CRA as the decision to be reviewed in this application.

[32] As such, this category of relief is also unavailable to the Applicant.

(3) Recovery of costs

[33] The Applicant seeks various categories of costs incurred in dealing with the CRA in connection with his entitlement to CRB payments.

[34] While the Applicant has not identified this request for relief with any precision, it appears to represent principally a claim in damages. It is trite law that damages are not available in an application for judicial review (*Brake v Canada (Attorney General)*, 2019 FCA 274 at para 26).

However, the Court does have jurisdiction to award costs of this application itself, to which I will now turn.

VI. **Costs**

[35] The Respondent clarified at the hearing that it does not claim costs in this application, and it argues that costs should not be awarded to the Applicant, because he chose to pursue this application after he received notice that the CRA had reversed the Decision.

[36] The Applicant asserts in the NOA that he received the Decision on July 5, 2024. He then commenced this application for judicial review by NOA dated July 31, 2024. Approximately a month later, the CRA sent the Applicant a Notice of Redetermination dated August 29, 2024, reversing the Decision, and it further confirmed this finding in a letter to the Applicant dated September 3, 2024. In the meantime, the Applicant took steps to advance the application, including preparing his affidavit sworn on August 12, 2024, and presumably incurred some out-of-pocket costs, at least in relation to the Court filing fee.

[37] However, after the CRA reversed the Decision, the Applicant continued to advance the application, principally in order to obtain adjudication of the various categories of relief canvassed above in respect of which he has been unsuccessful. As such, I agree with the Respondent that no costs should be awarded.

JUDGMENT IN T-1964-24

THIS COURT'S JUDGMENT is that

1. The style of cause in this application is amended as above to name the Attorney General of Canada as the Respondent.
2. This application is dismissed.
3. There is no order as to costs.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1964-24
STYLE OF CAUSE:	YONAS ASFAWU v CANADA REVENUE AGENCY
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Yonas Asfawu	FOR THE APPLICANT (ON THEIR OWN BEHALF)
Elliot McPhail	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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