

Federal Court



Cour fédérale

Date: 20220412

Docket: T-781-21

Citation: 2022 FC 523

Ottawa, Ontario, April 12, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

FRANK SANTAGUIDA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Frank Santaguida, seeks judicial review of a decision dated April 6, 2021, finding him ineligible to receive the Canada Recovery Benefit [CRB].

[2] The CRB was part of a package of measures introduced by the Government of Canada in response to the COVID-19 pandemic. It provided financial support to eligible employed and self-

employed individuals directly affected by the COVID-19 crisis. In order to receive the CRB, eligible residents of Canada could apply for benefits in respect of any two-week period falling within the period beginning on September 27, 2020, and ending on October 23, 2021. They could also apply for benefits retroactively for any period up to sixty (60) days after that period had ended. One of the eligibility requirements was a minimum income of \$5,000 in 2019 or 2020, or in the twelve-month period prior to their first application for the CRB.

[3] The Canada Revenue Agency [CRA] was responsible for administering the CRB on behalf of the Minister of Employment and Social Development. As part of its duties, the CRA could validate certain CRB applications.

[4] In December 2020, the Applicant applied for the CRB for the thirteen (13) two-week periods between September 27, 2020, and March 27, 2021. The CRA decided to validate the application and had several discussions with the Applicant about the requirement to substantiate his earned income. The Applicant claimed to have worked in a café, which had since shut down. He maintained that the owner paid him via Certapay and could no longer be reached, as he had disappeared.

[5] On January 15, 2021, the CRA rendered a first decision and found that the Applicant was not eligible for the CRB, as he did not meet the following criteria:

You did not earn 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 your first application.

[6] The letter informed the Applicant that if he disagreed with the decision, he could request a second review, which he did on January 25, 2021.

[7] During a telephone conversation on February 24, 2021, the officer assigned to conduct the second review [Officer] requested that the Applicant provide additional documentation to establish that he met the eligibility criteria of \$5,000.

[8] The Applicant provided the following documents to the CRA on March 24, 2021, and March 31, 2021:

- a) a copy of his driver's license;
- b) credit union statements for September 2018 and January 2020;
- c) a printout of his banking history with the credit union for the period starting January 9, 2019, until December 27, 2019;
- d) a printout of his banking history with his bank for the period starting February 19, 2020, until April 3, 2020; and
- e) a Personal Assessment with his bank dated February 19, 2021.

[9] By letter dated April 6, 2021, the Officer noted that, further to a conversation on February 24, 2021, the CRA had not received the documents requested to confirm his CRB eligibility. The Officer informed the Applicant that he did not meet the eligibility criteria to qualify for the CRB and that if he disagreed with the decision, he could apply to this Court for judicial review within thirty (30) days of the date of the letter.

[10] The Applicant, who is self-represented, submits that he was denied procedural fairness when the CRA required him to “physically” obtain a receipt for work done while under COVID-19 restrictions. He also claims that the Officer erroneously concluded that he was ineligible because he did not earn at least \$5,000.

II. Analysis

[11] The Officer’s decision is reviewable against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 15 [*Flock*]; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16 [*Aryan*]; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 14).

[12] When determining whether a decision is reasonable, the Court’s focus is on “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83). It must ask itself “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The “burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov* at para 100).

[13] When reviewing issues of procedural fairness, the role of this Court is to determine whether the proceedings were fair in all the circumstances (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35;

Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at paras 54-56).

A. *No Breach of Procedural Fairness*

[14] The Applicant claims that he was asked by the CRA to “physically” obtain a receipt for work done in 2019. He states that he is a high-risk disabled individual and was advised by his doctor to stay home. He submits that the CRA failed to acknowledge that it would be against the law and the rules of the lockdown during the pandemic to have him go out to obtain a receipt of work. In his view, the CRA has shown reckless disregard for his safety and life.

[15] The Applicant’s argument is without merit.

[16] The Second Review Report [Report], which forms part of the reasons for the Officer’s decision (*Aryan* at para 22), does not support the Applicant’s argument that he was required to “physically” go out to obtain a receipt for work.

[17] The Report shows that the Applicant had several conversations with the CRA throughout the process regarding the need to substantiate his declared income. During a telephone conversation with the Applicant on February 24, 2021, the Officer informed him that the bank statements he provided did not constitute proof of his income. While they showed multiple entries to and from his account using Certipay, they did not demonstrate where the money was coming from. The Officer asked the Applicant to provide pay stubs, a record of employment or T4 documents to show that he met the \$5,000 eligibility requirement. When the Applicant stated

that the café where he worked had closed, the Officer suggested that he try engaging Service Canada to assist in obtaining a record of employment from his employer.

[18] During the course of the same conversation, the Applicant also asked about the e-transfer he received for doing work on someone's home. He indicated that he did casual jobs. The Officer informed the Applicant that the CRA would need documents to show that he was carrying on an active business and asked him to provide an invoice for the work done, showing the client's name, contact information, what was done and how much he was paid.

[19] In another conversation on March 10, 2021, the Officer suggested to the Applicant that if he had reported his income to his social assistance provider, he could communicate with them to obtain a letter supporting his income claim.

[20] The Report clearly shows that the Applicant was aware of the type of supporting documents he needed to submit to substantiate his income and that he was afforded the opportunity to present his case.

[21] The Applicant argued at the hearing that he could not provide an invoice for the renovation work because he could not physically go see the person for whom he had worked. I do not find this to be a reasonable excuse given that the invoice would have originated from the Applicant himself. I also note that the Applicant has not demonstrated that he could not communicate with his client by email, telephone, or by mail to obtain receipts for the payments received.

[22] I understand that the situation with COVID-19 may have made things more difficult for the Applicant. However, there is simply insufficient evidence on the record to persuade me that the Applicant could not obtain the requested documentation without putting himself at risk or being in violation of the lockdown.

[23] The Applicant also argued at the hearing that the transition from the Canada Emergency Response Benefit [CERB] to the CRB was intended to be easy and that it is unfair for him to have received the CERB and then be denied the CRB. While I am sympathetic to the Applicant's argument, I have no evidence before me of the qualifying criteria for the CERB. However, I note that this Court considered this argument in *Flock*. The Court observed that two (2) different statutes introduced the CERB and the CRB and that the qualifying criteria were not the same (*Flock* at para 3).

[24] The duty of procedural fairness requires that an individual impacted by a decision be given an opportunity to know the case against them and present their case fairly and fully (*Vavilov* at para 127). The onus of demonstrating a breach of procedural fairness lies with the Applicant. Upon review of the record and after considering the submissions of the Applicant, I am not persuaded that his right to procedural fairness was breached.

B. *Reasonable Decision*

[25] The Applicant claims that it was unreasonable for the Officer to deny his application because he could not provide the work receipt.

[26] The Applicant was required, pursuant to section 6 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, to provide any information required by the CRA in respect of the application.

[27] In determining if an applicant was eligible, the officers used a document entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guideline] to guide them. It addressed the documentation required to establish the \$5,000 minimum income. For employment income, acceptable proof would consist of recent pay slips, employment verification letters, record of employment, bank statements showing the name, address and payroll deposit and any other documentation that will substantiate employment income for \$5,000. As for self-employment income, the CRA Guideline provided several examples of what would constitute acceptable proof. An example of such proof would consist of invoices to clients showing the date of the service, the name of the client, the cost of the service and the type of payment received.

[28] Where an individual was unable to provide any of the documents suggested, the officers would work with the applicant to see what other acceptable documents they may have. This is exactly what the Officer did in the second review. The Officer explored with the Applicant what documents would constitute acceptable proof in order for him to access the CRB. There is no evidence that the Applicant pursued the alternative routes suggested by the Officer and that he was unable to access the requested documents when attempting to do so.

[29] I recognize that the CRA Guideline also stated that officers may use their “judgment, experience and expertise” in deciding if proof is required. However, in this case, the Officer

could reasonably require proof of income. The entries in the CRA's system demonstrate that the Applicant was on social assistance and that he had no other source of income.

[30] Moreover, it was reasonable for the Officer not to rely on the amended 2019 tax return filed by the Applicant in March 2021 to include the amounts he claimed to have earned. The entries in the CRA's system indicate that the Applicant did not have any T4 slips or other slips to substantiate his alleged income. Additionally, Canada's income tax system is a self-reporting system. It is based on the premise that the taxpayer is able to provide all relevant documents in support of their return (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 37).

[31] Upon review of the record, I am satisfied that the decision is reasonable. The Officer considered all relevant information, such as the CRA's Special Assessment Observations Notepad Entries, the Applicant's previous income and deductions for 2017, 2018 and 2019 taxation years as recorded on the CRA's computer system, and all of the Applicant's documents. The Officer could reasonably find that the Applicant's supporting documents were simply insufficient to support his application. The Applicant has not raised any valid arguments to explain how the Officer's decision was unreasonable, despite his burden to do so (*Ayran* at para 45). The Applicant's arguments amount to a disagreement with the weight given to his supporting documents. It is not the Court's role to re-assess them to arrive to a conclusion that is favourable to the Applicant (*Vavilov* at para 125, *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[32] The Applicant attached three (3) documents to his affidavit in support of his application for judicial review: (1) a bank statement from 2019; (2) the invoice for the renovation work; and (3) documentation on the individuals who are at risk of more severe disease or outcomes from COVID-19. However, these documents were not before the Officer at the time of the decision.

[33] It is trite law that, on judicial review, the Court is limited to the evidentiary record that was before the decision maker. The Federal Court of Appeal has recognized three (3) non-exhaustive exceptions to the general rule: (1) the new evidence provides general background information; (2) the new evidence addresses procedural fairness issues; or (3) the new evidence highlights the complete absence of evidence before the administrative decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

[34] Since none of these exceptions apply, the documents attached to the Applicant's affidavit are inadmissible and have not been considered by the Court.

[35] To conclude, the Applicant has failed to persuade me that the duty of procedural fairness was breached, or that the decision rendered was unreasonable.

[36] Having regard to all of the circumstances, I exercise my discretion not to award costs against the Applicant.

[37] As the CRA was improperly named as the Respondent in this application for judicial review, the style of cause shall be amended to replace the CRA with the Attorney General of Canada as the named Respondent (*Aryan* at paras 13-14).

JUDGMENT in T-781-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause is amended to reflect the Attorney General of Canada as the Respondent; and
3. No costs are awarded.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-781-21

STYLE OF CAUSE: FRANK SANTAGUIDA v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 24, 2022

JUDGMENT AND REASONS: ROUSSEL J.

DATED: APRIL 12, 2022

APPEARANCES:

Frank Santaguida

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Andrew Lawrence

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT