

Federal Court



Cour fédérale

Date: 20220928

Docket: T-577-22

Citation: 2022 FC 1354

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 28, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

ANDRÉ CLOUTIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, André Cloutier, is a programmer/analyst who received the Canada Recovery Benefit [CRB] from September 27, 2020, to June 19, 2021. On March 15, 2022, Mr. Cloutier filed an application for judicial review of a Canada Revenue Agency [CRA] decision dated February 14, 2022, in which a CRA official, having completed a second review of Mr. Cloutier's CRB application, determined that he was not eligible for the CRB in every period

for which he had applied because he had not stopped working and had not had a 50% reduction in his average weekly income compared to the previous year for reasons related to COVID-19.

[2] At the hearing, Mr. Cloutier submitted that the information provided by the CRA had led him to believe that he was eligible for the CRB. He therefore accepted the benefits because he thought he was entitled to them, and the CRA did not stop the payments until 38 weeks after his benefits began. He alleges that the eligibility criteria on which the CRA's decision is based were not posted on the government's CRB application website, that he completed the application questionnaire in good faith and to the best of his knowledge, and that he did likewise during a telephone call with the CRA on March 23, 2021, after which the official confirmed that he was eligible.

[3] I am sympathetic to the situation of Mr. Cloutier, who now finds himself having to repay the large amounts he received from the CRA. However, my role in this judicial review is to determine whether the CRA's reasoning and the resulting outcome are reasonable, that is, whether the decision 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]" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 85 [*Vavilov*]).

[4] When his application was first reviewed in August 2021, Mr. Cloutier clearly did not meet the criteria of paragraph 3(1)(f) of the *Canada Recovery Benefits Act*, SC 2020, c 12 [Act], because he had not stopped working and had not had a 50% reduction in his average weekly income compared to the previous year for reasons related to COVID-19. Indeed, Mr. Cloutier

had produced invoices in support of his application that showed \$6,452 in business income from a contract performed between May and August 2019. As pointed out in the notes in the report of the CRA official who issued the decision of February 14, 2022, Mr. Cloutier had been looking for work since then and was unemployed in March 2020 when the pandemic began. The official also noted that, according to Mr. Cloutier's supporting documentation and income tax return, he did not work in 2020. His last income was in August 2019; therefore, Mr. Cloutier could not have stopped working because of COVID-19.

[5] Mr. Cloutier submits that his situation is the result of the CRA's contradictory positions and its lack of organization. He argues that the CRA should have realized earlier that he was not eligible for CRB benefits, as he would not have applied if he had known he did not meet the criteria.

[6] The CRA did take almost a year to verify Mr. Cloutier's eligibility. However, it is important to bear in mind that the situation caused by the pandemic has been difficult for the whole of society, both the public and the government. The government had to hastily create a program to provide economic support to Canadian workers across the country, and the CRA had the onerous task of administering this program. It is certainly unfortunate that these circumstances resulted in delays in processing Mr. Cloutier's application and, in a perfect world, the CRA would have warned him that he was not eligible when he first applied. However, this unfortunate situation does not give him any rights that are not already set out in the Act.

[7] I note that, in a conversation on January 21, 2021, Mr. Cloutier told a CRA official that he did not wish to have his application reviewed over the telephone and that he would be communicating in writing from that point forward. He also told her that he had already answered all the questions in calls with other CRA employees in March and September 2021. On January 24, 2022, the official tried to reach Mr. Cloutier again by telephone because she had been informed that she could not proceed in writing. The official could not speak to Mr. Cloutier because her call was disconnected after the telephone rang. Having read the official's notes, I see that, as of February 10, 2022, she had not received a call back from Mr. Cloutier, upon which she closed the file and issued her decision. However, according to those same notes, it does not appear that the official left a message to call her back. Logically speaking, with no call-back message, I fail to see how the official could have expected Mr. Cloutier to call her back to provide information supporting his request for a second review.

[8] However, although this appears to be a possible breach of procedural fairness by the CRA, it is not determinative in this case. Indeed, Mr. Cloutier stated before me that, at the time of the events, he had no information to add, as he had no other proof of income for the period in question. Consequently, I fail to see how the official could have made a different decision even if Mr. Cloutier had called her back, since he would have answered the same questions in the same way.

[9] In my opinion, the official's reasoning is consistent and based on the evidence. The burden is on Mr. Cloutier to show that the CRA's decision is unreasonable by persuading this Court 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).

In light of the evidence and reasons above, I find that Mr. Cloutier has failed to meet his burden.

[10] Consequently, I will dismiss the application for judicial review.

JUDGMENT in T-577-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
without costs.

“Peter G. Pamel”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-577-22

STYLE OF CAUSE: ANDRÉ CLOUTIER v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 15, 2022

JUDGMENT AND REASONS: PAMEL J

DATED: SEPTEMBER 28, 2022

APPEARANCES:

André Cloutier

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Bénédicte Philippe, Articling
Student

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT