

Federal Court



Cour fédérale

**Date: 20230628**

**Docket: T-2321-22**

**Citation: 2023 FC 909**

**Ottawa, Ontario, June 28, 2023**

**PRESENT: Mr. Justice O'Reilly**

**BETWEEN:**

**RICHARD ANTHONY CLIMANS**

**Applicant**

**and**

**CANADA (REVENUE AGENCY)**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Richard Climans is a self-employed full-time musician in Calgary. Understandably, his income dropped during the Covid-19 pandemic. Accordingly, he applied for and received the Canada Recovery Benefit (CRB) in 2020 and 2021.

[2] In January 2022, Mr Climans provided the CRA with documents supporting his benefit claim. In June 2022, a CRA officer informed Mr Climans that he was not eligible for the CRB. His income tax returns for the years 2019, 2020, and 2021 showed that his net income was less

than \$5,000. To be eligible for the CRB, according to the officer, Mr Climans's net income had to exceed \$5,000.

[3] Mr Climans requested a second review of his eligibility for the CRB. The second officer confirmed that Mr Climans's net income was too low to be eligible for the CRB. The officer informed him that he had to repay over \$24,000 in benefits.

[4] Mr Climans argues that the second decision was unreasonable because, on his reading of the applicable rules, he was eligible for the CRB. He asks me to quash the second decision and order another CRA officer to reconsider his eligibility.

[5] I can find no error on the CRA officer's part. While the wording of the eligibility criteria is somewhat confusing, the officer correctly determined that Mr Climans did not meet them. I must, therefore, dismiss this application for judicial review.

[6] The sole issue is whether the second decision was unreasonable.

## II. Was the Second CRA Decision Unreasonable?

[7] Mr Climans submits that he carefully reviewed the eligibility criteria for the CRB. Those criteria included a requirement that an applicant's "total income" must exceed \$5,000. He believes he met this criterion for the relevant timeframe. He says his understanding of the eligibility rules was confirmed in a 2020 telephone call with a CRA agent.

[8] While I understand Mr Climans’s submissions and sympathize with his position, I cannot conclude that the second decision was unreasonable.

[9] The eligibility criteria for the CRB are set out in the *Canada Recovery Benefit Act, SC 2020, c 12* (provisions cited are set out in an Annex). Paragraph 3(1)(d) of the Act states that applicants must have a “total income” of at least \$5,000 from employment, self-employment, or other prescribed sources.

[10] On its face, paragraph 3(1)(d) appears to support Mr Climans’s submissions as he had a “total income” of more than \$5,000 during the qualifying period. However, an additional provision of the Act qualifies the wording of that paragraph.

[11] The Act goes on to state in subsection 3(2) that income from self-employment is calculated by subtracting expenses from revenue. In other words, for purposes of determining a self-employed person’s eligibility for the CRB, it is net income that matters. A self-employed person is eligible only if their net income exceeded \$5,000 in the qualifying period.

[12] In Mr Climans’s case, his net income for the qualifying period was lower than \$5,000, making him ineligible for the CRB. The officer who rendered the second decision followed the applicable rules under the Act and arrived at a reasonable conclusion. The decision is justifiable, transparent, and intelligible.

### III. Conclusion and Disposition

[13] While it may appear incongruous that the term “total income” means, in the case of self-employed persons, “net income”, that is the way the eligibility rules in the Act are drafted, and the officer had no alternative but to apply them. I must, therefore, dismiss this application for judicial review. I note that Mr Climans named as respondent the “Canada Revenue Agency”. The proper respondent is “Canada (Attorney General)” and I will make that change.

**JUDGMENT IN T-2321-22**

**THIS COURT'S JUDGMENT** is that:

1. The application for judicial review is dismissed.
2. The respondent "Canada Revenue Agency" should be substituted by "Canada (Attorney General)".
3. There is no order as to costs.

"James W. O'Reilly"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2321-22

**STYLE OF CAUSE:** RICHARD ANTHONY CLIMANS V. CANADA  
REVENUE AGENCY

**PLACE OF HEARING:** CALGARY AB

**DATE OF HEARING:** JUNE 6, 2023

**JUDGMENT AND REASONS:** O'REILLY J

**DATED:** JUNE 28,2023

**APPEARANCES:**

Richard Climans REPRESENTING HIMSELF

Tristen Cones FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General Of Canada FOR THE RESPONDENT  
Calgary AB