

Federal Court



Cour fédérale

Date: 20231102

**Docket: T-159-23
T-160-23**

Citation: 2023 FC 1463

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 2, 2023

PRESENT: Justice Sébastien Grammond

Docket: T-159-23

BETWEEN:

RÉMY ÉLIE LOEB

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-160-23

AND BETWEEN:

RÉMY ÉLIE LOEB

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Loeb is seeking judicial review of decisions concerning his ineligibility for the Canada Emergency Response Benefit [CERB] and the Canadian Recovery Benefit [CRB]. I dismiss the application since the second review officer reasonably concluded that Mr. Loeb had not stopped working or suffered a reduction in income or hours of work for reasons relating to the COVID-19 pandemic and that, with respect to the CERB, he had not demonstrated self-employment income of at least \$5,000 in the year preceding the application.

I. Background

[2] Mr. Loeb is a real estate broker. In 2020 and 2021, he received the CERB for six periods, and the CRB for 24.

[3] On June 23, 2022, the Canada Revenue Agency [the Agency] undertook an initial review of Mr. Loeb's eligibility for the CERB and the CRB. On June 27, 2022, the Agency sent him a letter requesting proof of income in excess of \$5,000. Over the next two months, Mr. Loeb submitted various documents. The first review officer issued two decisions on November 21, 2022. The officer found that Mr. Loeb was ineligible for the CERB for all periods claimed, because he had not earned at least \$5,000 in self-employment income in 2019 or in the 12 months prior to the date of his first application, and his hours of work had not been reduced for reasons related to COVID-19. He also found that Mr. Loeb was ineligible for the CRB because he had not earned at least \$5,000 in self-employment income in 2019, 2020 or in the

12 months prior to the date of his first application, and he had not had a 50% reduction in his average weekly income because of the pandemic.

[4] In November 2022, Mr. Loeb requested a second review of these decisions. He submitted amended tax returns showing increased self-employment income for the years 2019, 2020 and 2021. He also had a telephone conversation with the second review officer. On January 5, 2023, the officer issued two decisions confirming Mr. Loeb's ineligibility for both benefits. The officer accepted that Mr. Loeb had earned income in excess of \$5,000 in 2020, but not in 2019, making him ineligible for the CERB. She also found that he had not stopped working, that his earnings had not decreased by 50%, and that his hours of work had not been reduced because of the pandemic. She therefore ruled that Mr. Loeb was ineligible for both the CERB and the CRB.

[5] Mr. Loeb is now seeking judicial review of both decisions.

II. Analysis

[6] On judicial review, the Court's role is not to reassess the case from scratch, but rather to consider whether the administrative decision maker, the second review officer in this case, has made a reasonable decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[7] This analysis must be based on the evidence and information available to the second review officer. Judicial review is not intended to give the applicant the opportunity to introduce new evidence that was not brought to the administrative decision maker's attention. In this case,

to support his application for judicial review, Mr. Loeb submitted various documents intended to substantiate his argument that his income had been reduced by more than 50%. These documents are inadmissible as they were not brought to the attention of the second review officer. Mr. Loeb argued that these documents were not new since they were available on the Internet. However, the second review officer cannot be criticized for not considering documents that were not brought to her attention, even if they were available on the Internet. The officer was not required to conduct her own research to complete the applicant's file.

A. *Cessation of work or reduced income*

[8] The first question is whether the officer reasonably concluded that Mr. Loeb did not stop working and did not suffer a reduction in income or hours because of the pandemic.

[9] The terms of this question are slightly different for the CERB and the CRB.

[10] For the CERB, paragraph 6(1)(a) of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act], provides that the applicant must have “cease[d] working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment”. The officer also considered whether Mr. Loeb's hours of work had been reduced as a result of the pandemic. This criterion is not explicitly derived from the CERB Act, and the parties did not specify its source, but I understand that it is derived from the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90.

[11] For the CRB, paragraph 3(1)(f) of the *Canada Recovery Benefit Act*, SC 2020, c 12, s 2, requires the person claiming the benefit not to have been self-employed for the period for which the benefit is being claimed, or to have had a reduction of at least 50% in the person's average weekly income.

[12] The evidence before the officer included Mr. Loeb's original and amended tax returns. Assuming the most favourable scenario for Mr. Loeb, that is, taking his amended tax returns as true, the officer established a net self-employment income of \$8,266 for 2019, \$6,050 for 2020 and \$43,450 for 2021. The officer also had a bank statement that Mr. Loeb had sent to the first review officer, showing the receipt of a substantial commission in June 2020.

[13] The officer also spoke with Mr. Loeb. The officer's notes summarize the substance of this conversation as follows:

[TRANSLATION]

[Mr. Loeb] told me he has been a real estate broker for about 11 years. He told me that when covid began, he could no longer visit homes. I asked him several times when he went back to work. He said about 6 months. I asked if that means he went back to work in September. He said he doesn't know. Told me it was limited, but says he could work online. I confirmed that he will receive the CRB in 2021 for a good part of the year. I asked him if work had resumed. He told me that this is what real estate brokerage is all about. Sometimes you have clients, sometimes you don't.

[14] On the basis of this information, the officer could reasonably conclude that Mr. Loeb had not stopped working, that his hours of work had not been reduced, and that his self-employment income had not decreased by at least 50% as a result of the pandemic.

[15] Even if one accepted his revised tax return for 2019, one would have to conclude that his income for 2020 only decreased by about 25% from 2019. In 2021, his income rose considerably. Mr. Loeb received a substantial commission in June 2020, at the height of the lockdown. In addition, the statements Mr. Loeb made to the officer did not allow her to assess the percentage by which his income had been reduced, but demonstrated rather that he had been able to continue his work.

[16] At the hearing before this Court, Mr. Loeb argued that the lockdown imposed in response to the pandemic had made it impossible for him to work. Open houses had not been allowed, some categories of transaction had been prohibited for a certain period of time, you could not meet new customers in certain public places, and the real estate firm's offices had been closed.

[17] I have no doubt that the lockdown measures related to the pandemic disrupted the lives of many people, including Mr. Loeb. I have no doubt that real estate transactions slowed down, at least during the first few months of the pandemic. However, to qualify for the CRB, Mr. Loeb had to demonstrate to the second review officer that his income had decreased by 50% or more between 2019 and 2020 or between 2020 and 2021. This demonstration had to relate to Mr. Loeb's individual situation. He could not meet his burden of proof by relying on industry statistics or by arguing that he had lost clients. His tax returns were the main concrete evidence before the officer. This evidence did not show that Mr. Loeb's revenues had decreased by more than 50%.

[18] In addition, to qualify for the CERB, Mr. Loeb had to demonstrate to the second review officer that he had stopped working for a period of two consecutive weeks within the period for which he was claiming the CERB or that his hours of work had been reduced. The information Mr. Loeb provided to the officer does not indicate any specific period during which he had stopped working, and simply does not establish a reduction in his hours of work.

[19] The officer's decisions regarding Mr. Loeb's ineligibility for the CERB and the CRB are therefore reasonable.

B. *Minimum income of \$5,000*

[20] The second review officer also concluded that Mr. Loeb had not demonstrated self-employment income of at least \$5,000 for 2019 or the 12-month period ending on the date of the first CERB application. According to the officer, this constitutes an additional reason for CERB ineligibility since Mr. Loeb does not meet the definition of "worker" found in section 2 of the CERB Act.

[21] Since Mr. Loeb is ineligible for the CERB anyway because he didn't stop working or have his working hours reduced for reasons related to COVID-19, the question of the income threshold is not determinative. I'll touch on it briefly for the sake of completeness.

[22] Mr. Loeb had initially reported self-employment income of \$0 for 2019. He then requested that his return be amended to show a net income of \$8,266. However, although he sent the officer a statement of expenses for 2020, he did not do so for 2019. The officer was therefore

unable to validate the net income calculation. The only relevant element on the adjustment request was that Mr. Loeb did not wish to [TRANSLATION] “deduct business-use-of-home expenses”.

[23] This Court’s jurisprudence has established that CERB and CRB review officers are not obliged to accept a tax return as sufficient proof that the taxpayer has earned the reported income: *Aryan v Canada (Attorney General)*, 2022 FC 139 at paragraph 35; *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at paragraph 43.

[24] In these circumstances, the officer’s decision is reasonable, as Mr. Loeb has not provided sufficient evidence regarding how his income for 2019 was calculated.

C. *Procedural fairness*

[25] Mr. Loeb’s notice of application, which appears to have been drafted using a template provided by a third party, contains allegations that the Agency failed to explain to Mr. Loeb the nature of the evidence required to demonstrate a decrease in income. Mr. Loeb’s affidavit is silent in this regard. Mr. Loeb did not address the issue at the hearing.

[26] Suffice it to say that it was up to Mr. Loeb to establish a breach of procedural fairness. He failed to discharge this burden. There is nothing in the record to show that Mr. Loeb was unaware of what he had to prove.

III. Conclusion

[27] For these reasons, Mr. Loeb's applications for judicial review will be dismissed.

[28] The Attorney General is seeking costs in accordance with the tariff. In the circumstances, I am of the opinion that Mr. Loeb should be ordered to pay a lump sum of \$500 in costs, which is likely to be less than the amount that would result from applying the tariff.

JUDGMENT in T-159-23 and T-160-23

THIS COURT’S JUDGMENT is as follows:

- 1 The application for judicial review in docket T-159-23 is dismissed.
- 2 The application for judicial review in docket T-160-23 is dismissed.
3. The applicant is ordered to pay the respondent costs in the amount of \$500, including taxes and disbursements.

“Sébastien Grammond”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-159-23 AND T-160-23

DOCKET: T-159-23

STYLE OF CAUSE: RÉMY ÉLIE LOEB v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-160-23

STYLE OF CAUSE: RÉMY ÉLIE LOEB v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 23, 2023

JUDGMENT AND REASONS: GRAMMOND J.

DATED: NOVEMBER 2, 2023

APPEARANCES:

Rémy Élie Loeb

FOR THE APPLICANT
(SELF REPRESENTED)

Anne-Élizabeth Morin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT