Federal Court Cour fédérale

Date: 20231215

Dockets: T-1057-23
T-1058-23

Citation: 2023 FC 1701

Ottawa, Ontario, December 15, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HANAA AL ABSI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This proceeding pertains to two applications for judicial review. The subject of these reviews are two decisions of the Canada Revenue Agency (the "CRA"), finding that Ms. Hanaa Al Absi (the "Applicant") was not eligible for certain benefits. One decision, dated April 12, 2023, (the "CRB Decision") found that the Applicant was not eligible for the Canada Recovery Benefit

(the "CRB"). The other decision, dated May 17, 2023, (the "CRSB Decision") found the Applicant was not eligible for the Canada Recovery Sickness Benefit (the "CRSB").

[2] The Applicant alleges that both decisions are unreasonable. For the reasons the follow, I find that the CRB Decision is reasonable and the CRSB Decision is unreasonable.

II. Preliminary Issue

[3] The Applicant names the CRA as the respondent to both applications. Pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the proper responding party is the Attorney General of Canada, since the decisions under review were made by the CRA on behalf of the Minister of Employment and Social Development. The style of cause is amended accordingly.

III. Background

[4] The Applicant applied for the CRB for seven periods between July 18, 2021, and October 23, 2021. The Applicant also applied for the CRSB for six periods between October 24, 2021, and December 4, 2021.

A. *The Validation*

[5] The CRA decided to validate the Applicant's CRB and CRSB applications. The CRA concluded that the Applicant was not eligible for the CRB because she was able but not looking for a job. The CRA also concluded that the Applicant was not eligible for the CRSB because she

was not employed on the day before her first application period. These are not the decisions under review by the Court.

B. *The Initial Reconsideration*

[6] The Applicant requested the CRA's conclusions to be reconsidered by another CRA officer. In support of her request, she provided submissions explaining in part that:

- The Applicant had her child in September 2019;
- The Applicant was on maternity leave, due to return to her job around September 2020;
- Both the Applicant and her child suffered from G6PD deficiency, which, according to her child's physician, "can trigger a crisis if exposed to infections";
- At her doctor's recommendation, the Applicant remained on leave to avoid the risk of exposure to the COVID-19 virus;
- The Applicant was not looking for work because she was still employed with her prior employer, even though she was on leave; and
- The Applicant applied to the CRB and CRSB at a CRA officer's recommendation.

[7] The CRA again concluded that the Applicant was not eligible for the CRB because she was able but not looking for a job. The CRA also concluded that the Applicant was not eligible for the CRSB because (1) she was not employed on the day before her first application period and (2) her scheduled work was not reduced by at least 50% for COVID-19 related reasons. These are not the decisions under review by the Court.

C. *The Final Reconsideration*

[8] The Applicant provided further submissions after the CRA concluded the initial reconsideration. The submissions repeated the same allegations.

[9] The CRA reconsidered the Applicant's case and submissions again. On a call with the CRA, the Applicant explained in part that she did not look for work during the application periods because "my job was still there. If I was able to go back to work I would of [*sic*] went back to Dollarama. I wasn't looking for a different job".

[10] The CRA concluded that the Applicant was not eligible for the CRB because (1) she was without work for reasons unrelated to COVID-19, (2) she did not have a 50% reduction in her average weekly income compared to the previous year due to COVID-19, and (3) she was able but not looking for a job. This is the CRB Decision under review by the Court.

[11] In a separate decision, the CRA also concluded that the Applicant was not eligible for the CRSB because (1) she was not employed on the day before her first application period and (2) her

scheduled work week was not reduced by at least 50% for COVID-19 related reasons. This is the CRSB Decision under review by the Court.

IV. Issues

[12] Was the CRA's finding that the Applicant was not eligible for the CRB reasonable?

[13] Was the CRA's finding that the Applicant was not eligible for the CRSB reasonable?

V. Analysis

A. *The Standard of Review*

[14] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

B. *New Evidence*

[15] As a preliminary issue, the Applicant sought to rely on two letters from a doctor dated April 14, 2022 and August 30, 2022, attached to the Applicant's affidavit of June 6, 2023, as well as an email dated July 21, 2023 and a resignation letter from Dollarama dated January 6, 2023. This evidence was not put before the CRA for the final reconsideration, and is therefore not admissible on judicial review, as none of the exceptions to allow new evidence on judicial review applies.

C. *The CRB Decision*

[16] The eligibility requirements for the CRB are set out in section 3 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the "Act"). Relevant here are the following requirements. First, under paragraph 3(1)(f) of the Act, the Applicant must, during the application period and for reasons related to COVID-19, have a reduction of at least 50% in her average weekly employment income relative to her total average weekly income for 2019, 2020, or the 12-month period prior to the application. Second, under paragraph 3(1)(i) of the Act, the Applicant must have sought work during the application period.

(1) Reduction in Income for Reasons Related to COVID-19

[17] The Applicant was employed but not working because she was on leave, first due to her pregnancy, but then due to the risk COVID-19 imposed on her given her health condition. The CRA found that the Applicant did not have a 50% reduction in her average weekly income "compared to the previous year" (i.e. 2020) due to COVID-19. The CRA also found that the Applicant was without work "for reasons unrelated to COVID-19". Both findings are essentially the same. They conclude that the Applicant was not eligible because (a) the Applicant did not experience the requisite reduction in employment, and/or (b) any such reduction would not have been due to COVID-19.

[18] Subparagraph 3(1)(f)(ii) of the Act states that if the application was made in 2021, the reduction in the applicant's average weekly income would be determined relative to the applicant's average weekly income "for 2019 or for 2020 or in the 12-month period preceding" the application

date. It was unreasonable for the CRA to assess the reduction in the Applicant's weekly average income solely relative to 2020, as doing so is contrary to the clear language of subparagraph 3(1)(f)(ii).

[19] The record before the CRA shows that the Applicant worked briefly for a few months in 2019 and therefore made some employment income. However, she made no income at all in the application period. It is evident that her average weekly employment income for the application period was therefore reduced by more than 50% compared to her average weekly employment income in 2019. The outstanding issue is whether the reduction in income was due to COVID-19.

[20] Assessing this issue requires the CRA to determine whether a person who was initially off-work on maternity leave could still meet the condition set in paragraph 3(1)(f) of the Act if they were not able to *return* to work as scheduled due to COVID-19 or an underlying condition exacerbated by COVID-19. The evidence before the CRA indicates that the Applicant would have returned to her position were it not for her underlying condition and how that condition interacts with a COVID-19 infection. Her inability to return to work, and the corresponding reduction in income, was therefore attributable to COVID-19.

[21] The Respondent's position in support of the CRA's decision suggests that, because the Applicant initially stopped working for reasons related to her pregnancy, the fact that she could not *return* to work as scheduled due to COVID-19 is irrelevant and would not suffice to establish eligibility under paragraph 3(1)(f). This is not a reasonable distinction. It unduly narrows the eligibility conditions, contrary to the language of paragraph 3(1)(f). The evidence shows that the

Applicant would have been working in the period in question were it not for COVID-19. In other words, she was not working due to COVID-19. The corresponding reduction in income was the result of COVID-19.

[22] The Respondent cites *Levesque v Canada (Attorney General)*, 2023 FC 997. In that case, a person who was on maternity leave was due to return to work in August 2021. She applied for a benefit under section 17 of the Act for the period between March 2021 and August 2021, prior to her scheduled return. The question was whether she was unable to work for at least 50% of the time that she would have otherwise worked. The Court found that, because the applicant was not due to return to work until after the period for which she applied, it was reasonable of the CRA to conclude that she experienced no reduction in work hours due to COVID-19. This is distinguishable from the case at bar. The Applicant here was applying for a period in which she would have been working were it not for COVID-19.

[23] The CRA's finding that the Applicant did not experience a reduction in income due to COVID-19 could have been predicated on one or both of the following conclusions: (a) there was no reduction in employment income, or (b) the reduction was not due to COVID-19. As explained above, both conclusions are unreasonable in light of the evidence. By extension, the view that the Applicant does not meet the condition under paragraph 3(1)(f) is also unreasonable.

(2) Pursuit of Other Work

[24] Despite my conclusion on paragraph 3(1)(f), the Applicant would still not meet the condition set by paragraph 3(1)(i). By her own admission, the Applicant did not seek work during

the application period. She said that her old position with Dollarama was still available to her, and that if she was able to return to work that she would return to work there. However, the Applicant could have still sought other positions that did not require in-person contact with others. She therefore did not meet the eligibility requirement in paragraph 3(1)(i) of the Act.

[25] The Applicant says that she was not looking for work because she was still employed with Dollarama. She also says that requiring her to return to work jeopardizes her health and safety and therefore engages her rights under section 7 of the *Charter of Rights and Freedoms*. However, paragraph 3(1)(i) of the Act does not require the Applicant to return to her old position or to accept work that endangers her or her child's safety. All it requires of the Applicant is for her to *seek* a position, one that allows her to work despite COVID-19. Even if she had not been successful in finding such a position, she would still have met the requirement under paragraph 3(1)(i) of the Act by merely seeking a position.

[26] I am sympathetic to the Applicant's unique circumstances, particularly with respect to her and her child's health, and that she applied to the CRB in good faith, believing genuinely that she was eligible based on the CRA's representations to her. Unfortunately, the CRA's ultimate conclusion here is reasonable. Therefore, the Court cannot intervene, even though the outcome may appear to be inequitable.

D. *The CRSB Decision*

[27] The eligibility requirements for the CRSB are set out in section 10 of the Act. Paragraph 10(1)(f) of the Act requires CRSB applicants, "as employees", to have been unable to work for at least 50% of the time they would have otherwise worked in the week because they:

1. contracted or might have contracted COVID-19,

2. have underlying conditions that would make them, in the opinion of certain medical professionals, more susceptible to COVID-19, or

3. isolated themselves at the advice of certain individuals for reasons related to COVID-19.

[28] The CRA found that (1) the Applicant was not employed on the day before her first application period and (2) her scheduled work week was not reduced by at least 50% for COVID-19 related reasons. Both findings are unreasonable.

[29] The Applicant was an employee with Dollarama. The fact that she was on a prolonged leave of absence due at first to her pregnancy and then to the COVID-19 pandemic does not alter the fact that she was an employee.

[30] The Applicant was due to return to work in September 2020 but was prevented from doing so due to the COVID-19 pandemic and the risk it posed on the Applicant given her underlying health condition. Her inability to return to her position continued up to and including the period for which she applied for the CRSB. The evidence before the CRA shows that, were it not for

COVID-19 and the risk it posed to the Applicant, the Applicant would been working at the time of the application. The Applicant therefore experienced a reduction of 50% or more in her scheduled work time due to the risk imposed by her underlying condition and COVID-19. The CRA's contrary conclusion is unreasonable.

[31] The Respondent argues that the CRA was reasonable to conclude that the Applicant's work week was not reduced by 50% or more for reasons related to COVID-19. Again, the Respondent's position rests on the view that, because the Applicant initially stopped working for reasons related to her pregnancy, the interruption in her work was not due to COVID-19. As with paragraph 3(1)(f), this view unreasonably narrows the scope of paragraph 10(1)(f).

[32] Moreover, the fact that the Applicant was able to stave off her return to work and her application for the CRSB until October of 2021 by relying on other benefits available to her is irrelevant. It is not a restriction imposed by the Act with respect to the CRSB.

[33] As with paragraph 3(1)(f) of the Act, it was not reasonable of the CRA to narrow eligibility so as to exclude an individual who, like the Applicant, would have returned to work were it not for the COVID-19 pandemic and their underlying health condition.

[34] The CRSB Decision is unreasonable.

VI. Costs

[35] The Respondent does not seek costs.

VII. Conclusion

[36] The application with respect to the CRB Decision (Docket: T-1058-23) is dismissed.

[37] The application with respect to the CRSB Decision (Docket: T-1057-23) is granted. The CRSB Decision is quashed and remitted for redetermination by a different CRA officer.

[38] No costs are awarded to either party.

JUDGMENT in T-1057-23 and T-1058-23

THIS COURT'S JUDGMENT is that:

1. The application with respect to the CRB Decision (Docket: T-1058-23) is dismissed.

2. The application with respect to the CRSB Decision (Docket: T-1057-23) is granted. The CRSB Decision is quashed and remitted for redetermination by a different CRA officer.

3. No costs are awarded to either party.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1057-23, T-1058-23
STYLE OF CAUSE:	HANAA AL ABSI v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 29, 2023
JUDGMENT AND REASONS:	MANSON J.
DATED:	DECEMBER 15, 2023

APPEARANCES:

Hanaa Al Absi	FOR THE APPLICANT ON HER OWN BEHALF
Grigor Grigorian	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT