

Federal Court



Cour fédérale

Date: 20240911

Docket: T-2160-23

Citation: 2024 FC 1428

Toronto, Ontario, September 11, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

DAT VIET NGUYEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Dat Viet Nguyen [the Applicant], is a self-represented litigant who seeks judicial review of a second level review decision of the Canadian Revenue Agency [CRA] dated September 6, 2023 [the Second Decision] finding the Applicant ineligible for the Canada Emergency Response Benefit [CERB].

[2] For the reasons that follow, I find that the Applicant has failed to discharge his burden of showing that the Second Decision is unreasonable. Accordingly, this application is dismissed.

II. Facts

[3] The Applicant applied for and received the CERB for five four-week periods between May 10, 2020 and September 26, 2020.

[4] By letter dated November 26, 2020 [the CRA Notice], the Applicant was advised that the CRA, acting on behalf of the Minister of Employment and Social Development, would be validating his application.

[5] The CRA Notice stated that the CRA could not confirm that the Applicant met the CERB eligibility requirement of having earned employment or self-employment income of at least \$5,000 in 2019 or in the 12 months before the date of his first application [the Income Requirement]. The CRA Notice provided a list of eligible and ineligible employment and self-employment income. The list of ineligible income includes “Employment Insurance (EI) earnings.”

A. *The first level review*

[6] The first level review of the Applicant’s CERB application was refused by an officer of the CRA by letter dated December 24, 2020 [the First Decision]. The basis for the First Decision

was that the Applicant had not met the Income Requirement. The First Decision provided a link to information on the eligibility criteria for CERB.

B. *The Applicant's Submission to the CRA*

[7] By letter dated March 10, 2023, the Applicant requested a second review of his eligibility for CERB. In that letter the Applicant provided a copy of information posted on the Government of Canada website on April 15, 2020 entitled, "Who was Eligible." The Applicant highlighted the statement that the CERB was available to workers "who stopped working because of reasons related to COVID-19 or were eligible for Employment Insurance regular or sickness benefits or have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020" [the Government Posting]. The Applicant asserted that he was on Employment Insurance from August 11, 2019 to May 9, 2020 and was therefore eligible for the CERB.

C. *The second level review*

[8] A second independent review by a second CRA officer [the Second Reviewer] was conducted. According to the second review report dated September 5, 2023, the Second Reviewer considered the documents on file which included information that the Applicant had not earned any employment or self-employment income in 2019 or in the 12 month period before his first application for the CERB. The Second Reviewer also considered the documents provided by the Applicant including the Government Posting. The Second Reviewer attempted

without success to contact the Applicant by phone on three different occasions; however, the Applicant did not return the Second Reviewer's calls.

[9] The Second Reviewer found the Applicant ineligible for the CERB by reason that the Applicant did not meet the Income Requirement. The Applicant was notified of the Second Decision. It is the Second Decision that is the subject of this judicial review.

III. Legislative Framework

[10] The enabling legislation for the CERB is the *Canada Emergency Response Benefit Act*, which constitutes Part 2 of the *COVID-19 Emergency Response Act*, SC 2020, c 5 [the *CERB Act*].

[11] Pursuant to section 4 of the *CERB Act*, entitlement to the CERB was based on: (i) making an application pursuant to section 5 of the *CERB Act*; (ii) satisfying the definition of “worker” in section 2 of the *CERB Act*; and (iii) meeting the eligibility requirements found in section 6 of the *CERB Act*.

[12] The definition of “worker” in section 2 of the *CERB Act* includes the Income Requirement and sets out the eligible sources for that income:

Definitions

worker means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an

Définitions

travailleur Personne âgée d'au moins quinze ans qui réside au Canada et dont les revenus — pour l'année 2019 ou au cours des douze mois précédant la date à laquelle

application under section 5, has a total income of at least \$5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:	elle présente une demande en vertu de l'article 5 — provenant des sources ci-après s'élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :
(a) employment;	a) un emploi;
(b) self-employment;	b) un travail qu'elle exécute pour son compte;
(c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the <i>Employment Insurance Act</i> , SC 1996, c 23 [<i>EI</i> benefits]; and	c) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la <i>Loi sur l'assurance-emploi</i> , LC 1996, c 23 [<i>EI</i> benefits];
(d) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption.	d) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption.

[13] The limited set of *EI* benefits referred to in subsection 2(c) of the *CERB Act* noted above relates to benefits for pregnancy and the birth of a child.

IV. Issues and Standard of Review

[14] The Applicant submits that the Second Decision is unreasonable.

[15] The standard of review of the merits of a decision in respect of a taxpayer's eligibility under the *CERB Act* is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 82-83 and 99-100 [*Vavilov*]). Under such a review, the party challenging the decision bears the burden of showing that the decision is unreasonable in that there is some fundamental flaw in its rationale or outcome, or that it lacks the hallmarks of justification, intelligibility and transparency to those who are subject to it (*Vavilov* at paras 95, 99 and 100).

V. Preliminary Issues

[16] The Applicant has named both the Minister of National Revenue (Canada Revenue Agency) and the Attorney General as respondents to this application. I agree with the Respondent that the style of cause should be amended to name the Attorney General of Canada as the proper respondent to this application.

[17] The Respondent has also identified an error in its supporting affidavit from the Second Reviewer [the Respondent's Affidavit]. The Respondent's Affidavit identifies two bases upon which the Second Reviewer found the Applicant ineligible for the CERB, when in fact there was only one, namely that the Applicant did not meet the Income Requirement. Based on my review of the certified record, I agree that this was both an obvious error and one upon which nothing turns; accordingly, subparagraph 24(b) of the Respondent's Affidavit shall be disregarded.

VI. Analysis

[18] The Applicant submits that the CRA erred in rejecting his application for the CERB based on his receipt of Employment Insurance “regular” (unemployment) benefits between August 11, 2019 to May 9, 2020. He continues to rely on the Government Posting, highlighting the statement related to Employment Insurance regular or sickness benefits.

[19] Unfortunately, the Applicant has selectively focused on some, but not all aspects of the Government Posting, which also includes the Income Requirement and the sources of eligible income. The Second Reviewer found that the Applicant did not have eligible income in the requisite period and this was clearly justified on the record. As the Respondent points out, under section 10 of the *CERB Act*, it was up to the Applicant to provide the Minister with the information required to support his application and he failed to do so. Accordingly, I find that the Officer’s reasons for finding the Applicant ineligible for the CERB are justified in light of the statutory scheme of the *CERB Act* and the evidence on the record.

VII. Conclusion

[20] The Applicant has not shown the Second Decision to be unreasonable. Accordingly, this application for judicial review is dismissed.

JUDGMENT in T-2160-23

THIS COURT'S JUDGMENT is that:

1. The style of cause shall be amended to name the Attorney General of Canada as the proper respondent to this proceeding.
2. The application for judicial review is dismissed; and
3. There is no order as to costs.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2160-23

STYLE OF CAUSE: DAT VIET NGUYEN v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 9, 2024

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: SEPTEMBER 11, 2024

APPEARANCES:

Dat Viet Nguyen

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Jacqueline Blackett

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT