

Federal Court



Cour fédérale

Date: 20231110

Docket: T-779-23

Citation: 2023 FC 1501

Ottawa, Ontario, November 10, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

ABDUL SALAM ABDUL

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

[1] The Applicant seeks judicial review of a second review decision made by an officer [Officer] of the Canada Revenue Agency [CRA] dated March 10, 2023. The Officer determined that the Applicant was not eligible for the Canada Recovery Benefit [CRB] for the two week period of January 31, 2021 to February 13, 2021 and the two week periods from February 28, 2021 to October 23, 2021. The Applicant seeks an order quashing the decision and a *mandamus* order directing the CRA to reverse the decision and declare him eligible for the CRB.

[2] For the reasons that follow, I am allowing the judicial review application and remitting the matter to a different CRA officer to determine the Applicant's eligibility for the CRB.

[3] The Applicant is self-represented and was assisted at the hearing of this application by an interpreter further to the Court's order of October 19, 2023.

[4] As a preliminary matter, counsel for the Attorney General of Canada raised the issue of the proper Respondent, noting that the Applicant had named the Canada Revenue Agency. I agree that, in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106, the proper Respondent is the Attorney General of Canada. The Applicant did not object to the change to the Respondent. As a result, I ordered that the style of cause be amended to name the Attorney General of Canada as the Respondent.

[5] The Applicant's CRB application was denied on the basis that he had not earned at least \$5,000 (before taxes) of employment income or net self-employment income in 2019, 2020, or in the 12 months before the date of his first application.

[6] The Respondent concedes that the Decision was unreasonable and should be set aside. More particularly, the Officer failed to properly consider invoices from the Applicant's catering business, submitted on November 24, 2022. The Officer noted that the invoices "did not provide customers names or address". However, the invoices appear to provide customers' names and telephone numbers.

[7] The only issue for determination on this application is the appropriate remedy. In addition to requesting that the decision be quashed, the Applicant asks the Court to declare that he met the eligibility requirements for the CRB and to annul the amount of \$16,000 owing to the CRA. The Applicant urges the Court to make the decision that the Officer should have made and to find that he was eligible for the CRB.

[8] The Respondent submits that the Court should simply remit the matter for reconsideration by another CRA officer. The Respondent asserts that the Court should not direct the CRA to find that the Applicant is entitled to the CRB as that would result in the Court substituting its decision for that of the Minister of Employment and Social Development, who is responsible for administering the CRB. Relying on *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 [*Tennant*], the Respondent argues that such relief is warranted in limited circumstances where only one lawful response or reasonable conclusion can be made, such that it would be useless for the decision-maker to re-determine the issue.

[9] The general rule is that a reviewing court should respect the legislature's intention to entrust the matter to the administrative decision-maker: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 139-142 [*Vavilov*]. However, in exceptional circumstances, the Court can exercise its power of indirect substitution: *Northern Inter-Tribal Health Authority Inc v Yang*, 2023 FCA 47 at para 82; *Tennant* at paras 79-82; *Clarke v Canada (Attorney General)*, 2023 FC 924 at para 23.

[10] A reviewing court may decline to remit the matter to the decision-maker where it is evident to the court that "a particular outcome is inevitable and that remitting the case would

therefore serve no useful purpose”: *Vavilov* at para 142. In other words, there needs to be a “foregone conclusion” rendering a redetermination by a different decision-maker unnecessary: *Canada (Attorney General) v Duval*, 2019 FCA 290 at para 28.

[11] I agree with the Respondent that this is not a case where the result is inevitable such that the Court should declare the Applicant is entitled to the CRB. While the Officer did not properly consider the Applicant’s invoices from his catering business in 2020, the Respondent pointed out the Officer noted that there was no self-employment income declared by the Applicant in his 2019 or 2020 income tax returns. The Respondent argued it was therefore an “open question” as to whether the Applicant is entitled to the CRB and that the matter should be sent back for reconsideration.

[12] Based on the foregoing, the application for judicial review is granted and the matter is remitted for reconsideration. A new officer must review the matter afresh and properly consider all of the documentation submitted by the Applicant to support his eligibility for the CRB.

JUDGMENT in T-779-23

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to name the Attorney General of Canada as the Respondent.
2. The application for judicial review is granted, subject to the terms below.
3. The March 10, 2023 second review decision of the Canada Revenue Agency Officer is set aside and the matter is remitted to a different officer for determination.
4. No costs are awarded.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-779-23

STYLE OF CAUSE: ABDUL SALAM ABDUL v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 9, 2023

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: NOVEMBER 10, 2023

APPEARANCES:

Abdul Salam Abdul

FOR THE APPLICANT
ON HIS OWN BEHALF

Niloofer Sharif

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT