

Federal Court



Cour fédérale

Date: 20250624

Docket: T-2655-24

Citation: 2025 FC 1144

Toronto, Ontario, June 24, 2025

PRESENT: Madam Justice Go

BETWEEN:

BARBARA T. MENDIOLA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Barbara Mendiola [Applicant] applied for and received the Canada Emergency Response Benefit [CERB] for eight four-week periods between March 15, 2020 and September 26, 2020 [Application Periods].

[2] On February 25, 2022, the Canada Revenue Agency [CRA] sent a letter to the Applicant to verify her CERB eligibility [Verification Letter]. The Verification Letter advised that the Applicant was not eligible for the CERB if she earned over \$1,000 in employment or self-employment income during the Application Periods and requested documentation showing proof of income.

[3] As the Applicant did not respond to the Verification Letter, the CRA advised the Applicant in writing on February 7, 2024 that she was not eligible for the CERB. On February 18, 2024, the Applicant wrote to the CRA requesting another review of her CERB eligibility and submitted documentation in support of her request. The CRA assigned an officer to review the Applicant's request [First Review Officer]. After a few attempts to contact the Applicant without success, the First Review Officer determined the Applicant was not eligible for the CERB because she earned more than \$1,000 in employment or self-employment income and issued a letter advising the Applicant of their decision dated April 17, 2024 [First Decision].

[4] The Applicant sought judicial review of the First Decision. Upon settlement, the Applicant's matter was returned to the CRA for a fresh review. A new officer conducted a second review [Second Review Officer] and contacted the Applicant for further information. Based on the available evidence, the Second Review Officer concluded that the Applicant was not eligible for the CERB [Decision].

[5] The Applicant seeks judicial review of the Decision. While I am sympathetic to the Applicant's situation, I dismiss the application.

II. Preliminary Issues

[6] Before this Court, the Applicant, who is self-represented, submits an affidavit attaching several documents that were not before the Officer. These documents include information showing the Applicant has 20 years of employment experience, T-4 slips from her employers for the 2015 and 2023 taxation years, and income tax information detailing the effect of CERB. At the hearing, the Applicant provided additional submission about her work history in Canada, and the impact of her income loss due to the pandemic.

[7] As I explained to the Applicant, on judicial review, I am limited to the evidentiary record that was before the Second Review Officer: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*].

[8] There are exceptions to this general rule: *Access Copyright* at para 20, and one of the exceptions is with respect to the issue of procedural fairness. However, I find that the Applicant has not demonstrated the newly introduced documents fall within any of the exceptions set out by the Federal Court of Appeal. As such, I will not consider the new evidence contained in Exhibits “A”, “F”, “G”, and “H” of the Applicant’s affidavit.

III. Analysis

[9] The Applicant does not deny that she earned more than \$1,000 during the Application Periods. However, the Applicant submits that she suffered loss of her primary job due to the

pandemic, resulting in an income loss of \$25,000 from March to December 2020. The Applicant continued working in a secondary essential job, earning above the \$1,000 threshold, but this income did not offset her significant loss of earnings.

[10] The Applicant argues the Decision was unreasonable, and the CRA breached procedural fairness by failing to conduct the promised second review, breaching the Applicant's legitimate expectation of fairness. The Applicant also submits that the Second Review Order failed to engage with key evidence, including the employer's letter confirming the loss of primary income, and failing to provide written explanation for disregarding this evidence or for its decision-making process.

[11] I do not question that the Applicant has suffered financial loss, as many Canadians have, during the pandemic. I also acknowledge that the Applicant is a hard-working individual who has been working to support her family, and continued to work and care for her family during the COVID-19 pandemic. However, I must reject the Applicant's arguments as they are not supported by the evidentiary record or the law.

[12] The CERB was established under the *Canada Emergency Response Benefit Act*, SC 2020, c 5 [*CERB Act*]. Under the *CERB Act*, a person was eligible for the CERB in any four-week period between March 15, 2020 and October 3, 2020 if they satisfied the eligibility criteria which included, among other things, that:

- a. They ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week eligibility period; and

- b. They did not receive, in respect of the consecutive days on which they had stopped working, more than \$1,000 in employment or self-employment income.

[13] The Applicant appears to believe that as long as she has suffered a job loss, she would be qualified to receive CERB, regardless of how much income she continued to earn. Unfortunately, that was not how the CERB worked.

[14] The Applicant also argues that the CRA did not consider her financial circumstances. However, it was not something that the Second Review Officer was authorized to do. Under the *CERB Act*, CRA officers cannot provide relief on humanitarian ground; they are bound by the legislation to assess eligibility based on the criteria set out in the legislation: *Devi v Canada (Attorney General)*, 2024 FC 33 at para 29, citing *Flock v Canada (Attorney General)*, 2022 FCA 187 at para 7.

[15] This case is factually similar to *Nwajei v Canada (Attorney General)*, 2025 FC 292 [*Nwajei*] in which an applicant had to quit one of his three jobs and was ineligible for CERB as he was making more than \$1000. The Court concluded the CRA decision finding the applicant ineligible was reasonable. Similarly in this case, the Second Review Officer's conclusion that the Applicant made more than \$1,000 was supported by the information available to them. For these reasons, I find the Decision reasonable.

[16] I also find there was no procedural fairness breach.

[17] Before making the Decision, the Second Review Officer spoke with the Applicant and her friend, Leo, by telephone and advised the Applicant that the call was regarding a second review of the Applicant's CERB eligibility. The Second Review Officer gave the Applicant a case number and gave her a deadline to upload documents such as bank statements and pay slips to show her earnings during the Application Periods.

[18] The Second Review Officer advised the Applicant that the CERB eligibility is based on the Applicant's total income. The Second Review Officer further advised that she must be eligible for all criteria to receive the CERB, and that the legislation must be followed. The Applicant later asked the Second Review Officer by telephone to make the decision with the documents already on file. The Second Review Officer subsequently confirmed with the Applicant that she would not be sending further documents for review. Based on the available evidence, the Second Review Officer concluded that the Applicant was not eligible for the CERB.

[19] In short, the Applicant was aware that the CRA was seeking to verify her income during the Application Periods. The Applicant was asked on several occasions to provide documents to prove her eligibility and the Applicant had a fair chance to make her case.

[20] With respect to the Applicant's argument that there was procedural fairness breach due to the Officer's failure to provide written reasons, this Court has consistently held that a CRA officer's review report and the relevant notepad entries are part of the officer's reasons: *Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 24.

[21] Finally, at the hearing, the Applicant indicated that the CRA has clawed back her Old Age Security and 2024 tax refund, yet at the same time, the CRA is still asking the Applicant to pay the full amount of CERB benefits she had received. The Applicant asked the Court to review the objection she had filed with the CRA.

[22] As I advised the Applicant, I can only review the Decision that is the subject of the judicial review application before me. However, as the Court noted in *Nwajei* at para 5, the arguments that the Applicant made about her family's circumstances are ones that may be appropriate to explain to the CRA in relation to repayment.

IV. Conclusion

[23] The application for judicial review is dismissed.

[24] There is no order as to costs.

JUDGMENT in T-2655-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2655-24

STYLE OF CAUSE: BARBARA T. MENDIOLA v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 18, 2025

JUDGMENT AND REASONS: GO J.

DATED: JUNE 24, 2025

APPEARANCES:

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FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Jun Choi

FOR THE RESPONDENT

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