

Federal Court



Cour fédérale

Date: 20260114

Docket: T-2615-25

Citation: 2026 FC 56

Toronto, Ontario, January 14, 2026

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

MOSTAFA ADKI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mostafa Adki [the Applicant], was found ineligible for the Canada Recovery Benefit [CRB] he obtained during the COVID-19 [COVID] pandemic. In a second level decision dated June 26, 2025 [Decision], an officer [Officer] of the Canadian Revenue Agency [the CRA] determined that the Applicant had not met the requisite income criteria under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [the *CRB Act*].

[2] The Applicant seeks judicial review of the Decision claiming that two key documents that make out the Applicant's eligibility were available to the Officer within the CRA system but were not reviewed and therefore the Court should remit the matter back to the CRA for redetermination.

[3] For the more detailed reasons that follow, this application is dismissed as the Applicant has not met his onus of showing that the Decision is unreasonable or procedurally unfair based on the record that was before the Officer. It is regrettable that the Applicant despite his persistent efforts was unable to obtain the documents he needed in time for the second level review, however, this does not change this Court's proper role on judicial review to consider the reasonableness of the Decision based on the record that was before the Officer.

II. Facts

[4] The Applicant worked for an electrical company [First Employer] as an Electrician Helper from July 12, 2020 until December 16, 2020 when he was laid off. The Applicant applied for and received the CRB in the periods he was unemployed between December 20, 2020 and July 31, 2021, before obtaining new employment on July 26, 2021 [Second Employer].

A. *The first level review*

[5] In April 2024, the CRA decided to validate the Applicant's applications. A first review of the Applicant's eligibility for the CRB was conducted by an officer of the CRA who wrote to the Applicant by letter dated April 9, 2024, requesting further documents to support his

eligibility. The Applicant responded by letter dated May 15, 2024, and provided the following documents: bank statements from December 2, 2020 to February 2, 2022; a Record of Employment [ROE] from the Second Employer; paystubs from July 2021 to January 2022 from the Second Employer; paystubs from August 2020 to December 2020 from the First Employer.

[6] The T1Case notes from the first level review state that while the reviewing officer contacted the Applicant on July 25, 2024, and requested additional documents from his First Employer, the Applicant advised that he had not been able to obtain them.

[7] In a first level review decision dated July 30, 2024, an officer of the CRA determined that the Applicant did not meet the CRB eligibility criteria as the Applicant had not demonstrated a 50% reduction in his average weekly income compared to the previous year due to COVID. The T1Case notes highlight the need for the missing ROE from the First Employer.

B. *The second level review*

[8] The Applicant requested a second level review and submitted two sets of further documents which consisted of: additional bank statements for the period from February 6, 2020 to December 2, 2020; a letter explaining that he had made repeated attempts to obtain a ROE from his First Employer but had not received it (with attached screenshots showing his communications with the First Employer); a self-completed Statement of Business or Professional Activities for October 1, 2020 to December 31, 2020 and January 1, 2020 to December 31, 2020; self-completed T2125 forms for 2020 and 2021; and unofficial tax summaries showing the Applicant's "gig work" at Uber and Lyft for 2020 and 2021.

[9] According to T1Case notes provided by the Respondent, the Officer had a telephone conversation with the Applicant on June 11, 2025, in which the Applicant acknowledged that he had no prior work or income in 2019 or 2020 until he worked for the First Employer in late 2020 and that he was let go by the First Employer and replaced because he was too slow.

[10] In the Decision, the Officer found the Applicant ineligible for the CRB on the basis that he had not demonstrated a 50% reduction in his average weekly income compared to the previous year due to COVID.

C. *The Applicant's new documents*

[11] After the issuance of the Decision, the Applicant obtained an ROE and a 2020 T4 from the First Employer [New Documents], which he attached as exhibits to his supporting affidavit on this application. According to the Officer's affidavit filed on this application, these documents were not made available to the Officer during the second level review.

III. Issues and Standard of Review

[12] The Applicant has raised issues going to both the reasonableness and procedural fairness of the Decision.

[13] In conducting a review of the merits of a decision, the applicant 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 95 and 99-101).

[14] Issues of procedural fairness on the other hand, are reviewed on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34 and 54-55 [*Canadian Pacific*]). The Court's review looks to ensure that those affected by a decision understood the case they had to meet and had the opportunity to put forward their views and evidence fully for consideration by an impartial decision maker (*Canadian Pacific* at para 41).

IV. Analysis

[15] The Applicant submits that the Officer failed to consider the New Documents relying instead on internal T1Case notes, automated system outputs and screenshots, which was both unreasonable and a breach of procedural fairness. According to the Applicant's counsel, the ROE from the First Employer demonstrates both that he had experienced a reduction in income, and that he was terminated for reasons related to COVID.

[16] I agree with the Respondent that the Applicant has not raised an issue justifying this Court's intervention.

[17] To begin with, the Respondent submits that the Court may only consider the evidentiary record that was before the administrative decision maker which did not include the New Documents (citing *Association of Universities and Colleges of Canada v Canadian Copyright*

Licensing Agency, 2012 FCA 22 at paras 19-20 [*Access Copyright*]). The Applicant who is represented by counsel, did not make submissions in the Applicant's Memorandum of Fact and Law as to why the New Documents should be allowed, nor did the Applicant provide a reply responding to the Respondent's written submission that the New Documents should not be admitted under the authority of *Access Copyright*.

[18] At the hearing, the Applicant submitted for the first time that the New Documents should be admitted under the exception to the general rule recognized in *Access Copyright* that permits evidence relevant to an alleged denial of procedural fairness that is not evident in the record (*Access Copyright* at para 20). The Applicant's counsel expanded on the procedural fairness argument made in the Applicant's written submissions by suggesting that the New Documents were available in the CRA system (or a shared system related to Service Canada) had the Officer not been negligent in failing to access the Applicant's information which he says would have been available as of 2021.

[19] There are a number of problems with the Applicant's submissions, the most critical being that arguments cannot be raised for the first time in oral submissions as a matter of procedural fairness (*Coomaraswamy v Canada (Minister of Citizenship and Immigration) (CA)*, 2002 FCA 153 at para 39).

[20] The Applicant's argument also ignores that section 6 of the *CRB Act* puts the onus on an applicant to provide the Minister with any required information in respect of their CRB application (*Ghukasyan v Canada (Attorney General)*, 2025 FC 140 at para 30). In any event,

the only evidence on the record is that of the Officer who swore to the fact that the New Documents were not available and that in conducting the second level review, the Officer reviewed and considered the Applicant's income and deductions from income for the 2020 and 2021 taxation years as recorded on the CRA's computer system.

[21] The Applicant's counsel also relies on the authority of *Moncada v Canada (Attorney General)*, 2024 FC 117, suggesting that it is authority for the proposition that, "[t]he CRA cannot claim a lack of evidence when the information exists within the government's own shared databases (Constructive Possession)." Not only was this authority not mentioned in the Applicant's Memorandum of Fact and Law, nor provided to counsel for the Respondent, but I do not consider it to stand for the proposition advanced by counsel.

[22] The New Documents are clearly not tendered to support a procedural fairness argument and are instead intended to support the Applicant's eligibility for the CRB on the merits and are not admissible for this purpose (*Greeley v Canada (Attorney General)*, 2019 FC 1493 at para 30). The Applicant's reliance on the ROE from the First Employer as proof that he was terminated for reasons associated with COVID, is also problematic. The ROE does not on its face provide this evidence. Rather, the Applicant's counsel provided an explanation for a particular code that appears on the document that counsel says relates to workload and staffing issues. Such an explanation should have been provided as part of the Applicant's evidence so that the Respondent could address it, and the Court could be properly informed.

[23] Based on the record that was before the Officer, I find that the Officer reasonably determined that the Applicant did not meet the income requirement upon which the Applicant was found ineligible. That record included an admission by the Applicant that he lost his job with the First Employer due to performance issues and not for reasons related to COVID. The Applicant has not taken issue with this admission from the Officer's T1Case notes, though Applicant's counsel suggested at the hearing that the Applicant's understanding of that call was compromised due to a language barrier. There is no evidentiary support for this submission.

[24] Finally, I am also satisfied that the Applicant was afforded procedural fairness. The Applicant knew the case he had to meet including the importance of the ROE from his First Employer, and he had a chance to and did provide multiple submissions to the Officer both in writing and orally.

[25] The Respondent did not seek costs and none will be awarded.

V. Conclusion

[26] The Applicant has not met his burden of showing that the Decision was unreasonable, nor has he shown that he was denied procedural fairness. Accordingly, this application is dismissed.

[27] At the request of the Respondent and with the consent of the Applicant, the style of cause for this proceeding is amended to name the Attorney General of Canada as the proper respondent.

JUDGMENT in T-2615-25

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to name the Attorney General of Canada as the Respondent; and
2. The application for judicial review is dismissed without costs.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2615-25

STYLE OF CAUSE: MOSTAFA ADKI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: JANUARY 12, 2026

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: JANUARY 14, 2026

APPEARANCES:

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Randy Ramoodit	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT