

Federal Court



Cour fédérale

Date: 20250618

**Dockets: T-415-24
T-416-24**

Citation: 2025 FC 1106

Ottawa, Ontario, June 18, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ARMAN YOUNANE KHOSROABADI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Arman Younane Khosroabadi, applied for and received both the Canadian Emergency Response Benefit (“CERB”) for seven four-week periods from March 15, 2020 to September 26, 2020 (“CERB Periods”) and the Canada Recovery Benefit (“CRB”) for twenty-eight two-week periods from September 27, 2020 to October 9, 2021 (“CRB Periods”).

[2] The Canada Revenue Agency (“CRA”) conducted a validation review and found that Ms. Khosroabadi was ineligible for both the CERB and the CRB she had already received. Ms. Khosroabadi was consequently required to repay these amounts.

[3] The CRA found that Ms. Khosroabadi was not eligible for either benefit because she did not meet the minimum income threshold, namely: she did not earn at least \$5000 in 2019, 2020 or in the 12 months before her first application of either benefit from an eligible income source (*Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 , section 6 [CERB Act] and *Canada Recovery Benefits Act*, SC 2020 c 12, s 2 , section 3 [CRB Act]).

[4] Ms. Khosroabadi argues that the CRA’s January 25, 2024 decisions were both unreasonable and unfair. She argues that the Second Reviewer erred in finding that her employment insurance (“EI”) benefits and EI family caregiver benefits for adults could not be considered “income” for the purposes of establishing that she met the minimum income threshold of \$5000. She argues that CRA agents told her prior to making her application that this income was eligible for the \$5000 amount. She also argues it was unfair and unreasonable that the Second Reviewer did not consider all the evidence before them and that it was unclear which evidence they did consider.

[5] I do not agree. I am dismissing the judicial review. Upon reviewing the record, I find that the CRA provided the Applicant with multiple opportunities to provide evidence and submissions, reviewed the evidence and submissions, and provided a transparent, intelligible and justified explanation for denying her review of the ineligibility decision. Ms. Khosroabadi has

not established any sufficiently serious shortcoming in the CRA's analysis of her eligibility in light of the facts and the law.

II. General Background and Procedural History

[6] Ms. Khosroabadi was laid off from her job in early 2019. She received EI benefits from approximately February 2019 to September 2019. Ms. Khosroabadi then received EI family caregiver benefits from October 27, 2019 to January 26, 2020 to provide care for her sister.

[7] Ms. Khosroabadi states that, due to the COVID-19 restrictions, she had to be her sister's full-time caregiver because in-house care was no longer available. She also states that she was offered to come back to her former employment in early March 2020 but then, because of COVID-19 restrictions, a senior employee continued to work at the store, while the Applicant had to wait to be able to return until the restrictions were lifted.

[8] Ms. Khosroabadi applied for the CERB in April 2020 and for the CRB in October 2020. She submits that she confirmed that both her EI and EI family caregiver benefits counted as eligible sources of income by speaking with "multiple CRA representatives" and consulting the "original criteria on the Government of Canada website".

[9] Approximately three years later, by a letter dated March 13, 2023, the CRA requested that Ms. Khosroabadi provide documentation to support her eligibility for the CERB and CRB payments. Ms. Khosroabadi submitted a copy of her "T4E" which set out her EI payments. The

first review officer (“First Reviewer”) found that did she not meet the \$5,000 income requirement and communicated their decision to Ms. Khosroabadi on April 12, 2023.

[10] On May 3, 2023, Ms. Khosroabadi provided the CRA with additional submissions. These submissions were treated as a request for a second review.

[11] The second review officer (“Second Reviewer”) took inventory in their notes of the submissions and evidence on file. They noted that Ms. Khosroabadi submitted a copy of the T4E (2019) and her recent May 3, 2023 submissions included: i) Ms. Khosroabadi’s personal statement; ii) a letter from Service Canada dated November 29, 2019 stating that EI claim for benefits was reactivated and that payment will begin on October 27, 2019 and would continue for 15 weeks; iii) Applicant’s sister’s medical notes, and; iv) a letter from her former employer indicating that they had offered her a job to start March 2, 2020.

[12] On January 10, 2024, the Second Reviewer spoke to Ms. Khosroabadi and asked her questions about the impact of COVID-19 on her work, her employment history since 2019, and advised her that there was no employment income on file for her in 2019 and 2020. Ms. Khosroabadi said that she was on EI at the time. The Second Reviewer requested that she provide pay slips for her work in 2019 and record of employment (“ROE”) from her previous employer.

[13] On January 10, 2024, Ms. Khosroabadi submitted her ROE and cheques from her work in 2019.

[14] The Second Reviewer spoke to Ms. Khosroabadi again on January 23, 2024 to advise that she was not eligible for the benefits because she did not meet income requirements. They noted:

I explained that rental income was not an eligible source of income for these benefits. The applicant was adamant that they reviewed all the eligibility requirements and that an agent advised them to apply for the benefits. I explained that I could not attest to what another agent has said or done.

[15] In their decision explanation notes, the Second Reviewer further explained that Ms. Khosroabadi's work schedule in the 12 months prior to their application (April 7, 2019 to April 6, 2020) was not impacted by COVID-19 because they were not employed. The Second Reviewer also found that Ms. Khosroabadi caring for her sister was "not a reason to stop working and collect CERB as their sister's illness was not related to COVID-19 and that the CERB is not the appropriate benefit in this case".

[16] The CRA notified the Applicant that she was not eligible for either benefit because of the \$5000 income requirement for either the CERB or the CRB in letters dated January 25, 2024.

III. Preliminary Issue: New Evidence

[17] The Respondent has asked the Court to not consider a number of documents that were filed in the Applicant's Record. The Respondent argues that these documents are not properly before the Court because they were not in front of the CRA when they were making their eligibility decision.

[18] The Respondent's position is based on an affidavit provided by the Second Reviewer where they set out the documents included in the Applicant's Record that were not before them:

- Past EI claim payments (Regular Benefits and Family Caregiver Benefits)
- 2020 T4E
- Dependents' medical/ER notes
- Original CERB eligibility criteria from the CRA website
- Canada Worker Lockdown Benefit (CWLDB) eligibility criteria from CRA website
- Statement of account for COVID-19 benefits letter dated 13 June 2023
- 2019 T4E
- Applicant's personal statement

[19] In general, it is not appropriate for me on judicial review to consider evidence that was not before a decision-maker. There are exceptions to this general rule, including to demonstrate a procedural defect, to provide general background information to assist the Court, and to demonstrate the absence of evidence in the record for a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[20] Counsel for the Minister confirmed that the Second Reviewer's affidavit is incorrect in stating that the Applicant's personal statement was not before them. This document was before the decision-maker and is therefore admissible to be considered.

[21] Two of the documents are eligibility criteria from the CRA's website that counsel for the Respondent agrees were operative at the relevant times. In my view, these documents were either arguably before the decision-maker at the time or fall within the exception that background information can be considered even if not before the original decision-maker.

[22] With respect to the other documents, I accept that the particular versions of the documents as submitted by the Applicant in their Applicant's Record were not before the decision-maker and therefore are inadmissible on judicial review. Having said that, as became clear to me during the hearing, for a number of the documents, (2020 T4E, 2019 T4E, and the sister's medical notes) the issue is not whether the Second Reviewer had access to the particular information in these documents but rather whether the particular version that the Applicant appended to her affidavit was in front of the decision-maker. While I appreciate it is important to be precise about the documents that were provided, it would be helpful, particularly where the other party is not represented by counsel, to clearly explain the concern with the documents, instead of a blanket statement that these are new documents that were not considered by the decision-maker.

[23] There are minor, inconsequential differences between the documents the Applicant filed on judicial review and the documents the Minister is stating were before the decision-maker. I am satisfied that even if I am wrong that the version of the evidence the Applicant is stating was filed with the CRA had in fact been filed, I cannot see how it would have made any difference to the Second Reviewer's decision. Neither party is arguing that the key information contained in these documents was not before the decision-maker.

IV. Analysis

[24] Ms. Khosroabadi challenges the process followed in validating her eligibility and the substance of the decision itself. With respect to the substance of the decision, I will apply a reasonableness standard of review. On the procedural question, the question I need to ask is whether the procedure was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[25] Ms. Khosroabadi argues that she applied for the CERB and CRB benefits in good faith, having been advised by CRA agents that she would be eligible based on her earnings through EI. She also argues that the CERB eligibility criteria on the CRA website at the time also support this position. In essence, Ms. Khosroabadi is arguing that she had a legitimate expectation that she be found eligible because of her interactions with CRA agents before applying. As explained by Justice Turley in *Olivet v. Canada (Attorney General)*, 2024 FC 1452 at paragraph 39:

... the doctrine [of legitimate expectation] does not create substantive legal rights or entitle someone to a particular outcome: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 97; *Chelsea (Municipality) v Canada (Attorney General)*, 2024 FCA 89 at para 36. Instead, it “is limited to procedural relief”: *Flock FC* at para 23. The doctrine cannot thus be relied on to argue that the Applicant was entitled to receive the CRB.

[26] The same is true here. While I do not doubt that Ms. Khosroabadi applied believing that she was eligible to receive the benefits, this is not a sufficient basis to find that the Second

Reviewer was unreasonable in applying the non-discretionary legislative criteria. The Second Reviewer had no choice but to apply the criteria set out in the legislation.

[27] For the sake of completeness, though it could not change the non-discretionary legislative criteria, I also note that I do not find the language on the website on which Ms. Khosroabadi argues she relied on to believe she was eligible, supports her position about the type of income that could be considered.

[28] The onus remains on the Applicant, as the taxpayer, to ensure that she meets the criteria (*CRB Act*, subsection 5(1); *CERB Act*, subsections 5(3), 10; *He v Canada (Attorney General)*, 2022 FC 1503 at para 25; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 26).

[29] The Second Reviewer's concern was clear: the lack of any employment income that amounted to \$5000 in the relevant time period. This concern was stated by the First Reviewer and in the CRA's letter that started the validation process, where it is reiterated that the minimum income threshold could be met through establishing income was earned through "employment income (total or gross pay), net self-employment income (after deducting expenses), maternity and parental benefits from Employment Insurance, or similar Quebec Parental Insurance Plan (QPBIP) benefits."

[30] The Second Reviewer's position that Ms. Khosroabadi did not earn sufficient income in the relevant period was consistent with the legislation they were applying. Subparagraph 3(1)(d)(iii) of the *CRB Act* and paragraph 2(c) of the *CERB Act* provide that the only

employment insurance benefits that may be calculated as a part of the net income are parental and maternity benefits under subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*, SC 1996, c 23 [EI Act] (See: *Mullone v Canada (Attorney General)*, 2024 FC 1999 at para 31).

[31] Further, as noted by the Second Reviewer, Ms. Khosroabadi's scheduled work week could not have been impacted by COVID-19 because she was not employed at that time – the last time she was employed was the end of January 2019.

[32] Ms. Khosroabadi also argued that her evidence was not considered and this made the decision unfair. I have carefully considered the record and I do not agree. The Second Reviewer's internal notes to file form part of the reasons for decision (*Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 9; *Asgaraly v Canada (Attorney General)*, 2023 FC 1285 at para 24). The Second Reviewer carefully summarized the evidence on file in their notes and referenced the Applicant's particular circumstances. Ms. Khosroabadi has not pointed to anything specific that was not considered by the Second Reviewer.

[33] My role on judicial review is limited. I have to decide whether the CRA was reasonable and fair in its eligibility decision. I have not found that Ms. Khosroabadi has established that there is a sufficiently significant shortcoming in the CRA's analysis or that the steps the CRA took in the validation process were unfair. The application for judicial review is dismissed.

[34] I acknowledge that Ms. Khosroabadi has raised issues regarding the impact of this process on her family. I note that these concerns may be more appropriately addressed with the CRA with respect to a repayment plan. The Second Reviewer notes in their decision letter that “We understand that it may not be possible for you to pay your debt immediately or in full. We’re here to help.”

[35] The Respondent indicated at the hearing that they were no longer seeking costs in this matter. I agree that this is appropriate and decline to award costs.

JUDGMENT in T-415-24 and T-416-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended with immediate effect to remove the CRA as a Respondent;
2. The application for judicial review is dismissed; and
3. No costs are ordered.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-415-24 AND T-416-24

STYLE OF CAUSE: ARMAN YOUNANE KHOSROABADI v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 18, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JUNE 18, 2025

APPEARANCES:

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