

CANADA / JUDGMENT

# Khan v. Canada (Attorney General)

2024 FC 1840

COURT

Federal Court

DECIDED

18 November 2024

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T-377-24 Citation: 2024 FC 1840 Ottawa, Ontario, November 18, 2024 PRESENT: The Honourable  
Mr. Justice Ahmed BETWEEN: NABIL KHAN Applicant and THE ATTORNEY GENERAL OF  
CANADA Respondent JUDGMENT AND REASONS I. Overview

- [1] The Applicant, Mr. Nabil Khan (“Mr. Khan”), is a self-represented individual who seeks judicial review of a decision of the Canada Revenue Agency (“CRA”) dated February 9, 2024, in which a Manager of Canada Emergency Benefits Validation (the “Officer”) determined that he was not eligible for certain instalments of the Canada Emergency Response Benefit (“CERB”), the Canada Worker Lockdown Benefit (“CWLB”), and the Canada Recovery Benefit (“CRB”).
- [2] Mr. Khan submits that the decision is unreasonable. Mr. Khan submits that the Officer should have considered equitable factors, including illness and financial hardship, when assessing his eligibility.
- [3] I am mindful of and commend Mr. Khan for his self-representation before this Court. However, for the reasons that follow, I find that the decision is reasonable. This application for judicial review is dismissed. II. Facts
- [4] Mr. Khan is a father. For the past five years, he has worked as an Uber driver. Between 2020 and 2022, Mr. Khan received the CERB, CWLB, and CRB.
- [5] The CERB, CWLB, and CRB are benefits intended to provide financial support for people adversely affected by the COVID-19 pandemic. Each benefit program is governed by its own legislation. The enabling statutes for the CERB, the CWLB, and the CRB are the Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 (the “CERB Act”), the Canada Worker Lockdown Benefit Act, SC 2021, c 26, s 5 (the “CWLB Act”), and the Canada Recovery Benefits Act, SC 2020, c 12, s 2 (“CRB Act”), respectively.

- [6] To be eligible for these benefits, a person must meet certain requirements. All three benefits require individuals to demonstrate earnings of least \$5,000 in prescribed categories of income in either 2019, 2020 or the 12-month period before applying for support (CERB Act, s 2; CRB Act, s 3; CWLB Act, ss 4(1)(d)-(e)). Additionally, the CERB Act states that individuals cannot earn more than \$1,000 in employment or self-employment income during the consecutive days on which they have stopped working (CERB Act, s 6(b)(i); Income Support Payment (Excluded Nominal Income) Regulations, SOR/2020-90, s 1). In contrast, the CRB Act and the CWLB Act require individuals who are employed to demonstrate a 50% reduction in their average weekly income compared to the previous year (CRB Act, s 3(1)(f); CWLB Act, s 4(1)(f)(iii)). The CWLB Act also requires that individuals must be affected by a lockdown order in a designated lockdown region (CWLB Act, s 4(1)(f)).
- [7] Mr. Khan received four CERB payments, 24 CRB payments, and two CWLB payments.
- [8] In 2022, the CRA initiated a review of Mr. Khan's eligibility for all three benefits, informing him on February 16, 2023 that he was not eligible for any of the benefits because he did not earn at least \$5,000 in the relevant time periods preceding his applications.
- [9] Mr. Khan requested a second review, providing bank statements, tax forms, and Uber tax summaries for consideration.
- [10] On February 9, 2024, the CRA informed Mr. Khan of the outcome of the second review (the "Eligibility Decision"). The Officer determined that he was not eligible for one CERB payment, 12 CRB payments, and one CWLB payment. This is the decision that is presently under review. III. Preliminary Matter
- [11] The Respondent submits that the style of cause should be amended to identify the Respondent as the Attorney General of Canada in place of the Minister of National Revenue. I agree. The style of cause is amended effective immediately, pursuant to Rule 303(2) of the Federal Courts Rules, SOR/98-106. IV. Issue and Standard of Review
- [12] The sole issue in this application is whether the Eligibility Decision is reasonable.
- [13] The standard of review is not disputed. The Respondent submits that the applicable standard of review is reasonableness (Canada (Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 16-17, 23-25 ("Vavilov")). I agree.
- [14] Reasonableness is a deferential, but robust, standard of review (Vavilov at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (Vavilov at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (Vavilov at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (Vavilov at paras 88-90, 94, 133-135).

- [15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (Vavilov at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (Vavilov at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (Vavilov at para 100). V. Analysis
- [16] Mr. Khan submits that the Eligibility Decision is unreasonable. He submits that the Officer should have considered equitable factors, including illness and financial hardship, when determining his eligibility for CERB, the CRB, and the CWLB.
- [17] Respectfully, and with sympathy for Mr. Khan’s position, I disagree. I do not find a reviewable error in the Officer’s decision.
- [18] The laws governing CERB, the CRB, and the CWLB do not allow for consideration of personal circumstances like illness or financial hardship when determining eligibility. These equitable factors are simply not a component of the compliance system for these three benefits. As stated by the Respondent’s counsel, “the issues that [Mr. Khan] is raising are not issues that the [Officer] could consider” in assessing eligibility.
- [19] Instead, eligibility for CERB, the CRB, and the CWLB is largely based on income, with the additional factor of designated lockdown regions for the CWLB. The Officer reasonably determined that Mr. Khan did not meet these requirements.
- [20] With respect to the CERB, the Officer determined that Mr. Khan was not eligible for one payment during the period of March 15, 2020 to April 11, 2020. Mr. Khan’s bank statements demonstrate that he earned more than \$1,000 of income during this four-week period, contrary to paragraph 6(b)(i) of the CERB Act. I find no error in the Officer’s decision.
- [21] With respect to the CRB, the Officer determined that Mr. Khan was not eligible for 12 payments during the period of November 22, 2020 to January 2, 2021; January 31, 2021 to February 27, 2021; July 4, 2021 to September 25, 2021; and October 10, 2021 to October 23, 2021. Mr. Khan’s bank statements demonstrate that, during these periods, he earned more than 50% of his average weekly income in the previous year. Consequently, he was ineligible for the CRB pursuant to paragraph 3(1)(f) of the CRB Act. Again, I find no error in the Officer’s decision.
- [22] With respect to the CWLB, the Officer determined that Mr. Khan was not eligible for one instalment during the period of December 19, 2020 to December 25, 2021. Although Mr. Khan was located in a designated lockdown region during this period, his bank statements demonstrate that he earned more than 50% of his average weekly income in the previous year. Mr. Khan was therefore ineligible for the CWLB pursuant to subsection 4(1)(f)(iii) of the CWLB Act. Once again, I find no error in the Officer’s decision.

- [23] I agree with the Respondent that the Officer's decision is transparent, intelligible and justified (Vavilov at para 15). In the benefits compliance context, an officer's reasons include the Second Review report as well as notepad entries made by CRA agents throughout the course of review (Crook v Canada (Attorney General), 2022 FC 1670 at para 14). Taken in their entirety, the reasons show that the Officer carefully considered the materials Mr. Khan submitted and provided a rational chain of analysis for the decision. VI. Conclusion
- [24] This application for judicial review is dismissed. The Officer's decision is responsive to Mr. Khan's materials and justified in light of the statutory framework for CERB, the CRB, and the CWLB (Vavilov at para 85).
- [25] Although the Respondent requests costs, I do not find this to be an appropriate case for a costs award. Mr. Khan is a self-represented litigant. Although Mr. Khan was unsuccessful in demonstrating that the decision is unreasonable, he brought this application in good faith seeking to have his circumstances considered. This Court has denied cost awards in similar contexts in the past (Lalonde v Canada (Revenue Agency), 2023 FC 41 para 97; Latourell v Canada (Attorney General), 2024 FC 44). JUDGMENT in T-377-24 THIS COURT'S JUDGMENT is that: The style of cause is amended to identify the Respondent as the Attorney General of Canada effective immediately. This application for judicial review is dismissed without costs. "Shirzad A." Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-377-24 STYLE OF CAUSE: NABIL KHAN v ATTORNEY GENERAL OF CANADA PLACE OF HEARING: BY VIDEOCONFERENCE DATE OF HEARING: SEPTEMBER 24, 2024 JUDGMENT AND REASONS: AHMED J. DATED: November 18, 2024 APPEARANCES: Nabil Khan (On his own behalf) For The Applicant Caitlin Ward For The Respondent SOLICITORS OF RECORD: Attorney General of Canada Halifax, Nova Scotia For The Respondent

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