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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

JACQUELINE BYRNE

Grievor

and

**DEPUTY HEAD
(Department of Employment and Social Development)**

Respondent

Indexed as

Byrne v. Deputy Head (Department of Employment and Social Development)

In the matter of an individual grievance referred to adjudication

Before: Nancy Rosenberg, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Paul Champ, counsel

For the Respondent: Richard Fader, counsel

Heard at St John's, Newfoundland and Labrador,
April 30 to May 2, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication before the Board

[1] In March 2020, as the COVID-19 pandemic (“the pandemic”) began to make its presence felt in Canada, Jacqueline Byrne (“the grievor”) was a full-time PM-02 Service Canada benefits officer working for Employment and Social Development Canada (“ESDC” or “the employer”) in its Employment Insurance (“EI”) program.

[2] The Canada Emergency Response Benefit (“CERB”) was a temporary benefit program put in place to provide immediate financial support to those who faced a loss or significant reduction of income due to the pandemic. The ESDC, the grievor’s home department, was responsible for the CERB program, but it was administered by the Canada Revenue Agency (“the CRA”). Applicants who met the eligibility criteria could apply for CERB payments of \$2000, for up to seven four-week periods between March 15, 2020 and September 26, 2020.

[3] The grievor applied for all seven cycles of CERB payments for a total of \$14 000. She was not eligible to receive them because she continued to work full-time, with no break or reduction in her employment income. After conducting an investigation, the employer revoked her reliability status security clearance, which resulted in the automatic termination of her employment.

[4] Although the grievor did not lose her ESDC job, or any employment income, because of the pandemic, she said that she thought that eligibility for CERB payments could be based on a loss or reduction of **either** employment **or** self-employment income, even if one had both. Having started a small home crafts business in 2019, she had projected that her second year in business would produce increased earnings. Once the pandemic hit it seemed unlikely that those projected earnings would materialize. Seeing this as lost self-employment income, she applied for the CERB.

[5] However, even if the pandemic had forced her to close her home business, the grievor was still receiving her full ESDC salary which made her ineligible for the CERB. In any event, her self-employment income did not reduce as anticipated, but rather, increased.

[6] The grievor testified that she would never have jeopardized her job had she understood the CERB criteria and realized that she was not eligible for it. However, I

find that she knew or strongly suspected that there were issues with her eligibility but chose to remain wilfully blind to them.

[7] Accordingly, the revocation of her reliability status was justified on proper and legitimate grounds, and the resulting termination of her employment was for cause. The grievance is denied.

II. The evidence

[8] The pandemic's economic impact was such that many Canadians faced a sudden drop in income due to lost jobs, layoffs, or reduced hours of work. Media reports in April 2020, based on Statistics Canada Labour Force Survey data, stated that Canada had lost more than 3 million jobs and that those working less than half their usual hours had increased by 2.5 million. By mid-April 2020, the total number of workers no longer employed, or working far less, was 5.5 million.

[9] To address this, the temporary CERB program was put in place to ease the financial burden by quickly getting some money into the hands of impacted Canadians to cover basic living needs — to help keep a roof overhead and food on the table.

[10] Applications were made via either an online or a telephone attestation process. Applicants had to respond to several questions, and their eligibility was determined based on their answers.

[11] Early on in the program's brief existence, the wording of the attestation statement was changed. At first, it was this:

...

Confirm the following to receive your payment:

...

*For at least 14 consecutive days of the four week period you selected, you have **either stopped or will stop working** due to COVID 19, **or**, You have lost **or** will lose your regular employment **or** self-employment income.*

...

[Emphasis added]

[12] The grievor testified that she thought that could mean that eligibility could be based on **either** a loss of employment income **or** a loss of self-employment income. In

her view, she could have been eligible based on the projected loss of her self-employment income, despite the continuation of her full employment income.

[13] On April 24, 2020, that initial wording was clarified, after which the attestation statement for a first application was this:

...
You have stopped or will stop working for reasons related to COVID 19, for at least 14 consecutive days within the four week benefit period, and have, or expect to receive, no more than \$1,000 in combined employment or self-employment income for these consecutive days.

...
[Emphasis added]

[14] And for subsequent applications, it was this:

...
You have stopped working for reasons related to COVID 19, and you continue to not work and expect to remain in this position for the entire four week period for which you are applying, and expect to receive no more than \$1,000 in combined employment or self-employment income.

...
[Emphasis added]

[15] The grievor testified that she had misunderstood the eligibility criteria and had thought that her ESDC salary did not figure into it. But when presented in cross-examination with the revised wording, she readily acknowledged that she could now see that she did not qualify for the CERB.

[16] Pressed on this point in cross-examination, the grievor explained that she did not really listen to the questions, that she “rushed through” both the questions and the read-back and verification of her answers. She described it this way: “You just answer yes or no — you don’t listen to the whole thing, it’s like the EI, yes-no, I know from the past when I’ve been on EI that’s what I did, so yes, I would’ve known the numbers and I would’ve just pushed them.”

[17] The grievor had over 20 years of federal government work experience under her belt, starting with the CRA in 1997 in several different units. She went on to hold several term positions, with Health Canada, the Canadian Coast Guard, the CRA again,

Passport Canada, and, finally, Service Canada. She said that some of her terms were seasonal positions but as they tended to be on either end of a year, she often worked the whole year. At Passport Canada, she held a secret clearance because she had control of passports; there was a very strict procedure to ensure that unused blank passports were returned to a vault. She also had work experience in the Newfoundland and Labrador provincial public service.

[18] In 2014, she started with ESDC in a PM-01 term position at a call centre, followed in 2015 by a term position as a PM-01 Service Canada benefits officer. On April 3, 2017, she was appointed to an indeterminate position as a PM-02 Service Canada benefits officer in the EI program.

[19] In this position, she dealt with regular, sickness, maternity, and parental EI claims. She ascertained the facts on such issues as reasons for loss of employment and availability for work, determined applicants' eligibility for EI benefits, adjudicated contentious applications, and monitored benefits payments throughout the duration of a claim. She said that the most contentious claims dealt with quits and dismissals.

[20] She had never had occasion to report fraud but she was responsible to report anything out of the normal course to her supervisor, who would take it to the integrity division. She said that she had received extensive training as a benefits officer and that if she was not sure how to proceed on a claim, she could obtain advice.

[21] The grievor said that she knew the importance of correctly understanding eligibility criteria and sticking to it, even when doing so was hard. She gave the example of gut-wrenching decisions she had to make when faced, for example, with an EI claimant ill with cancer with only a short period of sick leave remaining. She said that difficult as it was, "you go with the criteria set out; you either meet it or not."

[22] When adverse information comes to light about an employee that may call their reliability or loyalty into question, a review for cause takes place. This is a formal reassessment of whether they should continue to hold a previously granted security status. It requires that both an investigation interview and a security interview be conducted. Stéphane Lavigne, a senior investigator with the ESDC's Internal Investigations Unit conducted both interviews.

[23] The grievor testified that while she had mistakenly told the investigator that she called the CRA inquiries line in May or June 2020, she actually called first towards the end of March and then again just before the May 24 long weekend. She said that when she called, she just asked a general question about eligibility and did not give her name, her social insurance number ("SIN") or state that she was an ESDC employee. She told the CRA agent that she was working full-time and had a small business, but that her income from the small business was nullified due to the pandemic and the indefinite cancellations of craft fairs and the like.

[24] On cross-examination, the grievor was asked to confirm that she had told the CRA agent that her small business income was nullified. She confirmed it and said that in March it was an anticipatory statement. As for the call in May, she said, "I guess I phrased it incorrectly."

[25] She said that the CRA agent advised that because of that lost self-employment income she could be eligible for the CERB, and if it was determined later that she was not, that she would have to pay back any benefits received.

[26] She said that she called back in May because she was hearing conflicting information in the media, mostly in a radio talk show that she listened to regularly. She said that she wanted to make sure that she was still eligible. She told the agent that she still worked full-time and had a small business and was given the same advice that she had received in March. She did not identify herself on this call either.

[27] She took no notes and did not know the name of the agents with whom she spoke. There was no note in the CRA's computer system about either call.

[28] The grievor received e-transfer payments for her home-business sales every month throughout the period during which she applied for and received the CERB. Her home business income was under \$1000.00 each month, except for May 2020 when it was slightly over that amount.

[29] When questioned by the investigator, she said that her home-business revenue had dropped by 60%. When it was put to her in cross-examination that her self-employment earnings had actually increased, she said that she simply gave the investigator an estimate. She had not actually looked at the figures.

[30] The grievor testified that the time of these events was an extremely difficult and stressful time for her as her mother became very ill and was in hospital for a lengthy period. The grievor struggled to care for her mother in difficult circumstances given the pandemic restrictions on visiting. She also had to help and support her father, who was significantly impacted by his wife's illness and who also became seriously ill. Both of her parents passed away in the early months of 2021.

III. Summary of the submissions

A. For the employer

[31] The employer submitted that the grievor was an experienced benefits officer, whose very job it was to understand and apply eligibility criteria. She knew that she was not entitled to the CERB, yet she applied for it on seven separate occasions covering the period from March 15 to September 26, 2020. She answered the attestation questions inaccurately and received a total of \$14 000.

[32] The CERB program was intended to provide relief for those who suffered the full effect of the economic meltdown that flowed from the pandemic. The benefit was intended to keep a roof overhead and food on the table. It was in that context that the grievor, a full-time, working ESDC employee, applied for and received CERB benefits.

[33] Seven times she submitted fraudulent information to receive benefits from a program for which her home department was responsible. At no time during that process did she see the light and stop; she continued to apply until the program closed, all while working full-time, including voluntary overtime.

[34] This was not a case of an honest mistake; it was fraud. The grievor was an experienced benefits officer; but there was no need to read a statute to understand the CERB eligibility criteria. The attestation script was short, only one page, and it simply required that an applicant answer the questions honestly. The grievor did not.

[35] She also gave the investigator misleading information and some of her testimony at the hearing lacked credibility.

[36] The grievor obtained a new CRA position after these events and answered a security question inaccurately, stating that she had not previously completed a security-screening form. This demonstrated her lack of credibility and willingness to

fudge answers in official processes to obtain her desired result. She also did not declare her business on her 2019 income tax return; she ran it under the table.

[37] The grievor's submissions that the pandemic and her difficult personal circumstances combined to create an extremely stressful time were not relevant because she had no reason to apply for the CERB in the first place. Her job was intact, and she had no break in her income. It was a positive action that she took.

[38] While this case involves a non-disciplinary termination, the reliability assessment revolves around integrity and specifically honesty and trustworthiness. Acquiring benefits fraudulently is tantamount to theft. Theft is one of the most serious offences in an employment relationship, and that it occurred seven times goes directly to these issues.

[39] The security investigation concluded that she had committed a breach of trust regarding her employer. This conclusion was justified when the overall facts are considered. It was reasonable to find that her actions were incompatible with holding reliability status, as they were inconsistent with the expected conduct that the employer had to rely on — that she would not abuse the trust given to her.

B. For the grievor

[40] The grievor's counsel submitted that while there might have been some wishful thinking on her part with respect to her eligibility for the CERB, the employer failed to establish that she had intentionally committed fraud.

[41] The year 2020 was a profoundly jarring, dislocating, and confusing time for everyone, and although the grievor did not argue that she experienced incapacity, nevertheless, it should be considered that she went through an extremely difficult and confusing time. The stress of coping with her mother's lengthy illness, exacerbated by the pandemic restrictions on hospital visiting, was followed by her father's illness and the ultimate deaths of both her parents. When that context is considered, the employer did not have enough evidence to establish a reasonable probability that she intended to commit fraud and was therefore unreliable.

[42] One must determine whether some risks are acceptable. Adverse information can be acquired, but consideration must be given to whether it was serious enough to

conclude that the grievor presented a risk in the workplace, could not be trusted, and was likely to abuse trust, steal, or be vulnerable to coercion.

[43] The CERB eligibility criteria were confusing for everyone, to a certain extent. The telephone-script language was confusing and ambiguous, and it changed over time. The phrase “employment or self-employment” was changed to “combined employment or self-employment”, with no notice of the change. Whether gross or net income was at issue changed as well. The language that required a claimant to have “stopped working” was ambiguous, when considered with the later added ability to have income up to \$1000 and still be eligible. None of the scenarios provided to illustrate eligibility were similar to the grievor’s situation of working, but also being self-employed.

[44] It was an urgent program rolled out fast, to avoid hardship. It was designed and delivered in a hurry. The public information was unclear. Unlike a program like EI, with pages and pages of regulations and jurisprudence about eligibility, the CERB program had just come out the door. For training, agents were simply sent a document.

[45] That the grievor called the CRA suggests that she was not certain she qualified; she would not have called otherwise. However, it was not crystal clear that she was not eligible, and she was told that if she was not, she could pay it back. Considering her state of mind at the time, at worst, it was wishful thinking, hoping, and understanding that she might have to pay it back. It was bad judgment on her part to not take further steps to determine her eligibility, but there was no intent to conceal.

[46] Considering the evidence on the balance-of-probabilities standard, one cannot conclude that the grievor was deliberately fraudulent. She can be criticized for wishful thinking, reasonable people could have misunderstood the eligibility criteria, and maybe a benefits officer should have had a better understanding of it, but the confusion of that period of the pandemic and her personal circumstances were such that it was not unreasonable for her to apply for the CERB, since she was told that she would simply have to pay it back if it was not correct for her to receive it.

IV. Reasons

[47] The grievor’s case essentially rests on her assertion that she applied for the CERB payments in good faith and would never have knowingly jeopardized her job.

Much of the evidence therefore concerned her responses to the attestation statements that were required by the application process.

[48] The wording of the attestation statement's first iteration was ambiguous. Inappropriate use of the disjunctive "either/or" and an attempt to cover too many variables in one sentence resulted in a phrase that taken literally, could render it as providing three distinct paths to eligibility, namely,

- 1) that you have stopped working or will stop working; **or**
- 2) that you have lost or will lose your regular employment income; **or**
- 3) that you have lost or will lose your self-employment income.

[49] That is how the grievor said that she understood it - that a loss in self-employment income could stand on its own to meet the eligibility criteria, regardless of her full-time employment salary. I do see her point, based on a literal understanding of a poorly drafted attestation statement.

[50] However, in this case, there are several problems with the grievor's explanation.

A. The ambiguous attestation statement was clarified early on

[51] Firstly, the attestation wording was clarified on April 24, 2020. Misunderstanding the criteria due to ambiguous wording might have applied to her first two applications but would not completely explain the five subsequent ones. The initial attestation statement should certainly have been clearer. However, once it was changed to, "You have **stopped working** ... and you continue to not work ... and expect to receive **no more than \$1,000 in combined employment or self-employment income**", it was quite clear.

[52] The grievor's counsel submitted that there had been no specific notice of the change in wording. Although each application was separate, and each required answering the attestation statement anew, in fairness to applicants, the employer would have been well-advised to have provided such a notice. In my view, when asking people to self-attest, notice of any change can be an important element of transparency.

[53] However, the grievor said that she was hearing conflicting information on a radio talk show that prompted her second call to the CRA inquiries line in May. She did not specifically relate this to a wording change but said that she wanted to ensure that

she was **still** eligible. This suggests to me that she likely had some awareness that something may have changed or been clarified. However, when she called the line the second time she misled the agent again, repeating that she worked full-time but had lost her self-employment income.

[54] Nor did she listen carefully to the attestation statement itself, given that she had continuing or renewed misgivings about her eligibility. When presented with the revised wording in cross-examination, the grievor readily acknowledged that she could see that she did not qualify for the CERB. She was, after all, an experienced benefits officer.

[55] Pressed on this point, however, she explained that she did not really listen to the questions, that she “rushed through” both the questions and the read-back and verification of her answers. She likened it to the process of some EI claimants, including herself, who just remember the order of yes/no questions and answer by rote, without actually considering the questions at all. This testimony was problematic on several levels.

B. The grievor lost no self-employment income

[56] Secondly, even if the grievor thought that a loss of self-employment income could meet the eligibility criteria notwithstanding her full-time employment income, the fact is that she had not stopped working in her home business and had suffered no such loss. While she may well have reasonably anticipated that a loss would result from the pandemic, no such loss materialized. In fact, her home business earnings increased.

[57] Although the grievor’s full-time employment income rendered her ineligible for the CERB in any case, the fact that her home business revenue actually increased goes to credibility. She twice told an agent on the CRA inquiries line that she had lost her self-employment income. She confirmed in her testimony that she said it had been nullified, explaining that in March that was an “anticipatory” statement. As for the May call, she said that she guessed she phrased it incorrectly.

[58] On March 1, 2021, the grievor was notified of the investigation interview, which was to take place on March 17, 2021. She had plenty of time to look at the figures. Given that her explanation for applying for the CERB was that she had anticipated a

drastic drop in earnings, one would think that she would have checked to see if that had occurred. But even without checking and just estimating, it is hard to believe that she truly thought that her business income had shrunk by 60% when, in fact, it had increased. Yet, that is what she told the investigator.

C. The grievor was an experienced benefits officer

[59] Thirdly, when she applied for the CERB, the grievor was an experienced Service Canada benefits officer, five years into a job the very essence of which was to understand and apply eligibility criteria for benefits. She knew the importance of correctly understanding eligibility criteria and sticking to it, even when facing gut-wrenching decisions. She said that difficult as it was at times, “you go with the criteria set out; you either meet it or not.”

[60] However, in her own case, the grievor seemed to go out of her way to not clearly understand and to not obtain definitive information on the eligibility criteria and whether she met it. Her end goal seemed to be an attempt to maintain plausible deniability. Calling the CRA inquiries line in March and May demonstrated that she not only had initial doubts but also ongoing or renewed concerns about her eligibility, even as she continued to apply for and receive the CERB payments. At the same time, calling anonymously and providing limited and inaccurate information indicates that she was not prepared to put her cards on the table, to be fully informed as to whether she met the criteria.

[61] In any event, even had she given the CRA agent her full information, and even had the CRA agent said that she might be eligible and to apply and pay it back, if necessary, none of that would explain or justify her repeated, inaccurate responses during the application process. She knew that the CRA agents did not adjudicate claims, that claimants had to apply and establish their eligibility by their specific attestations in each application. Even giving her the benefit of the doubt on the first two applications, she still answered inaccurately at least five times.

D. Non-disciplinary termination based on revocation of reliability status

[62] This was not a disciplinary termination. The issue before me is not to determine whether the grievor engaged in misconduct or, if so, whether the penalty of termination was excessive, or whether the employer properly applied the principles of

progressive discipline. None of that applies to a non-disciplinary termination based solely on the revocation of an employee's reliability status.

[63] As noted earlier, a review for cause is a formal reassessment of an employee's eligibility to continue to hold a previously granted security status. It is initiated when adverse information is uncovered or reported about an employee that may call their reliability or loyalty into question.

[64] When a review for cause results in the revocation of an employee's reliability status, an automatic termination of employment follows because every position in the federal public administration requires at least reliability status. It is the lowest-level security clearance and the basic requirement for all positions.

[65] The issue to be determined in such a case is whether the termination was for cause; that is, whether the employer had reasonable cause to revoke the grievor's reliability status, whether that action was justified on proper and legitimate grounds and the relevant policies. See *Canada (Attorney General) v. Féthière*, 2017 FCA 66 at para. 32, and *Canada (Attorney General) v. Heyser*, 2017 FCA 113 at para. 77, which states as follows:

...

[77] ... when the employer terminates an employee on non-disciplinary grounds, i.e. because the employee has lost his or her reliability status, the Board must determine whether the revocation leading to the termination is justified. If so, the employer has shown that the termination was made for cause. If the employer is unsuccessful in demonstrating that the revocation was based on legitimate grounds, then there is no cause for the termination and the employee ... must be reinstated.

...

[66] The Board must assess a revocation decision through a security or reliability lens. Such a decision is governed by the principles set out in the employer's security policies, in particular the *Values and Ethics Code* for the *Public Sector* and ESDC's *Code of Conduct*, both of which require that employees always act with integrity. Under section 2, "Values and Expected Behaviours", part c), "Integrity", the ESDC's *Code of Conduct* states this:

...

Value: Integrity

Integrity is the cornerstone of good governance and democracy. By upholding the highest ethical standards, public servants conserve and enhance public confidence in the honesty, fairness and impartiality of the federal public sector.

Expected Behaviors

...

Public servants shall serve the public interest by:

i) Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law.

- You are expected to do your work in a way that meets both the letter and the spirit of the law. If you are in doubt about the "rightness" of doing something, do not do it....*

...

- Your personal activities after working hours or outside of the workplace (off-duty conduct) are usually private matters. They could become work related, however, if they:*

are harmful to the Department's reputation (such as personal violations of the laws that ESDC administers)

ii) Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.

...

iii) Taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favour of the public interest.

...

iv) Acting in such a way as to maintain their employer's trust.

...

[67] The Treasury Board's *Standard on Security Screening* states that security-screening practices provide reasonable assurance that individuals can be trusted to safeguard federal government information, assets, and facilities and to reliably fulfill their duties. It describes the focus of the required reliability status screening as appraising an individual's honesty and whether they can be trusted to protect the employer's interests.

[68] The burden of proof that the employer had to meet was to show that on a balance of probabilities, the grievor's non-disciplinary termination was for cause, in that, it resulted from a reasonable and legitimate revocation of her reliability status. A revocation is legitimate if the employer had reasonable cause to believe that the

grievor might steal or misuse valuables, exploit or fail to safeguard information or assets entrusted to her, or exhibit behaviour that would reflect negatively on her reliability.

E. Revoking the grievor's reliability status was justified

[69] The preponderance of the probabilities in this case leads me to find that the grievor's explanations for applying for the CERB in the first place, and especially for continuing to apply for it, lack credibility. I find it more likely than not that she knew or strongly suspected that she was ineligible to receive it, at least once the attestation wording was clarified. Repeatedly applying for a benefit that she either knew or suspected she was not eligible to receive was clearly behaviour that violates the *Values and Ethics Code for the Public Sector* and ESDC's *Code of Conduct* and reflects negatively on her reliability.

[70] I find that she had misgivings about her eligibility, which prompted two calls to the CRA inquiries line. However, these same doubts apparently caused her to not identify herself, not mention that she was an ESDC employee, and not provide her SIN. She called anonymously and, as she put it, "just asked a general question".

[71] She did advise the CRA agents that she had a full-time job, but also told them that she had lost her self-employment income. That was not true in March because it was just her projection that she would lose it. By the May 24 weekend she knew, or should have known, that she had not lost any self-employment income. In fact, May was the month that her home business income was slightly over the \$1000 limit, making her ineligible for the CERB even without considering her employment income.

[72] The employer submitted that the grievor's conduct amounted to fraud. Her counsel argued that there was insufficient evidence to show intent to commit fraud; that at most, it might have been wishful thinking. I agree that the evidence did not demonstrate a clear intent to defraud, but neither is it necessary to do so. As mentioned earlier this is not a discipline case. The grievor's employment was not terminated for fraud but rather because her reliability status was revoked based on the findings that she had committed a breach of trust and that her continued employment would present an unacceptable security risk to the employer.

[73] The grievor suspected that she was not eligible for the CERB but kept herself wilfully blind to that likely possibility. She called the inquiries line twice but misled the agents and never really sought to find out if she was eligible. The advice she received was likely the type of answer that she sought — that she should just apply and pay it back if necessary. She heard conflicting information on the radio that was concerning enough to make the second call but, if her testimony is to be believed, she continued to rush through the questions without actually listening to them.

[74] In *Murphy v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLRB 64, a grievor completed a security form and did not disclose a conviction under which he had served a four-month jail term in Morocco many years before. He claimed that he had never fully understood exactly what had occurred in Morocco; that is, whether he had actually been convicted. The Board said this:

[139] Whatever validity this excuse for non-disclosure might enjoy gets whisked away by the grievor's admission that despite meeting in prison with Canadian embassy officials (who were likely quite well placed to remove any nagging doubts as to what might have transpired in that Moroccan courtroom), no questions were ever asked of them. He testified to never having formally followed up on his curiosity about the validity of the Moroccan proceedings.

[140] ... This excuse damages the grievor's credibility, and I find it is disingenuous to use it as a reason for not providing full, true, and plain disclosure.

[75] It seems that the similarly uncurious grievor in this case wanted some information about eligibility, but not too much. I believe that she sought to keep things vague, perhaps to maintain plausible deniability should she be found not eligible. If she really wanted to know, she would have approached the CRA inquiries line straightforwardly and identified herself and her continuing full-time federal government employment. She certainly would not have said that she had lost her self-employment income, because that was not true. Like the grievor in *Murphy* who had access to Canadian embassy officials but chose not to ask the question, the grievor in this case also had access to the information but did not truly ask the question.

[76] In her testimony, the grievor mentioned that she had recently obtained a new term position with the CRA and confirmed that she had been granted reliability status for it. In cross-examination, she was shown a “Personnel Screening, Consent and Authorization Form” from 2010 that she had submitted for a position at Passport

Canada. The form asked, “Have you previously completed a Government of Canada security screening form?” The grievor had answered “Yes” and provided the name of the department that did the screening and the year it was done.

[77] However, another copy of that form that she filled out for her new CRA position showed that replying to the same question (“Have you previously completed a Government of Canada security screening form?”), she had answered “No”. In cross-examination, she indicated that she had not understood the question, that she thought it was asking if she currently had a security clearance. That response was not credible in all the circumstances.

[78] The grievor has held many term positions in different federal government departments and agencies. She cannot help but be familiar with that question, and her failure to answer it honestly speaks volumes as to her understanding of its import, to her lack of credibility, and, as the employer put it, to her willingness to fudge answers in official processes to obtain her desired result. In the absence of a credible explanation, I find that she answered no to that question in order to conceal the revocation of her reliability status and termination from her ESDC employment.

[79] As well, her testimony that she not only answered the CERB attestation questions by rote but had also done this for EI in the past, speaks to a cavalier attitude toward official processes and a lack of understanding of the ethics and integrity required of public service employees.

[80] Finally, I heard and fully understand the grievor’s moving testimony about the extremely difficult period during which she struggled to care for her mother in the face of pandemic restrictions on hospital visits, while also trying to support her father, who became seriously ill as well. Clearly, it was a terribly stressful time of loss and grieving for her and her close-knit family.

[81] The grievor did not argue that she had been incapacitated but asked that that context be taken into account. While I have no doubt that she may not have been at her best during that stressful time, I cannot accept that her actions can be attributed to the medical crises that her family members were experiencing. She worked full-time for ESDC, took no leave during that time, volunteered for a significant amount of overtime and continued to grow her home business. The grievor, while undoubtedly severely stressed, seems to have been functioning reasonably well.

[82] As well, applying for the CERB was not an additional stressful circumstance that happened, forcing the grievor to find the wherewithal to cope with it, at an already difficult time in her life. It was a positive step that she took, entirely unnecessarily, because she had not stopped work, worked significant overtime, and had not lost any employment or self-employment income. As employer counsel put it simply and succinctly, “She didn’t have to apply in the first place.” I agree. Although her family situation was difficult, from a financial point of view, the grievor was weathering the pandemic very well.

[83] Based on all the evidence, I conclude that the revocation of the grievor’s reliability status was justified based on proper and legitimate grounds and on the relevant policies. Accordingly, the resulting termination of her employment was for cause.

[84] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[85] The grievance is denied.

January 31, 2025.

**Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board**