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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

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BETWEEN

**RIDWAN ISKANDER ABDULAZIZ**

Grievor

and

**TREASURY BOARD  
(Department of Employment and Social Development)**

Respondent

*Abdulaziz v. Treasury Board (Department of Employment and Social Development)*

In the matter of an individual grievance referred to adjudication under s. 209(1)(b) of  
the *Federal Public Sector Labour Relations Act*

**Before:** Patricia H. Harewood, a panel of the Federal Public Sector Labour  
Relations and Employment Board

**For the Grievor:** Emilie Taman, counsel

**For the Respondent:** Richard Fader, counsel

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Heard at Ottawa, Ontario,  
December 16 to 18, 2024.

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## REASONS FOR DECISION

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### I. Overview

[1] The events surrounding this grievance took place within the backdrop of a pandemic that many would rather forget.

[2] On November 22, 2019, the Treasury Board hired Ridwan Iskander Abdulaziz (“the grievor”) as a passport officer at Employment and Social Development Canada (“the respondent”). His term position was classified PM-01. By March 2020, he was in an indeterminate position.

[3] When the global shutdown occurred in March 2020 due to the COVID-19 pandemic (“the pandemic”), work was reorganized. Mr. Abdulaziz was reassigned to the newly created Employment Insurance Emergency Response Benefit (EI-ERB) call centre. He was there to provide information about the EI-ERB, which was a benefit made available to millions of Canadians who had lost their jobs or experienced severe financial hardship due to significant reductions in their employment incomes.

[4] On June 30, 2021, the grievor’s security clearance, at the reliability status level, was revoked (“the revocation”) for claiming the EI-ERB, which he was not entitled to. The grievor referred two grievances to adjudication, one against the revocation and termination, and the other that made discrimination allegations about the screening interview. The discrimination grievance — 566-02-44107 — was withdrawn at the hearing.

[5] In the revocation letter, the employer noted that the grievor’s behaviour had been contrary to what was expected of him and that it cast serious doubt on his trustworthiness. The chief security officer concluded that the grievor was unsuitable for reliability status. By letter, his employment was terminated under s. 12(1)(e) of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) on the same day.

[6] The grievor argued that the inconsistencies in his application and electronic claimant reports (ECR) were just honest mistakes that can be explained by his sloppiness. The employer argued that he was being deceitful and that he repeatedly submitted ECRs for benefits that he was not entitled to.

[7] The question that I must determine is whether the revocation was done for cause under s. 12(3) of the *FAA*. If the revocation was for cause, my analysis ends there, and the termination is maintained. If I find otherwise, then I must follow the Federal Court of Appeal's (FCA) reasoning in *Canada (Attorney General) v. Heyser*, 2017 FCA 113, and the grievor must be reinstated. The burden of proof is on the employer to establish 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 the grievor's reliability status.

[8] Ultimately, this case turns on the grievor's credibility, notably, his explanation for why he repeatedly provided false information on eight ECRs. He stated that it was just an honest mistake. He thought that all the answers to the questions on the application and ECRs pertained to the job he had lost at Enterprise Rent-A-Car ("Enterprise") due to the pandemic. I will explain later why I did not find his explanation credible.

[9] For the reasons that follow, I find that the employer has met its burden on a balance of probabilities of establishing that the revocation was for cause. After an investigation into the matter, it was reasonable and legitimate for the employer to conclude that the grievor was no longer trustworthy, and to revoke his reliability status.

[10] The first part of my decision will summarize the evidence. Then, in the second part, I will summarize the parties' arguments. In the third part, I will review the applicable test in revocation cases and explain why I have concluded that the revocation was done for cause.

## **II. Background**

[11] The facts in this matter are fairly straightforward. Many of the material facts are not in dispute.

[12] The employer called three witnesses Stéphane Lavigne, the Senior investigator who conducted the internal administrative investigation and the interview for cause; Jean-Marc Béliveau, the deputy director of integrity as of the investigation; and Luc Tremblay, the director and chief security officer of the Integrity Program, who has

since retired. Mr. Tremblay made the final decision to revoke the grievor's reliability status.

[13] The grievor testified on his own behalf.

[14] Overall, the grievor's recollection of his EI-ERB application was scant, particularly with respect to the incorrect answers that he provided in his application form and the eight ECRs that he submitted. At times, he became emotional during his testimony, especially when speaking about his precarious financial situation during the pandemic and the impact that losing his job had on him and his family.

#### **A. The grievor's story**

[15] As of the hearing, the grievor was 29 years old. He is part of a big family and has 5 brothers and 2 sisters. His parents came to Canada as refugees in 1992. He was born soon after, on December 13, 1995.

[16] He grew up in community housing in what he described as a very rough neighbourhood in Ottawa, Ontario. His parents did everything they could to make sure that he and his siblings did not fall into some of the activities in the neighbourhood — drugs, gangs, and general criminal activity, and they succeeded.

[17] His parents tried to put him in the best school. His elementary school was not the best, but he went to a better high school outside their neighbourhood.

[18] He did fairly well. He put in a significant amount of work, and from there, he went to Carleton University and studied biology but then switched to political science after one year. He saw himself more in the government sector than in sciences. He wanted to be an environmental policy analyst.

[19] In 2018, he completed his undergraduate degree. From that point, he started to apply for jobs in the federal public service. He really saw himself as having a career in the public service. But it was difficult to find one. There were many screening questions, and the processes were quite lengthy.

[20] He had bills to pay and needed a job. So, instead of doing nothing, he found a job working at Enterprise. He started there in April 2019 as a full-time employee with variable hours. He worked from 7 a.m. to 6 p.m., Mondays to Fridays, with the

weekends off. He was working about 45 to 60 hours per week while he applied for federal public service jobs.

[21] His intention was to find a public service job and then leave Enterprise, but life had other plans. When he eventually found a public service job, he stayed on part-time with Enterprise because he needed the money. That was until he was laid off due to a shortage of work.

[22] The grievor testified that before he landed the passport officer job, he ran into some financial trouble with a mortgage broker who lied to him and his brother. They tried to buy a house and were told that the lender backed out on the day they were to move. They bought the house in Barrhaven, an Ottawa suburb, and were put on a mortgage with a 14% interest rate.

#### **B. The grievor's hiring as a passport officer**

[23] Eventually, on November 23, 2019, the grievor found the passport officer job with the employer. He testified that he took classroom training until the end of the year, December 2019. Then, he had to apply what he had learned by going 10 consecutive days in a 30-day period without making any errors.

[24] A passport officer's duties include taking applications, scanning them, making sure people correct their passport photos to ensure there are no angles or smiles, and following similar guidelines. Then, the passport application is submitted for review. He worked in person until the office went online, due to the pandemic.

[25] When the pandemic hit in March 2020, the passport officers were sent home. They were on leave (the 699 leave code was used during the pandemic) for about three weeks because they had nothing to do. He said that they were told that the employer might need their help with a new EI-ERB call centre that it was creating. Then, they were told that certain of them had been selected to work in the new call centre, which was to provide information to Canadians seeking emergency relief benefits. At the hearing, he stated that he did not know whether the employer selected officers randomly, but he was chosen.

[26] His recollection was that the call-centre training was brief. He remembered feeling that it was not enough. It included some training on how to answer calls, how to set up the forms on the platform, and how to set up the headphones. There was also

a one- or two-page document on the Canada Emergency Relief Benefit (CERB), but that was it.

[27] He did not recall taking 3.5-hour CERB training and did not recall any training on CERB client scenarios.

[28] He started working in the EI-ERB call centre from home on April 6, 2020. His role was to answer questions about the EI-ERB. It was a general call centre about the emergency relief benefits; it was not specialized. He received many questions, like how often did a caller need to submit a report and whether they should go through the Canada Revenue Agency (CRA) or the employer. Some were about records of employment. Some were more specific on things that the officers had not been trained to answer.

[29] The grievor stated that the officers were provided a toll-free “1-800” number that they could call for specific answers on eligibility or similar questions.

### **C. The CERB and EI-ERB’s introductions during the pandemic**

[30] Millions of working people in Canada were affected by the pandemic shutdown. Some lost their jobs. Others had their incomes significantly reduced. Small businesses were also affected detrimentally.

[31] The employer entered a number of media releases into evidence, including communication that was released on the Internet from March 25 to April 15, 2020, about the CERB. None of the information in the releases was disputed, including an updated release on April 15 that stated that the CERB eligibility rules were changing to give more Canadians access to the benefit, and that included allowing people to earn up to \$1000 per month while collecting the CERB

[32] In response to the hardship that Canadians and businesses faced as a direct result of the pandemic shutdown, the federal government introduced a number of measures “... to protect Canadians and the economy from the impacts of the global COVID-19 pandemic ...”, including the CERB and EI-ERB.

[33] Information about the CERB and the eligibility criteria was available on the employer’s website. Canadians were able to apply for it from April 6, 2020. They could also call a toll-free number if they required more eligibility information.

[34] The CERB was a taxable benefit that provided \$2000 per month for up to four months for workers who had lost their incomes because of the pandemic. It covered workers who had lost their jobs or were sick or quarantined or taking care of someone sick with COVID-19 as well as working parents who had to stay at home due to sick children or school and daycare closures. It applied to wage earners, self-employed individuals, and contract workers not otherwise eligible for the EI-ERB. The EI-ERB was the taxable benefit available to individuals with insurable income whereas the CERB was intended for individuals whose income was not insurable, like self-employed individuals. The criteria for the EI-ERB were different from the CERB but both benefits were communicated to the public as the Canada Emergency Response Benefit.

[35] Workers still employed but not receiving any income because of disruptions caused by the pandemic could also be eligible to receive the CERB. In addition, due to the EI-ERB system's inability to process the high volume of applications that were received, updates were made on April 15, 2020 such that the EI-ERB was also available to people who were not earning more than \$1000 of income in a four-week period.

#### **D. The grievor applied for the EI-ERB**

[36] The grievor testified that he applied for the EI-ERB the same day he started working in the EI-ERB call centre on April 6, 2020.

[37] He remembered reading something on the Internet in which the prime minister said that someone who lost their job due to the pandemic could apply for the CERB. At first, he did not think that it applied to him. However, when his manager from Enterprise called him to inform him that he was being laid off due to the pandemic, he asked what he should do. The manager told him that he could apply for the CERB, so he did.

[38] He applied online using his personal computer. In cross-examination, the grievor said that he was probably on a break when he applied since the call-centre employees were entitled to two 15-minute breaks, and it took less time than that to apply. He did not remember whether he was rushed.

[39] He said that he was 100% confident that he was eligible for the benefits because he had lost his job at Enterprise. In cross-examination, he admitted that he did not contact the toll-free number to verify if he was eligible. He did not feel that he had to

call because he was so sure that he was eligible. He thought that if he lost a **job** due to the pandemic, he was eligible to apply.

[40] The grievor applied online, using his name and accurate bank information. He acknowledged that he put incorrect information on the initial application form. In response to the question as to whether he would return to work with this employer, he said that he would, even though he should have said the opposite. He acknowledged that that was not accurate. When asked why he answered that way, he said that he did not know.

[41] The grievor testified that he answered the questions thinking that they were about the loss of his Enterprise job. In cross-examination, he was challenged on that response since he referenced his Passport Canada phone number in the application and cited his number of hours worked per week as 37 and his weekly pay as \$650.00. He said that he did not know why he entered that inaccurate information about his work hours. He always thought that the EI-ERB application was about the loss of his Enterprise job. In cross-examination, he also acknowledged that putting down that he earned \$650 per week in his initial application was not close to accurate.

[42] In response to the question as to whether in the last 52 weeks, he had had any other period of work with the same or another employer, he ticked "NO". That was also inaccurate because when he applied, he was working full-time at the EI-ERB call centre and earning a gross salary of \$1975 biweekly. He said that he was probably just sloppy when he answered it.

[43] The grievor testified that he entered incorrect information on the seven subsequent ECRs that he submitted from April 6 to July 20, 2020.

[44] On the first ECR, which he filed on April 6 for the period covering March 22 to April 4, 2020, in response to the question as to how many employers he worked for, he responded with one. When asked why he did not include his federal government employment, he said that he could not remember. He was thinking about his Enterprise job.

[45] In cross-examination, the grievor acknowledged that in his second ECR, he did not indicate that he was making any money. He stated that it was based on his Enterprise earnings. He also admitted that he did not indicate any earnings, and the



number of employers was left blank, even though he had a full-time job with the employer. He admitted that it was not accurate.

[46] In cross-examination, he was unable to explain the discrepancy between the record of earnings statement from Enterprise, which stated that he had earned \$2852.00 by the date it was issued on April 15, 2020, and the T4 of his remuneration from Enterprise, which registered his employment income in the T4's box 58 from May 10 to July 4, 2020, as \$2141.65. When in redirect examination, he was asked to confirm whether it was severance, he said that on an unknown date, his Enterprise manager informed him that something would be sent to him but that he "could not put his finger on it".

[47] He admitted that he did not seek an employment insurance (EI) specialist's advice about his eligibility because he was so sure that he was eligible. However, he testified that on an unspecified date, he received a call from a client about eligibility. The grievor had no contemporaneous documentary record of the call. The client was basically in the same situation as he was of having had two jobs and losing one. The grievor called the toll-free helpline, to see if the client was eligible for benefits. An EI specialist confirmed that the person was **not** eligible.

[48] Once he realized the client was not eligible, he understood that he was also not eligible. He stopped making benefits claims. His last one was made at the end of July 2020.

[49] He did not contact his immediate supervisor and took no steps to repay the amounts that he had received. He testified that he had heard that many people were receiving repayment letters. By the time he found out that he was ineligible, the federal government would know it eventually, and then he would just repay it. He waited for his letter, to repay the benefits.

[50] He stated that when he stopped claiming the EI-ERB, his brother and sister reached out to family and friends and asked to borrow money. Some were generous enough to give a little, to help them make ends meet until they figured out the mortgage broker situation.

[51] The grievor was not surprised when he learned that he was under investigation for claiming the EI-ERB, but it was still scary. He did not report receiving the benefits to his employer because he was waiting for the letter, so he could pay them back.

[52] He said that he heard that many other people had received letters, and he knew that he would receive one and set up a repayment plan. He said that no real system was in place for him to pay it back, so he waited for the letter, for confirmation.

[53] He said that during the phone interview, when the investigator pointed out several inconsistencies in his application, he was confused. Once the investigator asked him the questions, it became much clearer.

[54] A couple of weeks later, he learned that his reliability status had been revoked and that his employment had been terminated. His first reaction was that he and his family members would lose the house and not have anywhere to live. He worried about his family and his career. He said that it felt as though everything was pulled from under him.

#### **E. After the termination**

[55] After the grievor's termination, it took him a while to get back on his feet.

[56] He could not find anything at first because the pandemic was still raging. He used websites, such as Linked In, Indeed, and Career Beacon, to find a job, any job. He even reached out to Enterprise management, to see if he could come back. The owner's wife had a company that might be hiring, but ultimately, it decided that it did not have the budget to move forward with hiring.

[57] It took him 8 to 10 months to find a job. He worked with Donwin Marketing Inc. from Jan 2022 to August 2023. Then, he worked at a vape store in Barrhaven part-time while completing his master's degree. He went back to school because he felt that his undergraduate degree was no longer enough. Many companies were looking for more credentials to work in the environmental sector.

[58] Two weeks before the hearing, he submitted his major research paper to complete a master's degree in science, with a focus on environmental sustainability. He was recently unofficially informed that he passed.

[59] As of the hearing, he was in a full-time temporary position as a special projects officer in forestry for the Government of Newfoundland and Labrador. The program helps protect Newfoundland from wildland fires.

[60] He said that his debt to the federal government was fully repaid as of his last tax return.

[61] He said that he learned from this experience that he needs to pay more attention and to try not to be sloppy and quick with applications.

#### **F. The investigation into the grievor's received EI-ERB benefits**

[62] In January 2021, Mr. Lavigne was a senior investigator with the employer's Internal Integrity Unit. He was appointed to investigate the allegation that the grievor had received the EI-ERB, even though he had not been entitled to it.

[63] Mr. Lavigne joined the public service in 2019. Before that, he spent 26 years in the special investigations units at different levels with the Sûreté du Québec. When he joined the federal government, he was appointed as a senior investigator with the employer's Unit. He became a manager in October 2021.

[64] He had no knowledge of the grievor before investigating the case. Initially, he was appointed to do the fact-finding before he was handed the mandate for the administrative investigation. Once the mandate was received, he was appointed as the senior investigator on the grievor's file.

[65] Mr. Lavigne explained that the first interview was part of the administrative investigation and that it was provided to senior management, the Assistant Deputy Minister and the employer's Labour Relations section. The second interview that he conducted was a review for cause and was provided to the Personnel Security group, to assess the grievor's reliability status. That team then reviewed it and was to make a recommendation to the chief security officer to maintain, suspend, or revoke the grievor's reliability status. Management and Labour Relations did not see that information. Mr. Lavigne was not involved in that decision. Mr. Lavigne referred to his administrative investigation report throughout his testimony.

[66] He confirmed that the administrative investigation was launched to examine whether there was sufficient evidence to conclude that the grievor contravened the

employer's *ESDC Code of Conduct* ("the *Code*") by obtaining the EI-ERB when he did not meet the eligibility criteria.

[67] Mr. Lavigne said that a team of analysts went through all cases first, to confirm or invalidate information in the employer's electronic systems that indicated that some employees had received a salary when they had no pay reductions due to the pandemic. After the analysts did their initial work, he interviewed the employees.

[68] Applicants could apply for the EI-ERB after two weeks had passed without employment. EI-ERB was paid Sundays to Saturdays. EI-ERB recipients had to submit an electronic claimant card every two weeks.

[69] Mr. Lavigne concluded that the grievor was not eligible for the EI-ERB because during the period in which he applied, he worked for the employer and received his full pay, with no reductions due to the pandemic.

[70] Mr. Lavigne said that the grievor completed eight ECRs to obtain the EI-ERB from April to July 2020. When claimants initially applied, if they qualified, they automatically received \$2000 and then had to provide the ECR every two weeks to continue to receive it. They were paid for the two previous weeks, just like EI.

[71] In cross-examination, Mr. Lavigne acknowledged that he is not an expert on EI eligibility criteria; nor is the grievor.

[72] Before interviewing the grievor, Mr. Lavigne went to the service provider to ask whether any repayment or arrangements to repay had been made. None had been made.

[73] After Mr. Lavigne reviewed the grievor's application and ECRs and then interviewed him, he concluded that the grievor was being deceptive.

[74] The initial application had a question as to whether the applicant had any other employment during the last 52 weeks, with either the same or a different employer. If it was answered "Yes", the applicant was disqualified. The grievor answered that he had had no other employment.

[75] When interviewing the grievor, Mr. Lavigne noted that he was in a fragile financial situation. He had loans to pay and issues with his mortgage. Mr. Lavigne believed that the grievor needed both incomes to pay his debt.

[76] Every time the grievor was confronted with more delicate questions, he always answered that he had made an honest mistake and that he did not know. He avoided answering in certain circumstances. Based on the interview and the information in the ECRs, Mr. Lavigne was confident that the grievor was not being 100% honest.

[77] Mr. Lavigne said that on the grievor's second ECR, he said that he had no employers, which was inaccurate. He said that he was ready and available to work, which he said consistently, but it was not accurate because he was not available to work during the day.

[78] In cross-examination, Mr. Lavigne admitted that if the grievor's Enterprise job had been his only source of income, he would have qualified for the EI-ERB when he lost that job.

[79] Apart from the initial application, Mr. Lavigne said that the grievor consistently reported no earnings, which continued through his last ECR on July 20 (see p. 339).

[80] Mr. Lavigne said that after he completed the administrative investigation report, it was provided to a Senior Integrity Officer, who investigated the grievor's case from the perspective of him as a regular member of the public who had applied for benefits, not from the perspective that the grievor was an employee. In cross-examination, Mr. Lavigne clarified that after the Senior Integrity Officer's report, the Integrity Operations Program decided to immediately recoup \$1000 of the \$2000 lump sum that had initially been paid.

[81] The grievor was provided with a copy of the administrative investigation report and was entitled to provide a rebuttal to it. On April 8, 2021, he emailed a Director at the Passport Processing Centre with questions about his suspension. He received a response on April 19, 2021.

[82] Mr. Lavigne considered the grievor's April 8 response as his official rebuttal. It did not change the outcome of his investigation, which was that the grievor was being deceptive.

[83] Once Mr. Lavigne issued his administrative investigation report, he remained available for questions. He provided a verbal briefing to the chief security officer and was not asked to provide any further information.

[84] He was not part of the team that effected the revocation.

[85] In cross-examination, Mr. Lavigne acknowledged that he was aware that when they reviewed the eligibility for the EI-ERB, the employer, the CRA, and the auditor general acknowledged that some who received it made mistakes in good faith.

[86] He acknowledged that the grievor's case was never referred to law enforcement. He said that the employer's senior management had decided that such files would not be so referred. He knew of no situation when such a case was referred to or accepted by law enforcement.

[87] In cross-examination, Mr. Lavigne also noted that when the interview was done in January 2021, the grievor acknowledged that he did not have all the money required to repay the EI-ERB immediately.

#### **G. The grievor's reliability status review**

[88] As of the hearing, Mr. Béliveau was a team leader with the Military Grievances External Review Committee, and his position was classified AS-07. He had worked in the public service for 39 years, including his military service.

[89] Mr. Béliveau was the deputy director of the Internal Integrity Unit when the revocation was effected. Reliability status is required for public service positions that have unsupervised access to information and information technology (IT).

[90] His role was to make sure that files were progressing and that documents were prepared and reviewed for the chief security officer when the director was not present. He ran the operation and advised on CERB and EI-ERB cases.

[91] Mr. Béliveau did not conduct investigations but carried out hearings in cases that might have impacted an employee's reliability status. He said that it was standard to refer to the *Code* during an administrative investigation.

[92] He also referred to the Treasury Board's *Standard on Security Screening*, which describes the conditions for granting, reviewing, or revoking a security clearance, including reliability status.

[93] Mr. Béliveau referred to the Treasury Board's *Policy on Government Security*, which describes the responsibilities of the sectors in the eight security domains, one of which is personnel screening.

[94] After the administrative investigation report was reviewed, the Personnel Security group would issue a report too. The employee was also required to answer questions from a security questionnaire in the second for-cause interview. He said that the Personnel Security group would also examine the financial aspect and that an assessment was done, to determine whether the person posed a risk to the employer.

[95] Then, Mr. Béliveau's unit would prepare a report that assessed whether the employee had maintained the trustworthiness required to retain their reliability status. This was initially done only via a letter when he first arrived at ESDC. In this case, the report was initially prepared in French for the chief security officer, and the process changed after that.

[96] He had no knowledge of the grievor before he worked on the grievor's file.

[97] The employer takes seriously protecting the information that it holds. It has valuable data bases of personal information on Canadians from birth to death. When he worked on the grievor's file, new measures were in place to protect that personal information, as it was not long after a major privacy breach at a reputable financial institution and the Privacy Commissioner's report on privacy breaches and the emphasis on protecting Canadians' privacy. He said that one of the reasons that the Internal Integrity Program was created was to respond to those very concerns.

[98] Mr. Béliveau did not find the grievor's explanation credible as to why he believed that he was entitled to the EI-ERB based on the criteria, including the information that the grievor provided, the questions that he answered during the interview, etc. Mr. Béliveau said that based on all the criteria, he did not feel that the grievor was honest about why he had believed that he was entitled to the EI-ERB.

[99] Mr. Béliveau said that based on the grievor's debt-to-income ratio, his answers to questions, and his admission that he had pressures meeting the mortgage, the

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

employer concluded that he had applied for the EI-ERB for personal reasons, to address his financial pressures.

[100] Mr. Béliveau said that it was important to know that the grievor had not been entitled to the EI-ERB but that he had put his interests first. In cross-examination, Mr. Béliveau acknowledged that someone who was eligible could have applied and have also been experiencing financial pressure.

[101] The Integrity Unit had to ask whether the grievor could be trusted with unsupervised access to information, and they felt he could not be trusted. Mr. Béliveau said that the chief security officer made the final decision to make the revocation.

[102] In cross-examination, it was suggested to Mr. Béliveau that the grievor's answers on his ECRs were inconsistent with someone trying to conceal income, since he claimed income on his initial application and said that he earned income in his second report.

[103] Mr. Béliveau acknowledged that he could not speak to the grievor's state of mind. However, the real trigger was the fact that to a question posed about other employers and income, the grievor put down an amount that did not make sense and then subsequently and repeatedly stated in other ECRs that he had no other income with any other employer, even though he was working full-time for the employer.

[104] Mr. Béliveau explained that the Unit did not try to establish fraud but the investigation was to assess the veracity of the grievor's statement as to why he believed that he was entitled to the EI-ERB. They wanted to know whether his story was consistent with what they could see. They did not try to establish a motive. They wanted to know whether he was honest in his responses to the questions on the EI-ERB ECRs.

[105] In cross-examination, Mr. Béliveau acknowledged that he reviewed a large number of files of the same nature as the grievor's. Some resulted in revoking employees' reliability status, but some did not, because the Unit determined that the story was credible. Some employees misread the application, and some applied but then realized that they did not answer that they were self-employed.

[106] Mr. Béliveau reviewed roughly 250 cases. Not every employee's reliability status was revoked. But in the grievor's case, the Unit felt that his story was not credible. A significant number of people were under financial pressure during the pandemic. The

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



employer's conclusion was that the grievor applied for the EI-ERB even though he knew that he was not qualified for it. He did so to address a personal circumstance.

#### **H. The revocation decision**

[107] Mr. Tremblay was the director general of the Internal Integrity Program and the chief security officer who effected the revocation. His position was classified EX-03. He has since retired. At the relevant time, he was the delegated authority who decided whether security clearances were revoked or suspended.

[108] During his public service career, he worked in security and IT for five different departments: Statistics Canada, the CRA, Shared Services Canada, Canadian Heritage, and, finally, the employer.

[109] On March 19, 2021, he sent a letter to the grievor, to inform him that his security status had been suspended.

[110] The grievor's file involved risk management. The employer holds the largest collection of data in Canada of personal information from birth to death. Many bad actors are interested in the data, which is constantly attacked. Protecting it is very important. Mr. Tremblay said that when someone may pose a risk to the data, the employer wants that person removed from the workplace.

[111] Mr. Tremblay described the process that he was involved in when adverse information is found with respect to an employee. Once the internal administrative investigation is completed, an administrative investigation report is issued that takes two routes, one to Labour Relations and one to the employer, to determine whether discipline will be imposed.

[112] When the employee's reliability status is examined, a team reads the administrative investigation report and decides whether the reliability status must be evaluated. In this case, the grievor's reliability status was suspended. With all the information in the Unit's possession, the Unit had to evaluate and recommend whether his reliability status should be revoked.

[113] The evaluation made a number of findings and recommendations to revoke the grievor's reliability status. Mr. Tremblay said that the process is not simple and that it

does not happen in the blink of an eye. Many meetings are held. Once reports are produced, a team meets and makes a decision.

[114] Mr. Tremblay described the process as rigorous because there are serious consequences to the lives of employees. He said that his job was to evaluate the risk.

[115] In his view, security **is** black or white. There cannot be a little or a lot of a security status.

[116] At the end of the day, he found that there was a risk due to the grievor's lack of trustworthiness and honesty. Mr. Tremblay said that the grievor reached for the EI-ERB and that he made false statements multiple times and then basically claimed that that was all a mistake. It amounted to the grievor incorrectly answering well-tested questions eight times.

[117] Mr. Tremblay acknowledged that the CERB application had some uncertainty but that the questions for EI-ERB benefits were taken from the EI program and were very clear. He noted that the EI questions are tested in focus groups and are solid. They are tested over years and with many users. One question that he said that the grievor was asked multiple times was whether in the last 12 months he had worked in his job or in another job and that the grievor answered "No". Mr. Tremblay said that it was clear that the grievor lied on the questionnaire.

[118] Mr. Tremblay said that the other factor was financial and involved the grievor's credit situation. The grievor saw it as a way to gain \$8000 and pay his debt.

[119] Mr. Tremblay noted that the employer understood the huge impact of losing one's job and being without revenue for a while, but his job was to protect the employer. Mr. Tremblay saw a risk with someone who went to the first pot of money that he could get his hands on.

[120] Mr. Tremblay said that if organized crime had got to the grievor and had offered him money, nothing indicated that he would not have taken it. When challenged in cross-examination that that statement seemed like a gross exaggeration, Mr. Tremblay said that he did not see it as a big jump, since the grievor knew how to find all the answers to the EI-ERB questions.

[121] On June 30, 2021, Mr. Tremblay wrote to the grievor, to inform him of the revocation. Since a public service position cannot be held without that status, his employment was also terminated.

[122] In cross-examination, Mr. Tremblay acknowledged that he did not see the question about whether the grievor had had employment in the last 52 weeks on the ECRs. In redirect examination, he noted that the grievor consistently indicated that he had no employer and that he was available to work, even though he was working full-time with the federal government.

[123] In cross-examination, Mr. Tremblay admitted that the crux of the issue is to determine whether there was reasonable cause to believe that the grievor was a security risk. He said that the context of the pandemic was factored into the equation. But he noted that the grievor was financially vulnerable even before the pandemic because he and his brother had purchased a house. Even with a second employment income, the grievor was under considerable financial stress.

[124] Mr. Tremblay noted that a large number of employees applied for benefits and made mistakes; they applied once or twice and discovered that they were not entitled. They reached out to the helpline and found out whether they were eligible. They made arrangements to repay the amounts that they owed. He saw that the grievor claimed the EI-ERB multiple times. The grievor never questioned his eligibility, even though he was working in the EI- ERB call centre.

[125] In cross-examination, Mr. Tremblay acknowledged that this is not a case of the grievor exploiting access to a database and taking information; nor is it a case of identified fraud.

### **III. Summary of the arguments**

#### **A. For the employer**

[126] The employer argued that this case is about the revocation of the grievor's reliability status and the termination that followed. It is not a discipline case. It must be viewed solely through the lens of security as forward looking.

[127] Therefore, in line with a trilogy of Federal Court of Appeal cases (*Heyser, Bergey v. Canada (Attorney General)*, 2017 FCA 30, and *Canada (Attorney General) v. Féthière*, 2017 FCA 66) ("the FCA trilogy"), the employer was required to prove only that the

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

revocation was proper and legitimate and aligned with its relevant policies. If so, the termination was justified. No suggestion was made that the termination was contrary to the collective agreement.

[128] The grievor inappropriately applied for the EI-ERB over the course of months and provided inaccurate information multiple times.

[129] It is important to remember the context of the pandemic. Up to 5.5 million people in Canada lost their jobs or had their jobs slashed. Within that context, the grievor submitted false information to procure the EI-ERB, which he was not entitled to. He applied even though he was a full-time public service employee.

[130] The revocation was done because the grievor was not deemed trustworthy.

[131] The employer has the authority to adopt policies. Parliament went further with the *FAA* at ss. 7, 11, and 11.1. The employer can do anything within the statutory limits and a collective agreement.

[132] The *Standard on Security Screening* defines of “reliability status”. It is the minimum security screening standard for positions that require unsupervised access to Government of Canada protected information, assets, facilities, or IT systems. Security screening for that status appraises honesty and whether an individual can be trusted to protect the employer’s interests.

[133] Appendix D of the *Standard on Security Screening* explains how to determine someone’s reliability. Can the person be trusted to safeguard information, assets, and facilities and be relied upon not to abuse the trust that may be accorded to them and to perform the assigned duties in a manner that will reflect positively on and not pose a security risk to the Government of Canada?

[134] The Federal Public Sector Labour Relations and Employment Board (“the Board”) must view this case through a security lens driven by employer policies and not through a disciplinary analysis (see *Tobin v. Canada (Attorney General)*, 2009 FCA 254; and *Richmond v. Deputy Head (Correctional Service of Canada)*, 2024 FPSLREB 167).

[135] The administrative review can run in parallel to discipline (see *Bergey*). The issue is whether there was cause behind the revocation. The employer did not have to disprove that the revocation was not for cause. Rather, the Board must determine the

version of events that better accords with the preponderance of the probabilities when considered in the context of all the facts, while applying common sense (see *Faryna v. Chorny*, 1951 CanLII 252 (BC CA)).

[136] The employer submitted that both *Varn v. Canada (Attorney General)*, 2017 FC 1132, and *Murphy v. Deputy Head (Canada Border Services Agency)*, 2019 FPSLRB 64 at para. 97, set out that there must be cause for suspending and revoking an employee's reliability status. The decision must be reasonable.

[137] The grievor's defence did not mesh with the preponderance of probabilities. He did not just fill out the forms in a sloppy way; he was misleading. He picked the right benefit and for eight ECR report cards, stated that he was ready, willing, and able to work, even though he was working at Passport Canada. He stated that he would return to work, even though he testified that he did not return to Enterprise.

[138] The \$650.00 was just made up. He provided a number for the passport office. He shifted gears when his first ECR was denied.

[139] Almost all his ECRs were identical. He left the number of employers blank, even though he had a full-time job. He continued to fill out the reports the same way and never reported his ECRs to his supervisor or reached out.

[140] The employer submitted that based on the number of errors and their natures, Mr. Tremblay concluded that the EI-ERB was obtained with false information. There was a reason for the revocation.

[141] The employer asked that the Board take judicial notice of box 58 of the T4 return that the grievor submitted. Four new boxes on the form all corresponded to the CERB periods, and the CRA required reporting such amounts. Enterprise submitted one for May 10 to July 4 and listed the grievor's employment income as \$5021.39.

[142] That made the grievor's ECRs even worse because during the period in which he applied for the EI-ERB and stated that he had no employer and no income, he had two employers and two income streams.

[143] Inappropriately obtaining benefits is one of the most serious offences, and it goes directly to the issue of trustworthiness. The employer cited a number of disciplinary cases, to illustrate how seriously arbitrators and courts have treated fraud

and theft (see *Kamloops (City of) v. Canadian Union of Public Employees, Local 900*, 2014 CanLII 12296 (BC LA); *Ottawa (City) v. Ottawa-Carleton Public Employees Union, Local 503*, 2014 CanLII 22561 (ON LA); and *Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN) v. Canada (Attorney General)*, 2019 FCA 212).

[144] The employer requested that the grievance be denied. If back pay is awarded, it should be subject to mitigation based on the materials that the grievor submitted.

#### **B. For the grievor**

[145] The grievor argued that he is a young man with a promising career. He worked hard to get out of a rough neighbourhood and pursue his dream of working in the public service. While still employed in the public service, he was young and inexperienced, and he made a mistake. He fully and unreservedly acknowledged that some of the answers that he provided on the ECR's were not accurate.

[146] The grievor argued that pursuant to the *Policy on Government Security* and the reliability status provision, the employer had to demonstrate that he had fraudulent intent or that a breach of trust took place. If such a breach occurred, it is reasonable to expect that the employer would have reported it to police, but it did not. There was no fraudulent intent and no security risk going forward. If the Board does not accept that the grievor acted with the full knowledge that he was not eligible for the EI-ERB, the analysis ends there.

[147] The grievor submitted that the employer grossly overstated the risk and that it did not discharge its burden of proving that the revocation was based on proper and legitimate grounds.

[148] The grievor agreed that much of the Board's analysis must turn on whether it believes that he made an honest mistake.

[149] The employer's position was out of touch with the reality of the earliest days of the pandemic, which is an important contextual fact. That undermines its claim that there was a security risk.

[150] The Board has jurisdiction under s. 209(1)(c) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*). It must determine whether the non-disciplinary revocation decision was made for cause under s. 12(3) of the *FAA*.

[151] This case has no consideration of a reasonableness analysis. It was a *de novo* hearing, not a judicial review application.

[152] Some revocation decisions are directly reviewed on judicial review, and the Board decides others in the context of a grievance. In *Varn*, the context was a judicial review, and the decision, on a reasonableness standard, was that the revocation decision fell within the range of acceptable outcomes.

[153] *Murphy* had some nuance, as the adjudicator recognized the application of the TB standard in which one has to inquire whether there was cause to believe that the person could pose a security threat, looking forward.

[154] The grievor noted that he did not take issue with the standard to establish a person's reliability itself but rather how it was applied.

[155] This is not a discipline case, but many of the cases that the employer cited were disciplinary and therefore are less relevant.

[156] The cases on discipline for off-duty conduct are also of limited utility since the only question in this case is the security issue. The question is to what extent did the grievor's behaviour, in reviewing for cause, constitute an accurate predictor of what might happen in the future, in terms of whether he can be trusted?

[157] The grievor submitted that he had been working for the employer for only three months when he was asked to pivot from working in passports to working in the EI-ERB call centre. He testified that his training was limited, and the employer called no evidence as to the extent of the training. He received no training on claimants, like him, with two incomes who lost one due to the pandemic restrictions.

[158] The grievor acknowledged that his financial situation was constrained. He saw applying for the EI-ERB as a lawful way to mitigate his financial stress.

[159] He acknowledged fully and unreservedly that some of the answers that he provided on the ECR'S were not accurate. If the grievor understood eligibility and tried

to falsify the ECRs, it would have made no sense to report income on the first report, as doing so would have put him over the \$1000 threshold during a four-week period.

[160] The grievor argued that there is insufficient evidence that he pivoted to reporting \$0 once his first ECR was rejected.

[161] The grievor argued that his answers were more consistent with someone who did not pay attention to the answers that they provided.

[162] The grievor was not diligent in informing himself about his eligibility and at worst was negligent or sloppy in his online conduct. It was not fraud or a breach of trust. There was no evidence that he would be easy prey for organized crime.

[163] The grievor argued that there was no obligation to report to the employer that he had received the EI-ERB. He did not take immediate steps to repay what he had received because he understood that he would receive a repayment letter. That evidence is consistent with his understanding that the CRA would have known that he was earning employment income with the employer. He used the same bank account for both the EI-ERB and his employment income. As soon as he realized that he was ineligible for the EI-ERB, he stopped submitting ECRs, and the matter was dealt with in due course, as it was for the millions of Canadians who were deemed ineligible.

[164] The grievor argued that there is no evidence that he returned to working for Enterprise after March 2020. He stated that the T4 box 58 might have been his severance amount. He did not know what it was. Suggesting that it was an additional element of deception was speculative, and the employer did not prove it.

[165] The grievor made a big sloppy mistake. He had no fraudulent intent and did not present a security risk going forward.

[166] There is no evidence that he placed his financial interest ahead of his obligations. Everyone applying for the CERB experienced financial pressure.

[167] It is important that the Board not anchor its analysis in a level of security that the grievor was not required to hold. The employer's zero-tolerance policy suggests that no analysis was done and that there was no reasonable cause to believe that he would present a security risk going forward. It was a blunt approach that did not fully consider the circumstances, including the mitigating ones.



[168] The employer did not engage in a sufficiently robust analysis. The evidence did not establish reasonable cause that the grievor would be anything but an asset for the employer.

[169] In *Heyser v. Deputy Head (Department of Employment and Social Development)*, 2015 PSLREB 70, the grievor falsified a medical certificate, to secure a telework arrangement. The former Board determined that the grievor's security clearance was not revoked for cause.

[170] In *Starkey v. Deputy Head (Department of Fisheries and Oceans)*, 2020 FPSLREB 8, the Board determined that the revocation was not for cause, even though the grievor was a member of an outlaw motorcycle group.

[171] In *Féthière v. Deputy Head (Royal Canadian Mounted Police)*, 2016 PSLREB 16, the RCMP revoked a security clearance of an employee who possessed and used marijuana at a work event. It was upheld that the revocation did not address the real security concerns.

### **C. The employer's rebuttal**

[172] The employer argued that if the grievor's repeated ECRs were a mistake, they constituted a big one. His continued denial goes to the issue of credibility.

[173] The employer said that the fact the grievor took 13 minutes to fill out the application mitigates against any idea that it was a mistake. Much of his testimony was that he could not remember.

[174] It is not fair to say that there is no evidence that the first ECR was denied. It was denied.

[175] If the T4 for \$5000 was wrong, it is not one document that matters but looking at everything together. It was very damaging for the grievor's case.

[176] The grievor's arguments about his integrity and his religion were self-serving character evidence. With respect the employer's decision not to report him to law enforcement, it is not part of the standard.

[177] The grievor answered “No” to the question about whether he had worked in the last 52 weeks admittedly only once, on the initial application. But in every ECR after that, he said that he had no employer and no income. It is one and the same thing.

#### **IV. Reasons**

[178] Reliability status is a requirement for most public service jobs and for all jobs that require unsupervised access to government information. The grievor’s passport officer job required it. When it was revoked, he lost his job. Thus, the key issue that the Board must grapple with is, was the revocation for cause?

[179] The FCA trilogy shifted the analysis under s. 209(1)(c)(i) of the *FPSLRA* such that it is no longer necessary to engage in an examination as to whether the decision was disciplinary so that the Board can confirm whether it has jurisdiction.

##### **A. Assessing the grievor’s credibility**

[180] However, as I said in the overview, this case turns on the grievor’s credibility. If I believe his claims that he was just sloppy when he completed the initial application and his ECRs, then the revocation was not for cause because the reason for it would not be justified. Therefore, I will begin with an analysis of his credibility.

[181] The test to determine credibility is the oft-cited *Faryna* case that the Board has consistently relied upon. To determine credibility, the question is whether the witness’s story is internally coherent and whether it hangs together as most probable. The test is stated as subjecting “... the truth of the story of a witness in such a case [to] its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable ...”.

[182] In other words, is the story consistent with what most likely occurred, and is it reasonable, according to an informed person? I applied the test, and I did not find the grievor’s version of events reasonable or credible. Although his demeanour during the hearing appeared sincere, especially when he testified about his profound sense of responsibility to his family and his drive to turn a new page after being terminated, I cannot ignore the overriding inconsistencies in his evidence.

**B. The grievor's explanation was not credible**

[183] The grievor acknowledged that his answers in his initial application and the seven subsequent ECRs were inaccurate. In those ECRs, he listed his earnings as \$0, even though he was earning a gross biweekly salary of nearly \$2000. He also left blank the questions about the number of his employers, which suggested that he had none, even though he had a full-time federal government job.

[184] The following list details the inaccurate information that the grievor submitted from April 6 to July 20 while working as an EI-ERB officer, and which the grievor admitted were inaccuracies:

In ECR 1:

- In the section on other employers, to the question, "In the last 52 weeks, did you have any other periods of work, either with the same employer or other employers?", the grievor inaccurately answered, "No".
- To, "Will you be returning to work with this employer?", he inaccurately answered, "Yes".
- To the number of employers question, he inaccurately answered 1.
- To the number of hours worked question, he inaccurately put 37 hours.
- To, "Is there any other money that you have not previously told us about, that you received or will receive for the period of this report?", he inaccurately answered, "No".

Summary of key inaccuracies:

- In ECR 1 - inaccurate reported earnings of \$650 each week, and 1 employer. In ECRs 1 through 8, he inaccurately answered "Yes" to this question: "Were you ready, willing and capable of working each day, Monday through Friday, during each week of this report?",
- In ECRs 2 through 8 - inaccurately reported no earnings and no employer.
- IN ECR 3,4, 6, 7, 8 he inaccurately answered "No" to this question: "Is there any money that you have not previously told us about, that you received or will receive for the period of this report?"

[185] The grievor suggested that he was not trying to hide anything since he put his toll-free passport office number in the initial application. Why would he do that if he was trying to fraudulently receive benefits?

[186] However, following the initial ECR, the grievor did not receive the EI-ERB. But in his later ECR's when he stated that he had no income and left the number of employers blank, he successfully received the EI-ERB. While I cannot speculate on the grievor's exact motivation for that sudden change, I find that it was more than a mere coincidence or sloppiness.

[187] Ultimately, I do not find credible the grievor's explanation that his repeated inaccuracies were just sloppy mistakes. I recognize that he was under stress and considerable financial strain, like many people were in the pandemic. But stress and financial strain do not absolve him from deceit.

[188] I will now explain the three main reasons I do not find credible the grievor's claim that he just made a sloppy mistake.

[189] First, I find it hard to believe that a federal government employee who had gone through a rigorous process to secure a job that he had wanted for so long would be so consistently sloppy in answering questions inaccurately on an application for emergency benefits. The grievor went through rigorous training to become a passport officer, including a 30-day testing period during which he was not allowed to make any errors in his duties processing passport applications. In other words, he knew the importance of being meticulous when filling out federal government applications. Furthermore, he was working at the very EI-ERB call centre that was administering EI-ERB benefits, and thus was even more attuned to the importance of submitting accurate information.

[190] As a result, the claim that he was just sloppy when he consistently filled out his ECRs does not seem credible.

[191] Even though it was an online application, and reports were filled out biweekly, and could be filled out quickly, they were still formal claims for the EI-ERB. Each time he filled out an ECR, he signed the confirmation statement that the answers provided were true to the best of his knowledge.

[192] The grievor knew that the benefit was a lifeline to many Canadians who had lost their jobs or were temporarily laid off during the pandemic. He was not an outsider. He had more information than the average layperson on the CERB and EI-ERB application process and criteria. He worked at the EI-ERB call centre fielding calls from distressed Canadians. He never stopped working while receiving the EI-ERB. He should have known that the EI-ERB was not available to individuals who maintained a full-time government job, and an income of well over 1k.

[193] While he alleged that the criteria for the EI-ERB were confusing, the media releases indicated that the CERB was for those who had lost their job or were earning

less than \$1000 per month. Further, by April 15, 2020 or soon after, there as an employee working at the call centre, he should have been aware that the EI-ERB was not for people who were earning over 1k per month.

[194] Second, the employer's uncontested evidence was that the grievor received some CERB and EI-ERB training. While he could not remember it or whether he went through the scenarios, I find that there is sufficient evidence that he received enough training to know when to ask for help. I find the grievor's submissions that there was no evidence on the extent of his training to be a stretch. There is documentary evidence that the training involved seven scenarios and a CERB fact sheet.

[195] According to the evidence, the grievor participated in 3.5 hours of training, which included scenarios that emphasized that a claimant had to have lost their job due to the pandemic, to be eligible. For example, one of the scenarios in the training was that a client's hours had been reduced due to COVID. The client was still working but was not making enough to cover current expenses. The client wanted to apply for CERB. The response provided was that the client **must have stopped working** due to COVID-19. The response also noted that employers for clients who are still working may be eligible for other support measures.

[196] Therefore, I do not find it credible that he believed that he was eligible for benefits during the March to July 2020 period. I simply do not accept his explanation that he did not reach out for verification from an EI specialist because he thought he qualified, especially since he admitted that he was not an expert in the CERB process, that he felt the training was not sufficient, and the toll-free number was readily available to him.

[197] Third, the grievor's credibility was further impugned during the hearing when he introduced into evidence his T4 from Enterprise. In boxes 57 and 58, a total of \$5021.39 in income earned was reported from March 15 to July 4, 2020. He was unable to confirm whether this was severance pay or something else. I find it curious since he could have easily obtained that information had he contacted Enterprise or the CRA.

[198] Regardless of whether it was severance or any other kind of income from Enterprise, it establishes that even when the grievor reported on his ECRs, during this period from March 15 to July 4 that he no longer had any income from Enterprise, he did in fact receive a total of \$5021.39 from Enterprise from March 15 to July 4, while

he was collecting EI-ERB. That was also while he continued to receive his \$1975 biweekly salary from the employer. I do not accept his argument that the fact he received income from Enterprise during this period should not be taken into account. At a minimum, it goes to his credibility. It is further evidence that his version of events is simply not credible.

[199] Therefore, taken as a whole, I do not find credible the grievor's "one big sloppy mistake" story. It is uncontested that he was under considerable financial strain when he applied for the EI-ERB because he and his brother were stuck with a mortgage at an exorbitant interest rate.

[200] He could not afford to lose the Enterprise job. He had to replace the income immediately, or his family would have been without shelter. Therefore, I find that an informed person would infer that the grievor made inaccurate ECRs because he needed the income, to keep his family housed. In his response to the investigation report, he said that he made an honest mistake by applying for the EI-ERB "... but it saved [them] from eviction and being homeless."

[201] I find that it is more likely than not that when the grievor realized that he would receive the EI-ERB, he simply continued to submit inaccurate claims, perhaps until he realized that he could be caught.

[202] Then, rather than coming forward to his employer to declare that he had "made an honest mistake", he remained under the radar and just waited until the CRA sent him a letter. Perhaps he figured that given that others had mistakenly applied for the benefits and had then just paid them back, no one would accuse him of intentionally making false claims. There is no evidence that points definitively to why he was less than honest. However, I find that the preponderance of evidence is that his inaccurate ECR's were not an honest mistake but rather a dishonest one.

### **C. The revocation was for cause**

[203] Since I do not find the grievor's explanation credible, I conclude that he was repeatedly dishonest when he filled out the ECR's incorrectly.

[204] I must now ask whether the employer has established on a balance of probability that the revocation was for cause. Is repeated dishonesty a proper and legitimate reason to revoke an employee's reliability status?

[205] I need not engage in an exhaustive recounting of the law since with the FCA trilogy, the Court made it clear that in a non-disciplinary termination, I must determine whether it was done for a legitimate and proper purpose. I find that it was in this case.

[206] Most of the cases that the employer cited involved grievances that challenged a termination on disciplinary grounds. They do not provide any guidance in a security clearance context in which the decision maker is required to determine whether someone's reliability status was revoked for cause.

[207] While I read the case law that the parties submitted, I will cite only what I consider relevant. There is no dispute that that this is not a discipline case. Therefore, the applicable test is what the Court laid out in the FCA trilogy. I must determine whether the termination was for cause based on the surrounding facts and the relevant Treasury Board policies. This requires inquiring into whether the revocation was based on proper and legitimate grounds (see the FCA's decision in *Heyser*, at para. 76). I find that it was.

[208] The applicable policies are the *Standard on Security Screening* and the *Policy on Government Security*. The *ESDC Code of Conduct* is also relevant for the acceptable behaviours and values of public servants.

[209] I also take note of the FCA's comments in *Varn*, at para. 47, which are that security screening assessments are predictive and forward looking and matters of nuance and judgement. However, I note that *Varn* was a judicial review application of a departmental security officer's decision to deny granting someone reliability status. Therefore, the standard applied in that case was reasonableness, not the for-cause standard that I must apply.

[210] The employer argued that revocation was done because of the grievor's lack of honesty and trustworthiness. While there is absolutely no evidence of Mr. Tremblay's claim that the grievor posed a risk of being bribed by organized crime, I find that the employer had cause for the revocation because the grievor was repeatedly dishonest.

[211] In the revocation letter, dated June 30, 2021, Mr. Tremblay stated the following:

...

*You obtained Employment Insurance Emergency Response Benefits (EI-ERB) payments to which you were not eligible by knowingly*

*providing false information on multiple applications. During the periods for which you applied to receive this benefit, you were a Passport Officer with ESDC reassigned to the EI-ERB call centre and received training to assist Canadians claiming this benefit. You applied on-line. In your initial applications, you did not declare your full income from your employment with ESDC. On subsequent applications, you indicated “no” to the question asking whether you had other employment with the same or another employer in the last 52 weeks, knowing at that time that you were employed by ESDC and receiving your full salary. For this reason, we do not find your explanation that you made an honest mistake credible.*

*During the investigation, you admitted having financial issues requiring that you maintain two jobs and applying for this benefit to meet your financial commitments. Your claiming of benefits you knew you did not qualify for in order to alleviate personal financial pressures, thus placing your self-interest ahead of your obligations, is behaviour contrary to what is expected and casts serious doubt on your trustworthiness.*

*Consequently, we have determined that you can no longer be trusted to safeguard information and assets, and be relied upon not to abuse the trust accorded to you and to perform your assigned duties in a manner that will reflect positively on ESDC and not pose a security risk to the Government of Canada. As a result, we find you are unsuitable to hold a reliability status.*

*You have a right to file a grievance in accordance with the provisions of your collective agreement.*

...

[Sic throughout]

[212] “Reliability status” is defined in the *Standard on Security Screening* as the minimum standard for positions that require unsupervised access to Government of Canada protected information assets, facilities, or IT systems. This level of security screening **evaluates an individual’s honesty** and whether the person can be trusted to protect the employer’s interests.

[213] According to that standard, security screening “... establishes and maintains a foundation of trust within government, between government and Canadians, and between Canada and other countries” (see section 3.1 of the *Standard on Security Screening*).

[214] A core value of the public service is integrity. It is described in some detail in the *ESDC Code of Conduct*. Integrity is about serving the public interest by acting in a way that “will bear the closest public scrutiny”. An expected behaviour, under this



value, is never using an official role to inappropriately obtain an advantage for oneself or others. It would also include an employee never putting their personal interests, in doing their job, above the employer's or acting in a way that does not serve the public interest.

[215] In this case, after the employer interviewed the grievor and issued a final report, the investigator concluded that the grievor was not honest when he applied for the EI-ERB. Mr. Lavigne concluded that the grievor was repeatedly deceptive when he omitted information from his ECRs that would have disqualified him for the EI-ERB while he remained a full-time employee collecting a biweekly salary of \$1975.00.

[216] The Chief Security Officer decided to revoke the grievor's reliability status because he concluded that the grievor put his personal interest above the employer's when he applied for benefits that he knew he was not entitled to. In the revocation letter, Mr. Tremblay noted that the grievor had admitted to applying for the EI-ERB to meet his financial obligations. Consequently, he determined that the grievor could no longer be relied on to safeguard information and assets because he was not deemed trustworthy. In short, the employer concluded he abused its trust by collecting benefits that he was not entitled to. I find that that decision was made for a proper and legitimate purpose for these two main reasons:

- 1) The grievor could not be relied on not to abuse the employer's trust in the future because he was found to have obtained federal government benefits that he was not entitled to as a full-time employee of the employer.
- 2) He could not be relied on to protect the employer's information and assets because he put his personal interests above the employer's.

#### **1. The grievor obtained benefits that he was not entitled to**

[217] The grievor obtained \$8000 from April 4 to July 20 that he was not entitled to. He did it by repeatedly submitting inaccurate or misleading ECRs.

[218] In this case, the grievor did not make a mistake once or twice and then correct it. Rather, the evidence was that he appeared to have changed the information that he submitted in his ECRs, to ensure that he received the benefit.

[219] While it may be tempting to believe that the grievor was completely ignorant as to what he was doing, there is uncontradicted evidence that he received training. This should have caused him to, at least, ask questions or immediately stop submitting

claims, if he was confused or not sure. He did neither. Instead, he continued to apply for and receive the benefit.

[220] Further, the arguments that the grievor was under stress and that the pandemic was a difficult time do not help his case. They are an unhelpful distraction because they do not explain the pattern of inconsistencies.

[221] Further, the grievor had no performance issues. Indeed, he was one of a group selected to work at the EI-ERB call centre when his passport work was temporarily reorganized due to the pandemic shutdown. While the employer noted that it considered the pandemic a factor before it decided on the revocation, there is simply no evidence that the pandemic's impact somehow caused him to be sloppy.

[222] The grievor's pattern of repeatedly and intentionally submitting false ECRs led the employer to conclude that he is not trustworthy and therefore is not fit to hold reliability status going forward.

## **2. The grievor never came forward to declare what he did**

[223] How could the employer trust the grievor to be forthright in the future when he missed the opportunity to come forward to report what had happened?

[224] The uncontradicted evidence is that the grievor was never forthright in declaring what he did. Throughout the investigation process, his constant refrain was that he made a mistake and that he was not familiar with the CERB EI-ERB eligibility criteria, even though he worked at the EI-ERB call centre for four months.

[225] While I have found that the grievor was not credible, even if I am wrong, and he made an honest mistake, he never came forward to admit it and to offer to pay the funds back between July 2020 and January 2021, before the investigation began. That is particularly troubling, given that he was an EI-ERB call centre representative working for the very department administering the EI-ERB benefits that he collected.

[226] The grievor never felt obligated to come forward and to be honest and forthright about obtaining the benefit, even when he recognized that he was not entitled to it. I do not find that this amounts to subjecting him to a higher standard of scrutiny than is required of someone who holds reliability status. The minimum standard requires trustworthiness, and it was further evidence of his pattern of deceit.

[227] Trustworthiness is fundamental to maintaining public trust in government institutions and programs, which was underlined in the “Evaluation of Reliability Status” document, which was reviewed before the Chief Security Officer made his decision to revoke the grievor’s security clearance. Being a public servant requires acting in a way that bears the closest public scrutiny. I find that the grievor failed to be trustworthy.

[228] He compounded his situation by failing to come forward immediately to report his “error”. Public servants are not perfect. They make errors, but when they do, they should come forward and report them. The fact that the grievor did not suggests that he did not even feel the need to be honest and forthright with his employer about what he deemed was an honest mistake.

[229] With information from the investigation that the grievor repeatedly submitted false information and failed to be frank about it once he allegedly discovered what he had done, I find that there was sufficient evidence for the employer’s conclusion that he could not be trusted to protect the federal government’s interests, including its information and assets in the present or future.

[230] This is similar to the adjudicator’s conclusion in *Murphy*, in which the employer revoked a grievor’s reliability status after discovering that for 20 years, even with top-secret clearance, he had failed to disclose that he had been arrested and imprisoned in Morocco for possessing hashish.

[231] It is also similar to *Therrien v. Deputy Head (Department of Employment and Social Development)*, 2019 FPSLREB 82, in which the adjudicator concluded that the grievor’s lack of honesty was a legitimate reason to revoke her reliability status. The adjudicator found that the grievor was dishonest when secretly, she leaked protected information to the media, which was a legitimate and proper reason for the revocation.

[232] Finally, I find the grievor’s claim unfounded that the employer failed to conduct a robust analysis of the security risk that he presented. It interviewed him twice, prepared an administrative investigation report, and gave him the opportunity to respond to it. When it rendered a decision, it relied on information gleaned from the report and the provided recommendations. I accept its evidence that such decisions are not made lightly. Moreover, I find it hard to imagine a circumstance in which an

employee's reliability status would be maintained after the employer concluded that they had been dishonest.

**D. The grievor's cited case law can be distinguished**

[233] The grievor provided no case law in which the Board found that a grievor was not credible with respect to the circumstances surrounding a review for cause, but still overturned the employer's decision to revoke their reliability status.

[234] In *Féthière*, the grievor's credibility was not at issue. In fact, the adjudicator remarked on the grievor's trustworthiness when he admitted that he had smoked a joint while off duty. However, the adjudicator concluded that there was no evidence that according to the employer, smoking marijuana at a party would have left him vulnerable to being blackmailed by organized crime. Therefore, the adjudicator determined that the employer revoked his security clearance without cause, and reinstated him. The FCA found that decision reasonable.

[235] This case also differs markedly from *Jassar v. Canada Revenue Agency*, 2019 FPSLRB 54, in which the Board found there was evidence that the respondent's decision to revoke the complainant's reliability status was a sham or camouflage. Again, in *Jassar*, the former tribunal found that the employer relied on false and inaccurate information to revoke the complainant's security clearance. The Board was particularly firm about the high-handed way in which the respondent treated the complainant through the disciplinary and investigation processes.

[236] That was not so in this case. In fact, other than claiming that the employer was not rigorous in its analysis of the grievor's security risk, he admitted that he repeatedly filled out ECRs with inaccurate information and included inaccurate earnings both in the initial application and in the seven subsequent ECRs.

[237] Furthermore, *Bergey* can be distinguished. In it, the FCA determined that the employer's decision to revoke Ms. Bergey's reliability status was for disciplinary reasons, not because the employer concluded that she was no longer loyal, reliable, or trustworthy.

[238] That stands in contrast to the grievor's situation, in which the employer's revocation decision was based on its determination that he was not honest when he repeatedly provided inaccurate information to secure the EI-ERB.

[239] Further, I find that the facts in this case differ from those in the former Board's *Heyser* decision, in which the adjudicator concluded that the employer revoked the grievor's reliability status without cause, and on appeal, the FCA found the adjudicator's decision reasonable. Even though the employee falsified a medical certificate, she was allowed back into the workplace for six months, with full access to the federal government information that she required to do her work. Thus, the FCA found the adjudicator's decision reasonable that there was insufficient evidence that she posed a security risk to the federal government's assets or information.

[240] In this case, the grievor's reliability status was suspended soon after the interview for cause took place. Moreover, he did not allege that the employer's actions in immediately suspending his security status demonstrated that it did not really believe that he was a security risk.

[241] I must conclude by noting that this decision will not be easy for the grievor to digest, particularly my findings on credibility. It is undisputed that the grievor has turned his life around. He has bounced back remarkably from a difficult period in his life. The fact that I have preferred the employer's version of events does not negate the fact that he is an intelligent and motivated person with an entire career before him, and I wish him well in the next chapter of his professional life.

[242] For all of the above reasons, I find that the employer's revocation decision was for cause.

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

*(The Order appears on the next page)*

**V. Order**

[244] The grievance is denied.

July 3, 2025.

**Patricia H. Harewood,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**