

Federal Court



Cour fédérale

Date: 20220321

Docket: T-1002-21

Citation: 2022 FC 381

Ottawa, Ontario, March 21, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ELIZABETA WALKER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Elizabeta Walker, seeks judicial review of a decision made by a benefits compliance Officer [Officer] of the Canada Revenue Agency [CRA] dated June 10, 2021. Based on the second review of the Applicant's eligibility for the Canada Recovery Benefit [CRB], the Officer determined that she was not eligible for the CRB for the period spanning from September 27, 2020 to June 5, 2021.

[2] The CRB is a benefit program created in 2020 by the federal government in response to the COVID-19 pandemic.

[3] Subsection 3(1) of the *Canada Recovery Benefits Act, SC 2020, c 12, (CRBA)* sets out the detailed eligibility criteria for the CRB. For the purpose of this application, the following eligibility criteria are relevant:

- Self-employed taxpayers must demonstrate a net self-employment income of at least \$5,000 in 2019, 2020, or in the 12 months before the date they applied.
- For each 2-week period for which they apply the taxpayer must not be employed or self-employed for reasons related to COVID-19, or have had a 50% reduction in their average weekly income compared to the previous year due to COVID-19.
- For each 2-week period for which they apply, the taxpayer must also demonstrate they were seeking work during the period, either as an employee or in self-employment.

II. **Preliminary Issue**

[4] Pursuant to Rule 303 of the *Federal Courts Rules*, the style of cause shall be amended to reflect the Attorney General of Canada as the Respondent, effective immediately.

III. Background

[5] On the basis that her newly established consulting company failed as a result of the pandemic, the Applicant applied for, and received, the CRB as a self-employed consultant in the hospitality industry.

[6] In 2021 the Applicant was subject to a validation review for proof of eligibility. On January 18, 2021, she submitted two invoices. One from January 2020 and the other from February 2020. Each invoice was issued to “Patel Hospitality”. The Applicant also submitted copies of two receipts for cash received from “Patel Hospitality” in payment of each invoice and a copy of an initial email with Amin Patel of “Patel Hospitality” arranging a telephone meeting for the first time to discuss retaining the Applicant.

[7] The eligibility review determined that the Applicant did not earn at least the required \$5,000 of employment or self-employment income in 2019, 2020 or in the 12 months prior to the date of her first application. By letter dated February 24, 2021, the Applicant was notified that she was not eligible for the CRB.

[8] In the Case Analysis Report, which supplements the reasons of the decision-maker, the section “SA Database Observations” contains the following remarks:

Client has no income in 2019. She submitted invoices and receipts that were issued to one client only. The client does not have the complete details. The documents does (*sic*) not even have the address and the phone number of the client.

I checked the details of the business (E. Walker Consulting) and found that it is already closed as of June 16, 2019. I also searched

for “Amin Hospitality” (client) but nothing came up. (This information is confidential. Don’t disclose to the client.)no

If the client will file for second review, she needs to submit the following documents:

- (a) Bank statement showing the payments that were issued to her
- (b) Statement of business income and expenses (Form T2125)
- (c) Proof that she is still actively seeking for possible clients (advertisement, cancelled contracts, etc.)

Client is not eligible for CRB. Sent denial letter dated February 24, 2021.

[9] The February 24, 2021 denial letter indicated that if the Applicant wished to request a second review she must include “any relevant new documents, new facts or correspondence”.

[10] On March 16, 2021, the Applicant requested a second review of her eligibility for the CRB.

[11] A different compliance officer was assigned to the second review. The computerized notes contain comments made by the second Officer during a telephone call with the Applicant on May 18, 2021. The notes show that the Officer told the Applicant that she “will need to provide bank statements from Jan 2020 to May 2021 with [her] name and month on them and not snap shots of them tp said ok as well will need to see from indeed where tp has been Appling

(sic) from beginning tp said ok asked tp if had any questions tp said no and will try to get me doc's (sic)".

A. *Decision under review*

[12] By letter dated June 10, 2021, the second Officer confirmed the findings of the first officer and determined that for periods 1 to 18, being September 27, 2020 to June 5, 2021, the Applicant had failed to meet the eligibility criteria of the CRB:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.
- You were not working for reasons unrelated to COVID-19.
- You did not have a 50% reduction in your average weekly income compared to the previous year due to COVID-19.
- You were able to work but not looking for a job.

IV. **Issues**

[13] The main issue, upon which both parties and I agree, is whether the Decision is reasonable.

[14] The Applicant also alleged that the Officer who determined her claim may not have been impartial, objective or fair in her questioning of the Applicant. She says that was because she called the Ombudsperson's office for CRA after which the Officer bullied and interrogated her for half an hour during a telephone call when the Applicant and her husband were visiting a patient in the hospital.

V. **Standard of Review**

[15] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 23.

While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[16] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem: *Vavilov* at para 83.

[17] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at para 125.

[18] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

[19] An allegation of procedural fairness is determined on a basis that approximates correctness review. Ultimately, the question comes down to whether the Applicant knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, at para 56.

[20] I find it is not necessary to address this issue other than to point out that the letter denying the first review clearly advised the Applicant why she was found not to qualify for the CRB and it alerted her to the nature and kind of information and documents she should submit if she sought a second review.

[21] Similarly, and more specifically, during the telephone call from the Officer in the second review, the Applicant was asked for bank statements from Jan 2020 to May 2021 with [her] name and month on them. These statements were not provided by the Applicant. The Applicant was also asked to provide a printout from Indeed showing where she had been Applying for jobs.

[22] The Applicant says that because of her accent she felt the Officer couldn't understand her most of the time during the telephone call. She also says that given the circumstances of being in a noisy hospital at the time of the call, she may have misunderstood what was required.

[23] Before concluding the telephone call, the Officer asked the Applicant if she had any questions. The reply was that there were no questions and she would try to get the documents for the Officer.

[24] The Applicant re-submitted multiple copies of the originally submitted documents but no bank statements or other evidence to support receipt of cash payments for her services..

[25] It is apparent from the foregoing that the Applicant was apprised of the case to be met and was given an opportunity to present specific documents to respond to the Officer's concerns. That meets the requirement for procedural fairness. The Applicant has provided no evidence of procedural unfairness.

VI. **The Decision is Reasonable**

[26] The Applicant's arguments concerning why the Decision was not reasonable address each of the 4 findings made by the Officer. The arguments are set out below, followed by the Respondent's argument and then my analysis.

A. *Income of \$5000*

[27] The Applicant submits, as demonstrated by her 2020 tax return, that she earned the 2020 income threshold for the CRB. She says the documents that were submitted to demonstrate how the income was generated included the invoices to her client and the receipts for payment. As such, the Applicant submits the Officer's finding that she did not earn enough to qualify for the CRB benefit is demonstrably false.

[28] The Respondent submits the Applicant failed to provide proof of the income she claimed with respect to her client Patel Hospitality. They note that the Officer requested further proof of

actual payment in the form of a cheque, e-transfer or bank statement. While the two sales receipts submitted indicate that the payment method was cash, the Applicant failed to provide documentation to prove that any such payments were actually made.

[29] The Respondent also observes that the allegation that there was no request for documentation was not in the Applicant's memorandum. In fact, the memorandum only states that the invoice, receipt and tax information is sufficient for proof of threshold income.

[30] In *Aryan v Canada (Attorney General)*, 2022 FC 139 (*Aryan*), Madam Justice Strickland considered a similar benefits compliance decision of the CRA where that applicant also reported self-employment income of at least \$5,000 in 2020. The supporting documents in *Aryan* included a Notice of Assessment (NOA) and a bank statement. On second review it was found that the NOA was based on self-reported income and the bank statement lacked specification as to the source of income.

[31] The applicant's position was that it was unreasonable to disregard and not accept the NOA issued by CRA as proof of earnings. The argument was that requiring additional proof that the income was earned and received ran contrary to the *CRBA*'s purpose of supporting Canada's economic recovery in response to COVID-19.

[32] After a thorough review of the CRA guidelines for CRB eligibility and the provisions of the *CRBA*, Justice Strickland held the CRA decision was reasonable. The Officer reasonably sought further documentation, consistent with the guidance set out in the CRB Guidelines.

[33] As is the case now before me, the NOA in *Aryan* was based on self-reported income and that applicant did not provide the requested supporting documents.

[34] Providing information requested by CRA to support a CRB application is not optional. Section 6 of the CRBA states “An applicant must provide the Minister with any information that the Minister may require in respect of the application.” (my emphasis)

[35] I similarly find that the Officer reasonably sought further proof of CRB eligibility and the Applicant failed to provide it to the satisfaction of the Officer. In line with the CRA guidelines, that was a reasonable basis for the Officer to deny the Applicant’s entitlement to the CRB.

[36] It has frequently been observed by this Court that the Canadian tax system is based on self-assessment: *Dimovski v Canada Revenue Agency*, 2011 FC 721 at para 17; *Froehling v Canada (Attorney General)*, 2021 FC 1439, at para 26.

[37] With the responsibility of self-reporting, comes an obligation, as set out in section 6 of the *CRBA*, to provide any information that the CRA may require to confirm compliance with the legislative provisions. This requirement compels an applicant to provide documents and information requested by CRA or explain why it is not possible to comply. It does not restrict what an applicant may submit to support their claim.

[38] For the foregoing reasons, I have not been persuaded that the Officer’s finding that the Applicant had not proven her net self-employment income in 2019, 2020, or in the 12 months

before the date of her first application was at least \$5,000 was unreasonable. It follows that the Officer's finding was reasonable.

[39] This ground alone is enough to dismiss the application. However, as the Applicant is self-represented, I will consider the other three arguments.

B. *Unemployed due to COVID-19*

[40] The Applicant explained that her extensive management experience in the hospitality industry since 2013, led her to start a consultancy business for her services. She states that the operation began in late 2019, but was abruptly stopped in its tracks as a result of COVID-19. The Applicant submits that she had several other potential clients in the pipeline, but was forced to abandon her plan as the hospitality industry was devastated by the pandemic. As such, the Applicant submits that she immediately began to apply for jobs.

C. *Seeking employment*

[41] The Applicant states that she submitted screenshots of her Indeed job account showing that she began to apply for jobs in the early months of 2020 in earnest. She submitted this information to the CRA, but they found, without explanation, that she was not attempting to find work. She submits that she has and continues to apply for jobs on a variety of platforms and through networking with her former colleagues and business contacts.

[42] The Officer's reasoning process for not accepting these two arguments is found in the "Rational [*sic*] for decision" section of the Case Analysis Report:

- TP has only showed same email for Jan 2020 with invoices for same client, done 2 different ways for 2 invoices nothing to show income was earned and received B/S or cancelled cheques etransfers
- It has not grown business stopped as of Feb 2020 said because covid but TP just started and did not advertise web page suspect more casual work tp stopped working in 2018 medical reasons and was support by husband after
- I still believe not looking for work as this was a copy and snip to a word doc and it showed tp had applied to jobs in Jan 2020 and 1 was for Nov 2020 but does not show as applied like others and it says applied but not selected and others say application Submitted looks suspect
- There is (*sic*) still questions where is tp living Nova Scotia or Alberta address Alberta bank Nova Scotia and phone # is Nova Scotia?
- My decision and with information from call and doc's tp is not eligible for CRB this is not covid related and no 50% loss due to Covid and it is not looking for work.

[43] On the Eligibility Criteria Checklist next to the heading "Did not quit job or reduce hours voluntarily after September 27, 2020" the Officer's note is "Not sure when tp stopped self employment but it did not really start".

[44] In addition to the failure to provide sufficient documentation of the stated \$6650 income, the Officer's reasoning demonstrates numerous concerns. These include the suspicious nature of the client's email, her address, company website, timing of the job applications and whether the consultancy business ever really started.

[45] Unfortunately for the Applicant, although she asserts that she continuously sought employment - and I acknowledge that she may have done so - the documents she submitted to CRA do not support that claim.

[46] The Officer's notes indicate that in the May 18, 2021 telephone call with the Applicant they requested information from Indeed to show, from the beginning, where the Applicant had been applying. The Indeed printout did not provide evidence that the Applicant was continuously seeking employment. The Officer noted that the re-submitted Indeed printout showed job applications were only submitted in January of 2020 and a single application was made in November 2020.

[47] The Applicant did not provide other documentary evidence to corroborate her efforts to find jobs across a number of job seeking platforms and for positions across the country.

[48] I find that without sufficient evidence to support the Applicant's position that she was continuously applying for jobs, the Officer reasonably concluded she had not substantiated either that she was unemployed due to COVID-19 or that she was actively seeking employment.

D. *Did not claim 50% reduction in income*

[49] The Applicant submits that she did not apply under the 50% less criteria; she applied under the criteria that she had lost her job due to COVID-19. She states, "I am not sure how they even thought this made any sense to include in their assessment of my CRB claim, as I have never made a claim on that 50% reduction criteria."

[50] The Applicant's argument that the Decision erred by stating that she did not have a 50% reduction in her weekly income compared to the previous year because she did not apply under that criteria is simply a misreading by the Applicant of the legislation and the Officer's statement.

[51] Paragraph 3(1)(f) of the *CRBA* provides as follows:

Eligibility

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

[. . .]

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period [. . .]

(Emphasis added)

Admissibilité

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

[. . .]

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines [. . .]

[52] The use of the word “or” where underlined above means that the test to qualify for CRB payments is disjunctive. A taxpayer can qualify either through loss of employment due to COVID-19 *or* proof of a 50% reduction of average weekly income.

[53] In my view, the Officer’s reference to the 50% reduction part of the test does not show any misunderstanding of the Applicant’s claim. Rather, it shows the Officer was being thorough by giving full consideration to both ways the Applicant might have satisfied the eligibility test. Having done so, the Officer reasonably concluded that the Applicant failed to meet either provision.

VII. **Conclusion**

[54] Based on a review of the Applicant’s supporting documents, the Case Analysis Report, and the documents in the underlying record and after considering the arguments of the parties, I find, for all the foregoing reasons, that the Decision is reasonable. It meets the requirements of being internally coherent as well as being transparent, justified and intelligible. It contains no circular reasoning or fatal flaws.

[55] My finding does not mean that I believe the Applicant was in any way trying to ‘scam’ or ‘cheat’ the system. It is only a finding that the evidence put forward by the Applicant and her husband to the Officer was not enough to prove on a balance of probabilities that the CRB claim met the criteria set out in the *CRBA*. It also underscores that when being paid in cash by customers it is important to have records that reflect the full details of the transaction and that the funds received be contemporaneously deposited to an account at a financial institution.

[56] The application for judicial review is dismissed.

[57] The Respondent has requested costs in this matter however in the exercise of my discretion I do not find this to be an appropriate case to award costs.

JUDGMENT in T-1002-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to reflect the Attorney General of Canada as the correct respondent.
2. The application for judicial review is dismissed.
3. No costs are awarded.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1002-21

STYLE OF CAUSE: ELIZABETA WALKER v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 10, 2022

JUDGMENT AND REASONS: ELLIOTT J.

DATED: MARCH 21, 2022

APPEARANCES:

ELIZABETA WALKER

FOR THE APPLICANT
(ON HER OWN BEHALF)

Matthew Chao

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT