

Federal Court



Cour fédérale

Date: 20220815

Docket: T-31-22

Citation: 2022 FC 1195

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 15, 2022

The Honourable Mr. Justice Pamel

BETWEEN:

MOHAMED RADHOUENE SAADI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Canada Recovery Benefit [CRB], created by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act], is a taxable benefit introduced at the end of the Canada Emergency Response Benefit [CERB] Program, on September 27, 2020, and, like the CERB, is designed to provide financial support to employed and self-employed Canadians who are directly affected by the impacts of the coronavirus disease 2019 [COVID-19] pandemic.

[2] The applicant, Mohamed Radhouene Saadi, has brought before the Court an application for judicial review, pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision rendered by a benefits processing officer [officer] from the Canada Revenue Agency [CRA] on December 8, 2021 [decision], finding that he was ineligible for the CRB. Mr. Saadi is an independent driver working with UBER Canada Inc. [UBER], who was employed by Autobus Inter-Rives Inc. during the periods for which he applied for the CRB. The CRA officer concluded that Mr. Saadi was ineligible because he had not stopped working for reasons related to COVID-19, and he had not had a 50% reduction in his average weekly income relative to the preceding year.

[3] For the reasons that follow, I am of the view that the decision rendered by the CRA officer is unreasonable, and I would therefore allow the application for judicial review.

II. Legislative framework and background

[4] Subsection 3(1) of the Act sets out the eligibility criteria for receiving the CRB, including the following:

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

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) 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 relative to

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application, and

(ii) in the case of an application made under section 4 in respect of a two-week period beginning in 2021, their total average weekly employment income and self-

...

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 par rapport à :

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020,

(ii) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle

employment income for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application;

...

Income from self-employment

(2) For the purpose of paragraphs (1)(d) to (f), income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue.

[Emphasis added.]

présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2021;

...

Revenu — travail à son compte

(2) Le revenu visé aux alinéas (1)d) à f) de la personne qui exécute un travail pour son compte est son revenu moins les dépenses engagées pour le gagner.

[Je souligne]

[5] Mr. Saadi arrived in Canada in October 2019 and worked for Walmart until January 2020; his taxable income from Walmart for 2019 was \$2,521, and during the first two weeks of January, he earned \$2,802. In January, Mr. Saadi began studying full time and needed more flexible employment to support his family. He completed training to become an Uber driver and worked for Uber until the start of the COVID-19 pandemic, in about mid-March 2020, when all non-essential businesses were required to close. Mr. Saadi collected CERB payments for a few weeks—\$14,000 in total—and, not wishing to abuse the system, resumed his work as an Uber driver in late June 2020 when public health measures were relaxed. Mr. Saadi stated that he had stopped obtaining Uber rides and that he had ceased working as of September 26, 2020, following public health restrictions announced by the Government of Quebec at the height of the second wave of the pandemic, claiming that he was incurring expenses without generating income. Furthermore, Mr. Saadi has asthma, and his 11-year-old daughter has type-1 diabetes, so

he could not take the risk of continuing to transport people for pay, given the vulnerability of his and his daughter's situations.

[6] Mr. Saadi explained that over the 22 weeks he worked—from January 1 to September 26, 2020, excluding the weeks during which he collected the CERB and a few weeks during which he earned some income but that were not considered full work weeks—he earned \$17,824, representing a weekly average of approximately \$810, or \$1,620 every two weeks. I must point out that, in his calculations, Mr. Saadi uses his gross business income, which was reported in his 2020 income tax return as \$13,745, and not his net business income of \$7,570. Furthermore, he calculates his average income on the basis of the 22 weeks that he worked, until September 26, 2020.

[7] Mr. Saadi sought to apply for the CRB as soon as the program started, on September 27, 2020. He was aware of the program's conditions, specifically the fact that he could not refuse a reasonable offer to work—a criterion set out in clause 3(1)(k)(ii)(C) of the Act—but that he would nevertheless be entitled to benefits as long as his average weekly income was reduced by at least 50% relative to the preceding year for reasons related to COVID-19. Mr. Saadi therefore accepted an offer of a paid internship and began working part time as a bus driver for Autobus Inter-Rives Inc. in October 2020. Mr. Saadi testified before me that he did this in good faith, despite the fact that this employment brought in less income—a weekly average of about \$338, or \$675 every two weeks including the school vacation period—and that the job site was far from his residence. According to Mr. Saadi, he earned less than 50% of the average income he was earning before September 26, 2020, for the two-week period.

[8] Starting on October 12, 2002, Mr. Saadi filed 10 CRB applications for 10 two-week periods between September 27, 2020, and February 13, 2021. On the basis of his applications, the CRA granted Mr. Saadi CRB payments for 7 of the 10 periods requested, namely, until January 2, 2021. On January 19, 2021, Mr. Saadi's CRB applications were reviewed for the first time. Mr. Saadi contacted the CRA several times for updates on the status of the review. Mr. Saadi had already provided his bank statements for 2020, but at the request of an officer, Mr. Saadi had to provide additional documents in April 2021, namely, a letter explaining why he had ceased his activities for Uber, two medical prescriptions in his own name and that of his daughter, his Uber records and his payslips from Autobus Inter-Rives Inc. The officer spoke with Mr. Saadi on April 26 and May 6, 2021, to obtain further information about his circumstances and his employment history. In a decision dated May 11, 2021, the officer concluded that Mr. Saadi was ineligible for the CRB because he had not had a 50% reduction in his average weekly income relative to the preceding year for reasons related to COVID-19.

[9] On November 26, 2021, Mr. Saadi requested a second review of his CRB applications. The officer responsible for the second review took into account the various documents that Mr. Saadi had already sent to the CRA in addition to those that he sent following the decision of May 11, 2021, namely, additional bank statements and a letter in which he explained how he thought his average income was supposed to be calculated.

[10] On December 8, the officer informed Mr. Saadi that he was ineligible for the CRB because he had not stopped working for reasons related to COVID-19, and because he had not had a 50% reduction in his average weekly income relative to the preceding year because of

COVID-19—the officer noted the way in which Mr. Saadi had calculated his average weekly income but found that his table did not follow the CRA’s method of calculating average income losses of more than 50%. The officer based her decision on the following conclusions, drawn from her analysis of the various documents before her:

- Mr. Saadi never stopped working and received income during the periods for which he had applied for the CRB—he worked for Autobus Auger—and therefore he did not stop working for reasons related to COVID-19.
- It was then that Mr. Saadi produced his income tax returns for 2020. The officer took the net amount of business income reported by Mr. Saadi (\$7,570) plus his reported employment income of \$7,939 (which included not only his Walmart salary from the beginning of 2020, but also his salary from Autobus Auger for the months of October to December 2020) and reached an annual income of \$15,509 for the purposes of the CRB entitlement calculation. Dividing this amount by 12, and then by 2, the officer arrived at an average income of \$646.21 for a two-week period. To have a 50% reduction in his average income for the two-week period in question, Mr. Saadi must have earned, for the periods for which he requested the CRB, no more than \$323.11. However, he earned, on average, \$675 every two weeks, including the school vacation period, from Autobus Auger, or double the threshold set out in the Act. The officer therefore concluded that Mr. Saadi’s income, relative to his average weekly income of the preceding year, had increased for all of the two-week periods for which he applied for the CRB, except for the seventh period, during which his income had decreased for reasons

unrelated to COVID-19, namely, the work stoppage due to the school vacation from December 20, 2020, to January 2, 2021, during which time he was not paid.

[11] The difference between Mr. Saadi's and the CRA's calculation methods can be summarized as follows:

- a) Mr. Saadi calculated his total income by referring to his gross business income, while the CRA, correctly, referred to his net business income, as required by subsection 3(2) of the Act;
- b) The period used by Mr. Saadi to calculate his total income was from January 1 to September 26, while the period used by the CRA was the full 2020 taxation year;
- c) Mr. Saadi calculated all of his average weekly income by dividing the total of his employment income and self-employment income by 22—the number of weeks during which he earned this income and excluding the period during which he collected the CERB and a few other weeks for various reasons—while the CRA divided the total amount of income by 52 weeks, even though the amount of CERB that Mr. Saadi collected during certain weeks was not included in the calculation of total income.

[12] Mr. Saadi filed this application for judicial review on January 7, 2022.

III. Standard of review and issues

[13] The appropriate standard of review for the decision of a CRA officer rendered under the Act is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 18). The Court’s role is therefore to consider the administrative decision maker’s rationale and the outcome to determine whether the decision is “based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[14] This application for judicial review raises only one issue: was the decision of December 8, 2021, finding Mr. Saadi ineligible for the CRB, unreasonable?

[15] Mr. Saadi raised in his notice of application the issue of whether the CRA had violated the principles of procedural fairness in failing to give him an opportunity to explain himself or clarify certain details of his application. Given that Mr. Saadi did not raise this argument before me and that I am of the view that the issue of the reasonableness of the officer’s decision is determinative, I will not address the issue of procedural fairness.

IV. The officer’s decision is unreasonable

[16] Mr. Saadi maintains that he is eligible for the CRB because he meets all the requirements of the Act. He argues that the method of calculating whether he had a 50% reduction in his average weekly income relative to the preceding year is not detailed in the Act and that the

officer should have calculated this average based on the number of weeks that he worked, namely 22 weeks, and not taking into account all the weeks in the year.

[17] Paragraph 3(1)(f) of the Act does not prescribe a precise method for calculating a taxpayer's average weekly income. Subparagraphs 3(1)(f)(i) and (ii) state only that, to determine whether the taxpayer has had a 50% reduction in their income, the officer must base the calculation on the average weekly income of 2019, 2020 or the 12-month period preceding the CRB application.

[18] The officer who rendered the decision under review prepared a report in which she set out the rationale for her decision. She rejected the calculations submitted by Mr. Saadi: [TRANSLATION] "the taxpayer submitted his own calculations, but when we perform our calculations properly, well, I don't get the same results". Mr. Saadi did indeed provide the officer with an explanatory letter in which he presented a detailed calculation of his average weekly income based on his 22 weeks of work during the 12-month period preceding his first CRB application.

[19] I am of the view that the officer's decision lacks the hallmarks of reasonableness: justification, transparency and intelligibility (*Vavilov* at para 99). First, the officer did not explain why she referred to Mr. Saadi's average weekly income in 2020 rather than referring to that earned in the 12-month period preceding the date on which he submitted his CRB application, thus not taking into account the income earned by Mr. Saadi when he worked for Walmart in 2019, but nevertheless including the reduced income he earned after the period for which he

applied for the CRB. For the applications in respect of two-week periods beginning in 2020, namely, periods 1 to 7, the officer concluded that Mr. Saadi did not have a 50% reduction in the average weekly income he earned in 2020. Is it not more difficult to arrive at a 50% reduction in income when it is, in part, the same income used to calculate the average weekly income referred to assess whether the person has experienced a reduction? This method of calculation would have the effect of raising the bar higher than what was intended by Parliament in the Act.

Subparagraph 3(1)(f)(i) states that, for an application made in respect of any two-week period starting in 2020, a person must have had a reduction of at least 50% in their total average weekly income relative to “their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application”. In my view, the calculation performed by the officer renders the decision unintelligible. Second, the officer did not explain why she calculated Mr. Saadi’s average weekly income on a 52-week basis, when that period included weeks during which Mr. Saadi did not earn employment or self-employment income for reasons related to COVID-19, and during which he collected the CERB.

[20] I am therefore of the view that the decision is not justified in relation to the facts and law constraining the decision maker.

V. Conclusion

[21] In light of the above reasons, I will allow the application for judicial review.

[22] No submissions on costs appear in the applicant’s file, and no submissions on costs were made at the hearing. Therefore, none will be granted.

JUDGMENT in T-31-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The officer's decision under review is set aside, and the matter is remitted to a new Canada Revenue Agency officer for redetermination.
3. Without costs.

“Peter G. Pamel”

Judge

Certified true translation
Francie Gow

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-31-22

STYLE OF CAUSE: MOHAMED RADHOUENE SAADI v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: JUNE 13, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: AUGUST 15, 2022

APPEARANCES:

Mohamed Radhouene Saadi

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Mathieu Lamontagne

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT