

Federal Court



Cour fédérale

Date: 20230713

Docket: T-585-22

Citation: 2023 FC 961

Ottawa, Ontario, July 13, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ROBERT SAMERY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This an application for judicial review of the decision of the Canada Revenue Agency (the “CRA”), dated February 17, 2022, denying the Applicant’s Canada Recovery Benefit (“CRB”) application (the “Decision”). The CRA found the Applicant ineligible for the CRB because the Applicant had not earned at least \$5,000 of income in 2019, 2020, or the 12 months preceding his application.

II. Background

[2] The Applicant, Robert Samery, applied for the CRB for the following eight two-week periods (collectively the “Periods”):

A. December 6, 2020 to February 13, 2021;

B. March 28, 2021 to April 24, 2021; and

C. May 9, 2021 to May 22, 2021.

[3] A CRA agent spoke with the Applicant on August 16 and 17, 2021. The CRA agent requested further documentation to demonstrate that the Applicant had earned \$5,000 prior to the first benefit period for the Periods.

[4] In response on August 17, 2021, the Applicant submitted a cheque, dated May 26, 2020, in the amount of \$5,085. The Applicant claims to have earned the income as part of a real estate transaction. The Applicant did not provide a corresponding bank statement to show that any money was deposited.

[5] In its initial decision, the CRA notified the Applicant that he was not eligible for the CRB as he did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020 or in the 12 months before the date of the Applicant’s first application.

[6] The Applicant requested a second review of the CRA's decision on August 24, 2021. It is this second review decision that is the subject of this judicial review.

III. Decision under Review

[7] A CRA officer that was not involved with the first decision conducted the second review.

[8] The CRA considered the following evidence:

- A. The Applicant's income and deductions from income for the 2019 and 2020 taxation years as recorded on the CRA's computer system.
- B. A TD Canada Trust Account Statement for the period of May 29, 2020 to June 30, 2020 provided by the Applicant. The account number, account holder's name and transaction description were redacted by the Applicant prior to submitting this document to the CRA.
- C. A copy of a cheque, dated May 26, 2020, in the amount of \$5,085 payable to the Applicant. The branch and financial information numbers were redacted by the Applicant before he sent the copy to the CRA.

[9] The CRA maintained that the Applicant was not entitled to the CRB. The CRA agent held that:

- A. The Applicant's 2019 tax documents indicate a net commission income of \$-10,176. The Applicant's 2020 tax documents reveal a net commission income of \$-15,496.

- B. It was unclear that the Applicant's bank statement was for his account as the statements were heavily redacted to the extent of omitting the Applicant's name and account number.

[10] The CRA communicated the Decision to the Applicant through letter dated February 17, 2022. The letter indicated that the Applicant did not meet the eligibility criteria because he did not earn \$5,000 of employment or net self-employment income in 2019, 2020 or in the 12 months before the date of his first application.

IV. Issues

[11] Did the CRA err in refusing the Applicant's CRB application?

V. Standard of Review

[12] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

VI. Analysis

[13] The eligibility requirements for the CRB are set out in section 3 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the “Act”). Paragraphs 3(1)(d) and (e) of the Act provide that an applicant must have earned at least \$5,000 of income in prescribed periods from prescribed categories of income. For a two-week period beginning in 2020, a minimum of \$5,000 had to have been earned in 2019 or in the 12-month period preceding the day on which the person applied for the CRB. For a two-week period beginning in 2021, a minimum of \$5,000 had to have been earned in 2019, in 2020, or in the 12-month period preceding the day on which the person applied for the CRB.

[14] Moreover, subsection 3(2) states that for the purposes of the income earned in the periods described in paragraphs 3(1)(d) and (e) “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”.

[15] The CRA document titled “Confirming CERB, CRB, CRSB and CRCB Eligibility” (the “CRB Eligibility Document”) sets out the kind of proof acceptable to demonstrate a \$5,000 income. This includes invoices for services rendered, documentation for receipt of payment, a list of expenses to support the net result of earnings, and any other documentation that will substantiate \$5,000 in self-employment income.

[16] The Applicant argues that the CRA erred by strictly requiring bank statements from him, and, in spite of the fact that he submitted a bank statement, denied his CRB application. The

Applicant relies on *Sjogren v Canada (Attorney General)*, 2022 FC 951 [*Sjogren*], where this Court held that bank statements were not a strict requirement under the Act or under the CRB Eligibility Document.

[17] I disagree with the Applicant. *Sjogren* is distinguishable from the present case for three reasons:

- A. In *Sjogren*, the applicant claimed to have been paid in cash. That is different from the present case, where the Applicant concedes that he was paid by cheque that was subsequently deposited in his bank account.
- B. In *Sjogren*, the CRA agent expressly stated that a bank statement was required “per the instructions” (para 28). The CRA agent made no such statement here.
- C. The CRA agent did not base their decision solely on the absence of bank statements. In this case, the CRA agent had direct access to the Applicant’s taxation documents from 2020, which covered the period where the Applicant purportedly received the cheque for \$5,085. This taxation information revealed negative commission income for 2020.

[18] While the Applicant argues that the income of \$5,085 was for a finite period of time in 2020, the applicable legislation states that the relevant net income must be for either the taxation year 2019, 2020 or the 12 months preceding a CRB application. Considering the cheque that redacted the Applicant’s account number, the heavily redacted bank statement that omits the

Applicant's name, account number and essentially all other information other than enough to show a "mobile deposit" was made on June 2, 2020 in the amount of \$5,085, and the net negative commission income from the Applicant's 2019 and 2020 tax documents, it was reasonable for the CRA to refuse the CRB application.

VII. Conclusion

[19] The application is dismissed.

JUDGMENT in T-585-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-585-22

STYLE OF CAUSE: ROBERT SAMERY v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 29, 2023

JUDGMENT AND REASONS: MANSON J.

DATED: JULY 13, 2023

APPEARANCES:

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FOR THE APPLICANT
(ON HIS OWN BEHALF)

Jacky Cheung

FOR THE RESPONDENT

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FOR THE RESPONDENT