

Federal Court



Cour fédérale

Date: 20240216

Docket: T-1068-23

Citation: 2024 FC 260

Toronto, Ontario, February 16, 2024

PRESENT: Madam Justice Go

BETWEEN:

TAYEBE JOODAKI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Tayebe Joodaki, the Applicant, is an artist. She made her earnings through selling her paintings and teaching students at their home.

[2] The Applicant applied for Canada Recovery Benefit [CRB] on October 16, 2020. Under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*], eligible recipients were

required to have a minimum income of \$5,000 from employment, self-employment, or certain prescribed government benefits and allowances in 2019, 2020, or in the 12 months before the date of their first application [Income Requirement].

[3] The Applicant received CRB for 25 two-week periods from September 27, 2020 to September 11, 2021. The Applicant's CRB eligibility at first underwent two reviews, each of which found the Applicant ineligible for CRB.

[4] On May 11, 2023, a manager at the Canada Emergency Benefits Validation branch [Officer] of Canada Revenue Agency [CRA] conducted a third review and informed the Applicant that she did not meet the CRB Income Requirement as she did not earn at least \$5,000 in income in 2019, 2020 or in the 12 months before the date of her first application [Decision]. The Applicant was required to repay the CRB payment she received.

[5] The Applicant seeks a judicial review of the Decision. While I am sympathetic to the Applicant's situation, I find the Decision reasonable and therefore dismiss the Applicant's judicial review application.

II. Preliminary Issues

[6] As a preliminary issue, the appropriate respondent should be the Attorney General of Canada.

III. Issues

[7] The only issue before me is whether the Decision was reasonable.

[8] The Respondent submits, and I agree, that an officer's decision on CRB eligibility is reviewable on a reasonableness standard and that the circumstances do not rebut the presumption of reasonableness per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. See also: *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15, *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16, and *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12.

IV. Analysis

[9] The Applicant's main arguments are as follows:

- a. First, the Officer incorrectly determined the date for the 12 months preceding her first application for CRB. The Applicant submits that the date should have been March 15, 2019, 12 months before she started to receive the Canada Emergency Response Benefit [CERB] – the predecessor to the CRB program – after she stopped working on February 28, 2020.
- b. Second, the income for calculating her eligibility for CERB should have been taken into account in determining her eligibility for CRB. On that basis, the Applicant made \$5,180.00 of self-employment income in the 12 months (March 2, 2019 through February 28, 2020) before the date of her first application for “COVID benefits.”

[10] I reject the Applicant's arguments for the following reasons.

[11] First, the Applicant's argument that the date of the 12 months preceding her first application should have been March 15, 2019 runs contrary to the statute.

[12] The Respondent points to paragraph 3(1)(d) of the *CRB Act* which sets out that the 12 month period is the 12 months preceding the day on which an individual first applied for CRB. The Respondent cites *Flock v Canada (Attorney General)*, 2022 FCA 187 [*Flock*].

[13] I agree with the Respondent. The appellant in *Flock* sought the CRB for the period from September 27, 2020 to November 21, 2020. The Federal Court of Appeal [FCA] confirmed in *Flock* at para 3, that "an applicant who is self-employed must have earned at least \$5,000 in income in one of two periods, either the year 2019 or in the 12-month period prior to when the application was made (CRB Act, s. 3(1)(d))." In that case, the FCA found "the 12-month period would be mostly in the year 2020 when the pandemic began:" *Flock* at para 3.

[14] Thus, contrary to the Applicant's argument, the 12-month period did not begin on March 15, 2019. Rather, it began in October 16, 2019, 12 months before the Applicant first applied for CRB.

[15] Further, for the purpose of eligibility, section 3(1)(d) of the *CRB Act* defines eligible income as income from:

- (i) employment,
- (ii) self-employment,
- (iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*,

- (iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and
- (v) any other source of income that is prescribed by regulation.

[16] There is nothing in the *CRB Act* that requires an officer to take into account income other than that set out in subsection 3(1)(d). As such, the Applicant's argument that the income that had previously qualified her for CERB has no basis in law.

[17] While I appreciate that from the Applicant's point of view, the CERB and CRB are both benefits that the Government of Canada established to provide income support to those who had difficulties earning income as a result of the pandemic, the two benefits are separate and distinct, each with its own eligibility requirements. Like the Applicant, the taxpayer in *Flock* also made similar argument before this Court, which was rejected by Justice Fothergill in *Flock v Canada (Attorney General)*, 2022 FC 305:

[21] Mr. Flock says that the transition from the CERB to the CRB was intended to be seamless, and it is inequitable and unjust for him to have received the CERB but then be denied the CRB when his financial circumstances did not change. He asserts that there was nothing in the eligibility questionnaire he completed to suggest his eligibility for the CRB would be determined with reference to his net self-employment income, rather than his gross self-employment income. He notes that he did in fact receive the CRB for four two-week periods, from September 27, 2020 to November 21, 2020.

[22] While Mr. Flock's criticism of the differing eligibility criteria for the CERB and CRB makes some logical sense, this is more a critique of the policy underlying the two legislative programs than a legal complaint. It is perhaps worth noting that the Remission Order was intended to ameliorate the effects of possible confusion surrounding eligibility for the CERB, which was introduced with short notice at the beginning of a public health emergency. Parliament was under no obligation to extend the Remission Order to the CRB when the new benefit was introduced seven months later.

[18] The FCA in *Flock* confirmed Justice Fothergill's finding. For the same reason, I must also reject the Applicant's argument.

[19] I also find no reviewable error in the Officer's determination of the Applicant's income as it was based on the information the Applicant provided to the Officer.

[20] During a phone conversation in April, 2023, the Applicant advised the Officer that from February 2, 2019 to November 30, 2019, she earned causal income through selling paintings and teaching art classes. She also advised the Officer that she had no other income to claim for 2019, 2020, as well as 2021 because of the COVID-19 pandemic. After the phone call, the Applicant provided documents to the Officer, which included contracts from an education centre where she taught painting, hand-written transaction records with her students, samples of her paintings, as well as copies of Notices of Assessments for 2017 and 2018.

[21] The Officer called the Applicant again on May 8, 2023 and inquired about why the Applicant did not work in 2021. The Applicant explained that she lost students as she could not enter people's homes because of the COVID-19 pandemic. The Applicant also confirmed that she did not work between September 7, 2020 and October 9, 2021 and she had no other income to report for 2019, 2020, or 2021.

[22] Based on the information the Applicant provided, the Officer concluded the Applicant reported an income of \$4,354 in 2019, \$1,230 in 2020, and \$1,630 from October 16, 2019 to

October 16, 2020. The Officer's conclusion was reasonably supported by the evidence before them.

[23] At the hearing, the Applicant raised a new argument stating that an agent advised her on the phone that she was eligible for CRB after her CERB ran out, which was why she applied. She would not have applied if she had income. The Respondent pointed out in response that the Applicant did not raise this issue in her application and that this conversation did not make it to the record. The Respondent also submitted the case law confirms that the position of an agent on the phone would not be able to supersede the legislation. See for example, *Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at para 22.

[24] I note that included in the Certified Tribunal Record, is a copy of an undated letter from the Applicant to the CRA stating that she had a conversation with an agent on December 4, 2020 and "cleared everything for her" and the agent told the Applicant that she was eligible for CRB. As a result, she spent the CRB payment on rent and other expenses and would not be able to repay the money.

[25] I am sympathetic to the Applicant's circumstances. However, as I stated in *Ibrahim v Canada (Attorney General)*, 2023 FC 1357 [*Ibrahim*], the tax system is based on self assessment, and the onus falls on the taxpayer to show that they are in compliance with the tax provisions, and in the context of the CRB, this onus is set out under section 6 of the *CRB Act: Ibrahim* at para 33.

[26] For all these reasons, I find the Decision reasonable.

V. Conclusion

[27] The application for judicial review is dismissed.

[28] There is no order as to costs.

JUDGMENT in T-1068-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended to name the Attorney General of Canada as the Respondent.
3. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1068-23

STYLE OF CAUSE: TAYEBE JOODAKI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 7, 2024

JUDGMENT AND REASONS: GO J.

DATED: FEBRUARY 16, 2024

APPEARANCES:

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FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Tristen Cones

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS