

Federal Court



Cour fédérale

Date: 20220624

Docket: T-143-22

Citation: 2022 FC 951

Toronto, Ontario, June 24, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

JUDY SJOGREN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a January 10, 2022 decision [Decision] of a Benefits Compliance Officer [Officer] of the Canada Revenue Agency [CRA] regarding the Applicant's eligibility for the Canada Recovery Benefit [CRB] provided under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act]. The Officer found that the Applicant had not provided sufficient documentation to establish the income criterion to obtain the CRB.

[2] As set out further below, I find that the Officer's reasons lack a logical chain of analysis and as such that the Decision is unreasonable. The Decision should be remitted to another Officer for redetermination. The Applicant's additional request for Canadian Recovery Sickness Benefits [CRSB] is not properly before me or supported by evidence and is denied.

[3] The Applicant's further request to review other decisions relating to the Applicant's eligibility for disability benefits is dismissed as being either moot, outside the jurisdiction of the Court, or an abuse of process, and on the basis of Rule 302 of the *Federal Courts Rules*.

[4] Accordingly, the application is allowed in part only.

I. Background

[5] The Applicant, Judy Sjogren, is a former hospital worker. She asserts that she is currently self-employed by selling her artwork.

[6] She applied for disability benefits after a spine injury in 2009. Her application was denied at the first level of review and again on reconsideration. Her appeal before the Social Security Tribunal [SST] General Division was dismissed in 2017. She was granted leave to appeal to the Social Security Tribunal Appeal Division [SSTAD] (2017 SSTADIS 559, [Leave Decision]), who ultimately denied her appeal (2018 SST 586, [SST Appeal Decision]). Ms. Sjogren sought a judicial review of that decision before the Federal Court of Appeal [FCA], who dismissed her application in *Sjogren v Canada (Attorney General)*, 2019 FCA 157 [Sjogren]. These decisions will collectively be referred to below as the Disability Decisions.

[7] In 2021, Ms. Sjogren applied for the CRB for the two-week periods between February 14, 2021 and October 23, 2021. She received the CRB for seven two-week periods between February 14, 2021 and June 5, 2021, but ultimately did not receive the CRB for the additional two-week periods between June 6, 2021 and October 23, 2021.

[8] In June 2021, the CRA commenced validation of Ms. Sjogren's CRB eligibility. On June 25, 2021, Ms. Sjogren provided a letter, her 2020 CRA issued Notice of Assessment for tax purposes, and handwritten receipts from the sale of artwork to support her CRB eligibility.

[9] On July 28, 2021, the first Officer issued their decision, concluding that Ms. Sjogren was ineligible for the CRB as she had not met the required income criterion [Initial Decision].

[10] Ms. Sjogren requested that the Initial Decision be subject to an independent review by a second Officer as allowed by the Act. On January 10, 2022, the Officer conducting the second validation concluded that Ms. Sjogren was ineligible for the CRB as she had not met the income eligibility criterion. The notes of the Officer state the following reasons for the refusal:

Taxpayer has submitted hand written invoices, and pictures of her art work as proof of income. This is not sufficient proof. As per instructions taxpayers are to have bank statements to correspond with invoices to support the income they are claiming. The lack of bank statements, and no history of self employment on file makes the taxpayer ineligible. She claims to only be paid in cash and she does not deposit earnings into her bank account. I did not request these bank statements, or for the 12 months prior to her application because she stated her earnings were never deposited into her account and she always used the cash for necessities. Without bank statements we are not able to see if and when this money was earned. No other documentation other than corresponding bank statements would be sufficient in this case.

II. Issues and Standard of Review

[11] There are two issues arising from this application:

1. Was the Decision of the second Officer reasonable?
2. Should this Court consider the Disability Decisions?

[12] An officer's decision on CRB eligibility is reviewable on the reasonableness standard:

Aryan v Canada (Attorney General), 2022 FC 139 [Aryan] at para 16; *Walker v Canada (Attorney General)*, 2022 FC 381 [Walker] at paras 13 and 15. None of the situations that rebut the presumption of reasonableness for administrative decisions are present: *Canada (Minister of Citizenship and Immigration v Vavilov)*, 2019 SCC 65 [Vavilov] at paras 16-17.

[13] A reasonable decision is “based on an internally coherent and rational chain of analysis” that is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision is reasonable if, when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 85, 91-95, 99-100.

III. Analysis

A. *Was the Decision of the second Officer reasonable?*

[14] The CRB was a benefit created in 2020 by the federal government to provide income support to eligible individuals in response to the COVID-19 pandemic.

[15] Under section 3(1) of the Act, a person could apply for the CRB for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021. If a person applied for the CRB in 2021, they were eligible for the CRB if they had for 2019 or for 2020, or in the 12-month period preceding their application date, a minimum total income of at least \$5,000 from sources including self-employment and benefits paid under the *Employment Insurance Act*, SC 1996, c 23 [Income Criterion], and met other criteria.

[16] Section 6 of the Act requires that an applicant provide the Minister with any required information in respect of their CRB application. As noted by the Court in *Aryan*, this includes documentation in support of the Income Criterion.

[17] The Applicant argues that she submitted sufficient documentation to establish that she met the Income Criterion. She asserts that she is also entitled to the CRSB.

[18] The Respondent argues that the Officer reasonably concluded that the Applicant had failed to demonstrate she met the Income Criterion in view of the documentation provided. It asserts that the Applicant has not filed any evidence to indicate that she applied for the CRSB or any other related benefit and therefore that this alternative request should not be considered.

[19] The document entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRB Guidelines], sets out the procedure used by CRA officers to determine an applicant’s CRB eligibility, including information that is considered to be acceptable to support an application.

[20] The CRB Guidelines state the following with respect to acceptable proof of self-employment income:

- Invoice for services rendered, for self employed individuals or sub contractors. For example an invoice for painting a house or a cleaning service etc. Must include the date of the service, who the service was for, and the applicant's or company's name.
- Documentation for receipt of payment for the service provided, e.g. statement of account, or bill of sale showing a payment and the remaining balance owed
- Documentation showing income is earned from carrying on a "trade or business" as a sole proprietor, an independent contractor, or some form of partnership
- Contracts
- A list of expenses to support the net result of earnings
- Proof of advertising
- Any other documentation that will substantiate \$5,000.00 in self employment income

[21] In support of the Applicant's request for a second assessment of her eligibility for the CRB, the Applicant provided a letter from her lawyer indicating that the Applicant had made \$5,225 in self-employment income for 2020 from the sale of her art. The letter attached handwritten receipts relating to the sale of her art and printouts of her art as it appeared for sale on her social media page. The receipts included the month and year of payment, the name and address (by city and province) of the purchaser, the piece of art purchased, the amount of payment, and that each payment was made in cash. The total for the receipts was \$5,525 with \$300 in noted expenses. The Applicant subsequently provided two affidavits that she had filed in a judicial review application challenging the Initial Decision, which was then pending and subsequently discontinued. One of the affidavits attached, amongst other documents, her 2020

Notice of Assessment for taxation purposes, an affidavit from a friend who had purchased art from her, and some bank statements from 2021 intended to show that she had not received any disability payments.

[22] The Respondent submitted evidence from the Officer that found the Applicant ineligible. In her affidavit and in the corresponding notes from the second review report, the Officer acknowledges the Applicant's documentation, but indicates that she does not consider this sufficient proof of the Applicant's asserted self-employment income. The Officer states that "[a]s per instructions taxpayers are to have bank statements to correspond with invoices to support the income they are claiming." She goes on to state that "[t]he lack of bank statements, and no history of self employment makes the taxpayer ineligible." The Officer acknowledges that the Applicant is claiming to only be paid in cash and to have used the income for necessities, rather than depositing her earnings into her bank account. The Officer explains that she did not ask the Applicant for bank statements because of this. However, she states that "[w]ithout bank statements we are not able to see if and when this money was earned. No other documentation other than corresponding bank statements would be sufficient in this case."

[23] The only reference in the CRB Guidelines to the obligation to provide bank statements is with respect to proof of income from employment, which is not claimed by the Applicant. As previously noted, the CRB Guidelines state that documentation establishing both invoicing for services rendered and receipt of payment for such services must be shown to establish self-employment. The guidelines do not require earnings to be deposited into a bank account to be eligible for CRB.

[24] The Court has commented on the nature of the documents to establish the Income Criterion in *Aryan* and *Walker*.

[25] In *Aryan*, the Court found a Notice of Assessment for tax purposes and bank statements to be insufficient to establish income as the documents did not clearly identify payment for services. The documents did not identify the clients for whom services were provided, the dates of the services and the description of services, and did not demonstrate that the applicant actually performed the services and was paid for them. As stated by the Court at paragraphs 35 and 43:

[35] There is no evidence to support the Applicant's position that the Officer was obliged to accept her 2020 income tax assessment as sole and conclusive proof of her income. And while tax assessments are one document that could provide income information to CRA with respect to CRB eligibility, they do not "prove" that the Applicant actually earned the income that she reported in filing her income tax return, or that her income was earned from an eligible source prior to September 27, 2020, pursuant to ss. 3(1)(d)(i-v) of the *CRB Act*.

[...]

[43] In conclusion, I am satisfied that the Officer reasonably sought further documentation, consistent with the guidance set out in the CRB Guidelines, and which documents the Applicant was required to provide pursuant to s. 6 of the *CRB Act*. The Applicant did not provide the documents requested (invoices, receipts, etc.) nor any alternative documents to prove that she met the CRB eligibility requirements. She relied only on her 2020 tax assessment which was based on her self-reported self-employment income, bank statements for the period November 2020 to May 6, 2021 which, as the Officer found, did not clearly identify payments for services or verify the source of the claimed 2020 income – which finding the Applicant does not challenge – and, her EI registration. The Applicant did not provide any documentation which might have identified the clients for whom she provided services, the dates on which those services were provided and a description of the services, the hourly rate she billed for her services, her record keeping of the provision of those services and amount and form of payment received for the services, or any

documentation whatsoever to demonstrate that she actually performed the services and was paid for them. ...

[26] In *Walker*, the applicant submitted two invoices and two receipts for cash received in support of its CRB eligibility. The officer's notes indicate that the documents provided did not include complete details about the client and further research showed that the applicant had no income for 2019 and that her business was closed. The applicant was advised that bank statements with her name and month were needed along with other documents. The officer concluded that the applicant was not eligible after noting a variety of concerns with the applicant's eligibility and the documents provided.

[27] The Respondent asserts that the same concerns apply here. In this case, the Applicant submitted only one end of the transaction and did not establish that she actually received money from the sale of her work. The Respondent asserts that it was reasonable for the Officer to conclude there was insufficient information to establish the self-employment income asserted, particularly as the Applicant had no prior history of self-employment from 2013 – 2019.

[28] However, the problem I have with this argument is that the notes from the second Officer do not support a logical chain of reasoning in association with the Officer's findings. The Officer states only that "per the instructions" bank statements were required, where no such specific requirement exists under the CRB Guidelines. The Officer indicates that the documents provided (which she incorrectly identifies as invoices instead of receipt slips) were insufficient because bank statements were not provided, yet it is clear that bank statements were never identified to the Applicant as being necessary. To the contrary, the notes indicate that the Officer understood

that the Applicant was claiming receipt of payment in cash and that her assertion was that the money was not deposited in the bank. The Officer expressly states that bank statements were not requested of the Applicant, yet the Officer goes on to state that no other documents would be sufficient to establish proof of payment besides bank statements, concluding that the absence of such bank statements was fatal to the Applicant's CRB eligibility.

[29] Imposing such a mandatory requirement for bank statements effectively precludes the Applicant from obtaining CRB if she does not deposit the cash received in the bank and does not appear to recognize the varied information that could be provided as proof of income per the CRB Guidelines.

[30] While it may have been open for the Officer to conclude that the evidence provided by the Applicant was insufficient, in my view her reasons do not sufficiently justify that conclusion.

As stated in *Vavilov* at paragraph 96:

[96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses* and *Alberta*

Teachers have been taken as suggesting otherwise, such a view is mistaken.

[31] Unlike *Walker*, there is no explanation as to why bank statements were specifically essential to establish proof of payment, and there is no indication of any other identifying details being missing from the information provided, or insufficiencies noted.

[32] In my view, the reasons provide insufficient justification for the Decision reached and as such, the Decision is unreasonable and must be sent back for redetermination.

[33] I note that the Applicant has requested that a directed determination be made, finding that she is eligible for CRB. However, I do not consider a directed verdict to be appropriate in these circumstances.

[34] The general rule is that if a decision is quashed the matter should be remitted to the decision-maker for reconsideration. As I am unable to conclude that an Officer would inevitably find that the Applicant was eligible for CRB, there are no exceptional circumstances that would justify a departure from this principle: *Vavilov* at paras 141-142.

[35] Further, I agree with the Respondent, the Applicant has not filed any evidence to indicate that she applied for the CRSB or any other related recovery benefit. There is no basis to grant her request that the Court should order she be paid the CRSB.

B. *Should this Court consider the Disability Decisions?*

[36] As a further aspect of the requested relief, the Applicant argues that the Court should review the Disability Decisions for two reasons. First, if she is found not to have been capable of earning over \$5,000 in 2019, 2020, or the 12 months preceding her first CRB application, then she asserts it should be found that she was incapable of earning income and as a result, she should have been granted disability benefits. Second, she asserts that the SSTAD and the FCA ignored evidence in concluding that she was not disabled within the meaning of the *Canada Pension Plan*, RSC 1985, c C-8.

[37] The Respondent argues that the Disability Decisions should not be reviewed by the Court. It asserts that the issues relating to the Leave Decision are moot; the Court does not have jurisdiction to review the SST Appeal Decision or it would be *res judicata*; and that it is an abuse of process for the Court to review *Sjogren*. I agree with each of these arguments as set out further below.

[38] In addition, I note that consideration of these additional decisions would be contrary to Rule 302 of the *Federal Courts Rules*, which provides that:

Limited to single order

302 Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

Limites

302 Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[39] While exceptions to this rule can apply when decisions are closely linked and arise under the same set of facts, this is not the situation here. The Disability Decisions are distinct from the Decision and CRB eligibility. The decisions are made by different decision-makers and are subject to distinct statutory requirements. There is no common ground that would justify considering these decisions in the same judicial review application.

[40] Moreover, as argued by the Respondent, the Disability Decisions cannot be reviewed for the following substantive reasons.

(1) The Leave Decision

[41] The doctrine of mootness is well established: a case is moot where the decision of the court will not have the effect of resolving some controversy, which affects or may affect the rights of the parties. Where the decision of the court will not have a practical effect on such rights, the court will decline to decide the case unless there is good reason to hear it despite its mootness: *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*] at 353.

[42] To determine whether the applications are moot, the Court adopts a two-part test. First, it is necessary to determine if there remains a live controversy. If no live controversy exists, the onus shifts to the party seeking to have the case proceed to justify, for the second part of the test, why the Court should nonetheless exercise its discretion to hear the matter. In this second part of the test, the Court will consider such factors as: (i) the adversarial context; (ii) judicial economy; and (iii) the role of the Court: *Borowski* at 358, 360 and 362; *Saskatchewan (Minister of*

Agriculture, Food & Rural Revitalization) v *Canada (Attorney General)*, 2005 FC 1027 at paras 25-29.

[43] As the Applicant was successful on her leave application and the SST General Division's decision was reviewed by the SSTAD, there is no longer any live controversy regarding the issue of leave and the first part of the mootness test has been met. There is no reason for the Court to hear the dispute under the second step of the test as there is no longer an adversarial context relating to leave. Further, it is not in the interests of judicial economy or within the role of this Court to review a decision that has already been decided. There is no basis to exercise my discretion to review the Leave Decision.

(2) The SST Appeal Decision and *Sjogren*

[44] I further agree with the Respondent, the Court does not have jurisdiction to review the SST Appeal Decision. Paragraph 28(1)(g) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] provides the FCA with jurisdiction to consider judicial reviews of decisions made by the SSTAD.

[45] Pursuant to subsection 28(3) of the *Federal Courts Act*, “[i]f the Federal Court of Appeal has jurisdiction to hear and determine a matter, the Federal Court has no jurisdiction to entertain any proceeding in respect of that matter.” Thus, subsection 28(3) prohibits this Court from entertaining a judicial review of the SST Appeal Decision.

[46] Further, the FCA has already reviewed the SST Appeal Decision in *Sjogren*. A further judicial review of the same decision, which was finally determined by the Court in *Sjogren*, would be barred under the branch of *res judicata* known as issue estoppel. Issue estoppel seeks to protect the finality of litigation by precluding the relitigation of issues that have already been conclusively determined in respect of the same parties in a prior proceeding: *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at paras 24-25; *Penner v Niagara (Regional Police Services Board)*, 2013 SCC 19 at paras 88-93.

[47] When a court of competent jurisdiction makes an order, that order is binding and conclusive unless it is set aside on appeal or lawfully quashed: *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 33. This Court is not an appellate body for the Court of Appeal, and the Applicant cannot seek to overturn *Sjogren* through a review at this Court.

[48] The Applicant's attempt to judicially review the Disability Decisions is accordingly dismissed.

IV. Conclusion

[49] The application for judicial review shall accordingly be granted in part and the Decision relating to CRB eligibility referred back to another Officer for redetermination.

[50] In view of this divided success, there shall be no order as to costs.

JUDGMENT IN T-143-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted in part and the January 10, 2022 decision of the Benefits Compliance Officer relating to the Canada Recovery Benefit is set aside and remitted back to another Benefits Compliance Officer for redetermination.
2. The remainder of the application is dismissed.
3. There shall be no order as to costs.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-143-22

STYLE OF CAUSE: JUDY SJOGREN v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 16, 2022

JUDGMENT AND REASONS: FURLANETTO J.

DATED: JUNE 24, 2022

APPEARANCES:

Judy Sjogren

FOR THE APPLICANT
(ON HER OWN BEHALF)

Melissa Nicolls

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Saskatoon, Saskatchewan

FOR THE RESPONDENT