

Federal Court



Cour fédérale

Date: 20221216

Docket: T-663-22

Citation: 2022 FC 1750

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 16, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

LUCIE ISABEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Lucie Isabel, is seeking judicial review of a decision made by a benefits validation officer [officer] of the Canada Revenue Agency [CRA], dated February 24, 2022, following a second review of Ms. Isabel's file. The officer concluded that Ms. Isabel was not eligible to receive Canada Recovery Benefit [CRB] payments because she had not earned at least

\$5,000 in employment income or net self-employment income in 2019, 2020, or the 12 months before she first applied.

[2] On March 29, 2022, Ms. Isabel applied for judicial review of the officer's decision. She alleges that, even though the officer did analyze the documents she submitted in support of her application, the officer misanalyzed them, thereby making her decision unreasonable. She has asked the Court to set the decision aside in order for her to be exempted from having to reimburse the CRB payments she has received and for which she was not found to be eligible. She has also asked the Court to order the CRA to pay her the CRB amounts to which she was entitled for 2020 and 2021 under subsections 3(1) and following of the *Canada Recovery Benefits Act*, SC 2020, c 12 [Act].

[3] For the reasons that follow, I find that the officer's decision is not unreasonable and that Ms. Isabel's application should be dismissed.

I. Legislative framework and background

A. *Canada Recovery Benefit*

[4] The CRB was introduced by section 2 of the Act, assented to on October 2, 2020, to provide financial assistance to employed and self-employed workers directly affected by the COVID-19 pandemic and not entitled to Employment Insurance benefits. The CRB was offered from September 27, 2020, to October 23, 2021. Subsection 3(1) of the CRBA sets out the eligibility criteria for receiving the CRB, which are 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

- (a) they have a valid social insurance number;
- (b) they were at least 15 years of age on the first day of the two-week period;
- (c) they were resident and present in Canada during the two-week period;
- (d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from the following sources:
 - (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

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 :

- a) elle détient un numéro d'assurance sociale valide;
- b) elle était âgée d'au moins quinze ans le premier jour de la période de deux semaines;
- c) elle résidait et était présente au Canada au cours de la période de deux semaines;
- d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :
 - (i) un emploi,
 - (ii) un travail qu'elle exécute pour son compte,
 - (iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*,
 - (iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas

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;

...

(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,

...

[Emphasis added.]

de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,

(v) une autre source de revenu prévue par règlement;

[...]

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,

[...]

[Je souligne.]

B. *Background*

[5] Ms. Isabel applied for the CRB for 12 two-week periods in 2020 and 2021, and she was subsequently paid CRB amounts on the basis of her applications. Ms. Isabel's eligibility for the CRB was verified, and a review of the CRA's files shows that, on June 22, 2021, Ms. Isabel sent the CRA some documents as part of this verification. The "Notepad" and "Observations" logs from the CRA systems dated August 18, 2021, state the following about Ms. Isabel's file:

[TRANSLATION]

For 2019, the taxpayer submitted invoices for self-employment for February to June 2019, but nothing after that. No income is entered in her T1 for 2019, be it on line 104 or line 135.

[6] Furthermore, the information in Ms. Isabel's file dated August 20, 2021, indicates the following:

[TRANSLATION]

Asked her whether she worked in 2020: yes, but she changed agents and was paid by direct deposit. Telemarketing. Worked about 6 hours a week before the pandemic, reduced to 3 hours a week and sometimes less.

Told her that we don't have any RL-1 slip equivalents in our files, so, for us, the two amounts of \$2,802 cannot be seen as evidence for \$5,000 in gross income. All we have is invoices amounting to \$1,488 for 2019 and about \$182 in expenses. If she earned \$5,600 gross, why didn't she report it in her 2019 tax return? Replied that she received the slips in December 2020 and that the accountant said that we had the slips on file, so there was no reason to adjust the return.

Question: your 2020 tax return mentions no self-employment income.

Answer: I was being paid small amounts by direct deposit, and this agent doesn't issue any slips at the end of the year.

Requested documents: January to December 2020 bank statements to check the income she received from the employer. In principle, I

should see this income decrease as of March 2020, when the lockdown started. She told me that she has always worked part-time and that, when the lockdown started, she had to work from home but fewer hours. . . .

[7] On August 24, 2021, Ms. Isabel submitted new documents. These were reviewed. On August 31, 2021, after an initial review of her benefit application, Ms. Isabel was informed that she was not eligible for the CRB.

[8] On September 8, 2021, she requested a second review of the decision made on August 31, 2021, and submitted new documents to support her application. The information in Ms. Isabel's file dated October 7, 2021, indicates that a CRA officer asked her whether she had had her income tax returns corrected. She answered no, alleging that no one had asked her to do so. The information in Ms. Isabel's file dated February 17, 2022, indicates the following:

[TRANSLATION]

Discussion: TP [taxpayer] has worked in telemarketing since 2013. For 2019, she [was] affiliated with two people who were working for Industrial Alliance. In 2020, she worked for another agent (the name on the provided bank statement is Khiseava). TP said that she had to [TRANSLATION] "fight" for a T4 with the people paying her in 2019. I informed TP that there were no T4s in her file and that TP had provided an RL-1 slip. I also told TP that these amounts were not reported in her 2019 return and that no amounts had been reported for 2020.

TP said that she didn't receive a regular salary. TP said that ever since she had been working from home, she only worked 3 or 6 hours a week.

She said that she had underlined the name of the person who paid her on the bank statement. Also, it was not her who had crossed out her account number.

[9] Finally, the information in Ms. Isabel's file dated February 22, 2022, indicates the following:

[TRANSLATION]

TP explained that, in 2019, she had only received payments from Ms. Gauthier, that Mr. Demers (Ms. Gauthier's spouse) did not make bank transfers. That it was Ms. Gauthier who did them. TP submitted invoices for that year to prove her income.

TP added that she had gotten the start date for her work with Ms. Gauthier wrong, it wasn't in 2013, it didn't last very long.

[10] On February 24, 2022, having reviewed her file, the officer informed Ms. Isabel that she was not eligible for the CRB. The reason cited by the officer in her decision letter is the following:

[TRANSLATION]

You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019 or 2020 or in the 12 months before you first applied; . . .

[11] To arrive at this conclusion, the officer considered all of the representations made by Ms. Isabel and the information she provided and found that the documents she had provided, as well as the income tax returns for 2019 and 2020, did not show the income required to satisfy the income threshold of \$5,000 provided for by the Act. In this regard, the officer noted as follows:

a) [TRANSLATION]

To establish her income, Ms. Isabel provided two RL-1 slips for 2019, for \$2,802.25 each, but no T4 or T4A slips for that year were produced for her file or submitted by her;

- b) The total of the invoices submitted by Ms. Isabel, \$1,488, did not match the amount indicated in the RL-1 slips provided;
- c) Ms. Isabel did not report any employment income in her income tax return for 2020.

[12] On March 29, 2022, Ms. Isabel filed this application for judicial review of the February 24, 2022, decision finding her ineligible for the CRB.

II. Issue and standard of review

[13] This application for judicial review raises only one issue: was the CRA officer's decision reasonable? In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*], the Supreme Court of Canada established a presumption that reasonableness is the applicable standard whenever a court is reviewing the merits of an administrative decision. The Court's role is therefore to consider the administrative decision maker's rationale for the decision and the outcome to which it led to assess 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).

III. Analysis

[14] Ms. Isabel submits that the officer misapplied the Act and that, consequently, she unfairly deprived Ms. Isabel of the maximum of CRB payments to which she would have been entitled. She submits that the RL-1 slips should have been sufficient evidence of her income for 2019,

which was more than the \$5,000 threshold, and that the documents she submitted as evidence of employment were misinterpreted as being insufficient for her to meet the eligibility criteria.

[15] I note that, as appears from the evidence on the record, Ms. Isabel filed her tax return for 2019 in April 2020 and that, in so doing, she did not report any employment income or any self-employment income. Ms. Isabel alleges that she did this because, at the time, she was waiting for her RL-1 slips in order to be able to produce her return to Revenu Québec and that she only received these slips in December 2020. Yet Ms. Isabel admitted before me that the amounts entered in the two RL-1 slips she received in December 2020, namely, \$2,802.25 reported as “Other income”, were only a portion of her income in 2019. Ms. Isabel confirmed the balance of her income for 2019 with a series of invoices, which she had also submitted to the CRA.

[16] However, why Ms. Isabel did not, at the very least, include her income calculated on the basis of these invoices in her income tax return for 2019 remains a mystery. Ms. Isabel was also unable to explain why, using her bank statements, she had not simply estimated or calculated the direct deposit payments she had received as a self-employed worker in order to enter them in her income tax return for 2019.

[17] Although this did not resolve the matter, Ms. Isabel submits that, after she received her RL-1 slips in December 2020, she submitted a T1 adjustment request for the 2019 tax year in order to amend the amount of \$0 entered on the “Other employment income” line of her tax return, changing it to an income of \$6,950. She only made this request on March 30, 2022, however, some 15 months after submitting her initial tax return to the CRA. The request also

postdates the first and second review of her CRB application and the filing of her application for judicial review of the officer's decision.

[18] More specifically, the evidence on the record establishes that the officer who spoke with Ms. Isabel as part of the second review of her application clearly told her that the two RL-1 slips she had provided were insufficient to establish that she had earned at least \$5,000 in 2019. The officer further explained to Ms. Isabel that the invoices she had submitted for 2019 were also insufficient as they amounted to a total of \$1,488. Ms. Isabel then sent the CRA her bank statements for 2020. The officer examined these statements and identified bank transfers amounting to a total of \$1,390.25. I asked Ms. Isabel why she had not also submitted her bank statements for 2019, insofar as these could have helped establish not only the amounts she had received in payment of her invoices but also the amount she allegedly received from the issuer of the two RL-1 slips. She answered that she did not submit her bank statements for 2019 because the two RL-1 slips should have been enough.

[19] I cannot accept this as a reasonable explanation. The officer's notes clearly establish that Ms. Isabel was informed that the two RL-1 slips were insufficient to establish her income given that there were no T4 slips in the CRA's file to confirm the amounts entered in the RL-1 slips. It seems to me that the truth about Ms. Isabel's income for 2019 lies in her bank statements, but, for reasons of her own, she decided not to provide them to the CRA. I therefore cannot fault the officer for not reviewing documents that were not before her—documents that Ms. Isabel would have been quite capable of providing and that she knew were required to supplement her file.

[20] On the basis of these reasons, I conclude that Ms. Isabel has failed to show that the officer's decision was unreasonable. Accordingly, this application for judicial review is dismissed. Regarding costs, the parties have agreed on an award of \$500 in favour of the Attorney General of Canada in the event of the application being dismissed. I see no reason to depart from such an agreement between the parties.

JUDGMENT in T-663-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. Costs in the amount of \$500 are awarded in favour of the Attorney General of Canada.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-663-22

STYLE OF CAUSE: LUCIE ISABEL v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 6, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: DECEMBER 16, 2022

APPEARANCES:

Lucie Isabel

FOR THE APPLICANT
(On her own behalf)

Audrey Turcotte

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT