Federal Court Cour fédérale

Date: 20230110

Docket: T-660-22

Citation: 2023 FC 41

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 10, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

LILLIAN LALONDE

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Lillian Lalonde, has brought this application for judicial review of a decision made by a benefits compliance officer [officer] of the Canada Revenue Agency [CRA] dated February 23, 2022, finding that the applicant was not eligible for the Canada Recovery Benefit [CRB].

[2] Ms. Lalonde submits that the officer breached her right to procedural fairness by not giving her sufficient time to file an amended income tax return and that the officer misunderstood the evidence of her eligibility. In support of her position, Ms. Lalonde filed an affidavit containing additional information that she believes is relevant to her case.

[3] On judicial review, the role of the Court is not to determine whether or not Ms. Lalonde is eligible for the CRB or to consider new arguments and evidence on eligibility. The role of the Court is simply to examine, in light of the evidence and the arguments before the officer, whether the decision is reasonable and whether the process was in accordance with the principles of procedural fairness.

[4] For the following reasons, and in keeping with the role of the Court, I find that the officer's decision is reasonable and that the process was fair.

II. Background

[5] The *Canada Recovery Benefits Act*, SC 2020, c. 12, s. 2 [CRBA], establishing the CRB, came into effect on October 2, 2020. The CRB was available to provide income support, for any two-week period beginning on September 27, 2020, and ending on October 23, 2021, to eligible employed and self-employed individuals who were directly affected by the COVID-19 pandemic. The Minister responsible for the CRB is the Minister of Employment and Social Development (CRBA, ss. 2, 3 and 4). However, the CRB is administered by the CRA.

[6] To be eligible, taxpayers had to meet the cumulative criteria provided for in section 3 of the CRBA, namely:

> - Self-employed taxpayers had to demonstrate a net self-employment income of at least $5,000 in 2019 or 2020, or the 12 months preceding the date they applied.
>
> - For each two-week period for which the benefit was claimed, taxpayers had to have been prevented from being employed or self-employed for reasons related to COVID-19, or have suffered a reduction of at least 50% of their weekly income from employment or self-employment compared to the previous year or the 12 months preceding the date on which the claim was made, for reasons related to COVID-19.
>
> - For each two-week period for which the benefits were claimed, taxpayers also had to show that they had looked for work, whether as an employee or in self-employment, to compensate for the shortfall.
>
> - Taxpayers had to show that they were present in Canada and able to work during the two-week period for which the benefits were being claimed.

[7] The burden of establishing eligibility for the CRB is on the taxpayer. Under section 6 of the CRBA, the applicant was required to provide any information the officer might require in respect of the application.

A. *First CRA decision*

[8] Ms. Lalonde applied for and received the CRB for 17 two-week periods between September 27, 2020, and January 2, 2021. When Ms. Lalonde submitted a claim for period 19 and subsequent periods, her case was selected for validation.

[9] On June 21, 2021, a first call took place between Ms. Lalonde and a validation officer. During that call, Ms. Lalonde indicated that she had no business expenses and that she would send proof that she was looking for work and a letter explaining her bank statement. A letter was sent on June 23, 2021, including bank statements, copies of cheques and other documents, but no evidence that she was looking for work.

[10] On October 7, 2021, a CRA validation officer conducted an initial review of the applicant's CRB eligibility by contacting her by telephone. According to the officer's notes in the file, the officer asked Ms. Lalonde for her bank statements to see if they were consistent with the cheques and invoices submitted. The officer concluded that the cheques were all marked "rent" or "loyer", which was not evidence of paid work eligible for the CRB.

[11] The officer rendered a decision on October 7, 2021, in which he found that Ms. Lalonde was not eligible for the CRB on the ground that she had not earned at least $5,000 of employment income or net self-employment income in 2019 or 2020 or the 12 months preceding the date of her initial application. A letter to this effect was sent to Ms. Lalonde on November 8, 2021.

B. *Second CRA decision*

[12] On December 5, 2021, Ms. Lalonde exercised her right to request a second review. She sent a letter to the CRA along with additional documentation.

[13] On February 23, 2022, following the second review, a second officer [the second officer] found that the applicant did not meet the eligibility requirements for the CRB. The decision states as follows:

> [TRANSLATION]
>
> Based on our review, you are ineligible. You do not meet the following eligibility criteria:
>
> > You were not present in Canada during the period.
> >
> > You did not earn at least $5,000 (before taxes) of employment income or net self-employment income in 2019 or 2020 or in the 12 months preceding the date of your first application.
> >
> > You did not have a 50% reduction in your average weekly income compared to the previous year for reasons related to COVID-19.
> >
> > You were able to work but were not looking for a job.

[14] The second officer's notes state that, when the second officer talked to Ms. Lalonde on February 18, 2022, that is, before he rendered his decision, she told him that she had worked in accounting for her husband for at least five years. She also explained that she had applied for the CRB because of a reduction of almost 50% in her income due to COVID-19. She stated that, before the pandemic, she had often worked full-time and that she now only worked one or two days a week.

[15] Ms. Lalonde also explained to the second officer that the submitted cheques are marked "rent" because the accountant mistakenly entered her salary in that box on her income tax return.

She added that, instead, the accountant should have reported her income as that of a self-employed worker, not under rent; that mistake was made for each of the previous five years.

[16] She further noted that, in 2021, she earned approximately $600 in income. She stated that the company had lost close to 60% of its contracts, which is why she was working occasionally and not looking for work while waiting for business to pick up. She indicated that she sometimes worked without billing, only one or two days a week. She also stated that she had left Canada to go on holiday but was unable to provide the exact dates.

[17] In the second officer's notes on his analysis of Ms. Lalonde's eligible income, one can see that the officer considered the information provided by the applicant. Despite Ms. Lalonde's explanations, the second officer found that the applicant's income had been reported as rental income and was therefore not eligible income. The notes also indicate that the second officer was unable to determine whether Ms. Lalonde had actually lost 50% of her income due to COVID-19, as she did not bill for all her hours, did not look for work to cover her loss, and was unable to show that she was in Canada for each of the CRB periods claimed.

[18] Since the applicant also disagreed with this decision, the applicant filed an application for judicial review.

III. Preliminary issue

A. *New affidavits*

[19] Ms. Lalonde and the respondent filed affidavits as part of the application for judicial review. The filing of affidavits is subject to sections 306 and following of the *Federal Courts Rules*, SOR/98-106 [the Rules], and a consistent line of authority from the Court of Appeal (*Canada (Attorney General) v Canadian North Inc.*, 2007 FCA 42 at paras 3–5, 709 and 12; *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at paras 17–22). In the case of an application for judicial review, the Court's role is to examine the legality or reasonableness of the administrative decision maker's decision in the legal and factual context before the decision maker. As a general rule, material that was not before the decision maker is not admissible on judicial review and the Court should not consider it (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19).

[20] The Federal Court of Appeal has recognized three exceptions to this general rule: (1) the new evidence contains general background information; (2) the new evidence addresses issues of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20).

[21] On judicial review of CRA decisions under the CRBA, the Court has previously held that it should not consider additional documents provided with an affidavit in support of an application that had not been submitted to the administrative decision maker (*Datta v Canada*, 2022 FC 973 at paras 29–30; *Lussier v Canada*, 2022 FC 935 at para 2).

[22] In this case, Ms. Lalonde's affidavit presents documents and evidence that was not before the officer. Neither the affidavit nor the documents satisfy the exceptions. For example, Ms. Lalonde presents a letter from her client and articles or communications containing information on COVID-19 from, among others, the government. As a whole, Ms. Lalonde's affidavit is therefore inadmissible and the Court cannot consider it (*'Namgis First Nation v Canada (Fisheries and Oceans)*, 2019 FCA 149 at paras 7–12; *Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at paras 13–15; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 26 [*Kleiman*]).

[23] However, Ms. Lalonde's affidavit is also aimed at demonstrating a breach of procedural fairness. In particular, she notes that she told the second officer about her intention to amend her income tax return because of an accounting error, but the officer processed her claim and refused it before she could do so. That specific aspect of Ms. Lalonde's affidavit is therefore eligible.

[24] The respondent's affidavit, overall, is consistent with the requirements and exceptions set out by the Court of Appeal. It mentions the general context of the program and how it was administered, and introduces all the documents and evidence that were before the second officer.

[25] In my view, however, the respondent's affidavit goes too far. The affidavit indicates which documents were consulted and how and why the officer reached his conclusion. These elements of the affidavit, including paragraphs 13, 16–23 and 26, "could add facts to the file and/or reasons to the decision" (*Sid Seghir v Canada (Attorney General)*, 2022 FC 466 at paras 13–14; *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 16).

[26] As a result, in determining the reasonableness of the officer's decision, I will not consider paragraphs 13, 16–23 and 26 of the respondent's affidavit. However, the documents introduced in those paragraphs, which make up the file that was in the possession of the CRA, are eligible.

IV. Issues and standard of review

[27] Ms. Lalonde raises two issues. First, she alleges a breach of procedural fairness because the second CRA officer did not give her enough time to amend and file her income tax return. Second, she alleges that the decision is unreasonable because the CRA officer did not fully understand her evidence.

[28] The first issue requires applying the correctness standard or, rather, determining whether the process followed was fair and just having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 60 at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The duty of procedural fairness requires that the person affected by a decision should have the opportunity to know the evidence and the arguments to refute and to present their case fully and fairly (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 127 [*Vavilov*]). The burden is on the applicant to demonstrate that there was a breach of procedural fairness.

[29] The second issue requires application of the reasonableness standard (*Vavilov* at paras 16–17, 23–25). A decision complies with that standard if it is based on coherent reasoning that is consistent and justified in relation to the legal and factual constraints of the case (*Vavilov*

at paras 102–107). The Court must not re-weigh the evidence or come to its own conclusion. Rather, the Court must show deference and focus on the decision, particularly its reasoning, transparency, intelligibility and justification (*Vavilov* at paras 15, 83). The burden is on the party challenging the decision to show that the decision is unreasonable (*Vavilov* at para 100; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16 [*Aryan*]; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 14; *Kleinman* at para 29).

[30] After reviewing the applicant's submissions and the information that was before the second officer as a whole, I find that Ms. Lalonde had an opportunity to know the evidence and the arguments needed for her CRB eligibility and to address the second officer's concerns.

[31] Moreover, in light of Ms. Lalonde's responses to the second officer about certain criteria required for her to be eligible for the CRB, the second officer's decision that she was not eligible is reasonable with respect to the cumulative criteria required and the evidence presented to him.

V. Analysis

A. *Procedural fairness not breached in second review*

[32] The applicant claims that the second officer did not give her an opportunity to amend her 2019 income tax return and to submit it to him, resulting in a breach of procedural fairness.

[33] Upon review of the record and after considering the applicant's submissions, I am not persuaded that her right to procedural fairness was breached (*Santaguida v Canada (Attorney General)*, 2022 FC 523 at para 24).

[34] According to paragraph 4 of her memorandum, and as confirmed by Ms. Lalonde at the hearing, the issue of whether her 2019 income tax return needed to be amended was raised on June 21, 2021, in a call with the first CRA officer. Ms. Lalonde herself indicated in that call that her income tax return contained an error and might need to be amended.

[35] That first officer then rendered a first decision on October 7, 2021, and the applicant was informed of that decision on November 8, 2021. The first decision states that the applicant was not eligible for the CRB, as she could not demonstrate that she had earned at least $5,000 in income from employment or self-employment in 2019 or 2020 or in the last 12 months preceding the date of her first application.

[36] The applicant exercised her right to request a second review. In a letter dated December 5, 2021, Ms. Lalonde explained the reasons for her request, which made no mention of an error in her 2019 income tax return. She also presented other evidence, but not an amended 2019 income tax return.

[37] On February 18, 2022, Ms. Lalonde discussed the situation with the second officer and again raised the situation of an error in her 2019 income tax return.

[38] However, between her conversation with the first officer on June 21, 2021, in which Ms. Lalonde mentioned the error in her 2019 income tax return, and her conversation with the second officer on February 18, 2022, Ms. Lalonde does not seem to have taken any steps to correct the situation. There is no evidence, for example, that Ms. Lalonde called her accountant, whom she blames for the error, to see if there was, in fact, an error and, if so, to correct it for all the years in which the error was made.

[39] In addition, in her memorandum, the applicant now claims that she amended her 2019 income tax return. However, the amended tax return is still not in evidence before the Court, despite Ms. Lalonde's affidavit.

[40] Although the process was not perfect, I nonetheless conclude that it was a fair and just process having regard to all the circumstances (*Canadian Pacific Railway Company* at paras 54–56). In light of the above, it appears that the applicant knew on June 21, 2021, that her 2019 income tax return might be relevant to her case and that it might contain an error. After the first CRA decision, Ms. Lalonde knew that her 2019 income tax return could support her application and knew the evidence to refute. She had ample time to amend her 2019 income tax return before the second review, but failed to do so.

[41] In any event, for the following reasons, the filing of the amended income tax return would have had no impact on the reasonableness of the officer's decision as a whole. In those circumstances, even if there was a flaw in the process followed by the second officer, which I reject, I would exercise my discretion against quashing the decision (*Ayangma v Canada (Attorney*

General), 2012 FCA 213 at para 58; *MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2; *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202).

[42] First, as held by Diner J. in *Ntuer v Canada (Attorney General)*, 2022 FC 1596 [*Ntuer*], citing *Aryan*, a notice of assessment is insufficient evidence to establish that an applicant met the criteria of a net income of at least $5,000:

> [27] In addition, a Notice of Assessment is insufficient to establish that an applicant earned a net income of at least $5,000 (*Aryan* at para. 35). The Officer was required to assess not only the Notices of Assessment submitted by Mr. Ntuer but also the other evidence on file, including invoices and client payment receipts submitted by Mr. Ntuer, as well as the information available through the CRA's internal records, to verify that Mr. Ntuer had indeed earned a net income of at least $5,000.

[43] Also, the second officer's decision was not based on the absence of an amended 2019 income tax return but on the full evidence before him, including cheques and bank statements indicating that several of the payments made to Ms. Lalonde for 2019 were for rent.

[44] In his reasons, the second officer specifically noted that the applicant was planning to amend her 2019 income tax return so that her income would be deemed eligible. Despite that note, and knowing that an amended 2019 income tax return would probably show eligible income, the officer nonetheless did not find Ms. Lalonde to be credible on the basis of the evidence as a whole, as discussed below.

[45] I therefore conclude that an amended 2019 income tax return would not have been determinative in the second officer's decision and that, in any event, his decision is reasonable in light of the evidence before him.

[46] Finally, as explained below, since Ms. Lalonde did not meet the other cumulative criteria for the CRB, the fact that procedural fairness might have been breached in respect of the issue of the 2019 income tax return, which I reject, is in any case moot.

B. *Second officer's decision to reject Ms. Lalonde's CRB applications reasonable*

[47] The onus was on Ms. Lalonde, through sufficient and correct evidence, to show the CRA that, on a balance of probabilities, she met the criteria established in the CRBA to receive a benefit (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 55; *Ntuer* at para 26). As noted by Diner J. in *Ntuer*, at paragraph 24, "[t]he eligibility criteria under section 3 of the Act are cumulative, that is, an applicant must meet all the criteria to be eligible to receive benefits under the CRB and/or CRSB."

[48] It is important to note that, in analyzing the reasonableness of the second officer's decision, the Court may consider the CRA's second review report and the second officer's notes. Just like the Global Case Management System notes used by immigration officers, they form part of the officer's reasons, as (*Aryan* at para 22; *Kleinman* at para 9; *Vavilov* at paras 94–98).

[49] In his notes, the second CRA officer indicated that he had examined the information submitted by Ms. Lalonde with her initial application, reviewed the first officer's notes, and

considered Ms. Lalonde's letter requesting a review and the additional documents submitted, including cheques, bank statements and Ms. Lalonde's income tax returns. He had also contacted Ms. Lalonde by telephone to give her the opportunity to answer his questions and show that she was eligible for the CRB.

[50] After analyzing the documents and Ms. Lalonde's answers, the second officer concluded that he was unable to establish Ms. Lalonde's eligible income earned in 2019, in 2020 or in the preceding 12 months. Several of the cheques were marked "rent" or "loyer", yet rental income is not eligible. In addition, the 2018, 2019 and 2020 income tax returns showed no self-employment income.

[51] The second officer then mentioned his discussion with Ms. Lalonde, who told him that she had not been in Canada during some of the periods. As Ms. Lalonde was unable to indicate the precise periods when she was absent, the second officer could not determine whether she met the requirement of being in Canada for each of the claimed periods.

[52] Ms. Lalonde also told him that she had lost over 50% of her income, but that she did not bill for all the hours she worked. Her loss was therefore not solely related to COVID-19, and it was impossible to determine whether the loss due to COVID-19 was in fact over 50% compared to her previous income.

[53] Finally, Ms. Lalonde indicated that she was not looking for work to compensate for her reduced income as a result of COVID-19.

[54] In my opinion, the record shows that the second officer considered all the documents and information provided by Ms. Lalonde, as well as her explanations. I have examined the applicant's submissions in light of the legislative framework of the CRBA and the parties' evidence in the record and find that the applicant has identified no significant error or oversight in the second decision that would warrant the Court's intervention.

[55] The reasons provided by the second officer to reject Ms. Lalonde's CRB claim are intelligible and justified in light of the evidence and the record before him. The second officer reviewed the invoices and income tax returns, and spoke with the applicant so she could explain the shortcomings of her application. She was unable to provide the information needed to discharge her burden of proof.

(1) Absence of $5,000 in eligible income

[56] The issue of Ms. Lalonde's amended 2019 income tax return, discussed earlier, is relevant for the CRB requirement that taxpayers have earned $5,000 in eligible income before making their application.

[57] Ms. Lalonde claims to have earned self-employment income, and the CRB guidelines mentioned in the calls with Ms. Lalonde state the following:

> Self-employment income
>
> Small business owners can receive income from their business in different ways, including as salary, business income or dividends.
>
> If a small business owner operates as an individual they bill clients in their own name, if they operate under a registered business name they bill their clients in the business name. If the business has a

name other than their own, there should be a separate bank account.

Things to consider for small business owners:

- Do they have business cards to promote their business?
- Do they advertised? E.g. Kijiji, Marketplace, Craigslist, their own website?
- Do they actively seek employment opportunities?
- Do they have a registered BN?
- Do they perform regular work and provide to non-related persons?
- If they are always paid in cash, do they have proof they keep track of hours and payments?

Family Members

If the applicant states they are working for a family member and the family member pays them for their service, consider:

- Would an arms length individual accept the same conditions of employment?
- Did the family member have another individual working for them and then hired the applicant?
- Has the applicant worked for the family member for a number of years and reports the income?
- Is there a contract for services performed? If no contract, the income from a family member may be considered a “gift”. There must be an agreement to pay, written at the time the service began.
- Does the applicant provide the same service to other clients who are not related?

While this information is not conclusive, it may help determine if the income earned from a family member is considered a “gift” or employment income.

[58] In this case, Ms. Lalonde was unable to show that she earned over $5,000 in self-employment income in the 12 months preceding her application.

[59] The second officer noted that he had reviewed the evidence submitted by the applicant, including cheques and bank statements, and had also looked at Ms. Lalonde's income tax returns that were already in the CRA's possession.

[60] As discussed, the evidence looked at by the second officer shows that several of Ms. Lalonde's cheques for 2018 and 2019 (no cheques were submitted as evidence for 2020) were marked "rent" or "loyer", and the 2018, 2019 and 2020 income tax returns in the file did not show any rental income. Rental income is not eligible income for the purposes of CRB eligibility. Ms. Lalonde's application was therefore rejected partly on that basis.

[61] In addition, when she talked to the second officer, Ms. Lalonde indicated that she had been working for her husband's company for the past five years. Rather than receive employment income, she had chosen to bill for her work as a small business owner. However, the evidence shows that her income was calculated as rental income for the purposes of her income tax returns. Ms. Lalonde blamed her accountant for this error, despite admitting that she had been working for her husband's company for at least five years and that this error had been repeated every year.

[62] The second officer examined Ms. Lalonde's income tax returns for 2018, 2019 and 2020. Each income tax return shows only rental income and no self-employment income. However, as

the applicant mentioned in her calls with the second officer, she used to work for the company almost full-time and, since the COVID-19 pandemic, one to two days per week depending on the company's needs. None of the three tax returns on the record show any such employment income. Ms. Lalonde therefore signed income tax returns containing omissions or errors for several years.

[63] When asked about her income at the hearing, specifically about the adduced cheques marked "rent" or "loyer", Ms. Lalonde admitted that a portion of those amounts was rental income, while another portion was for work done for her husband's company.

[64] For 2019, however, Ms. Lalonde alleged that her accountant had made the mistake of categorizing her salary as "rent" because a rental building she had owned was sold in 2019. She noted that the $6,242 entered as rental income in 2019 was therefore incorrect and that the entire amount should have been entered as self-employment income. Ms. Lalonde relies on this 2019 sale to assert that her entire income that exceptional year was eligible employment income and that no portion should have been allocated to rental income.

[65] But there is no evidence on the record concerning the sale of a building that could support Ms. Lalonde's assertion. It is therefore impossible to determine with certainty whether or not a portion of the $6,242 reported in the 2019 income tax return is in fact attributable to rent, or to confirm whether another portion was related to her work. The evidence instead shows that some cheques from 2019 are marked "rent" or "loyer", while other cheques from 2019 are not marked in this manner. It is therefore possible that some amounts for 2019 were for work, while others

were for rent, as the 2019 cheques seem to indicate. In fact, six cheques from 2019 are not marked “rent” or “loyer”, although that is unclear since “purchase orders” related to some of those cheques indicate that the invoice was for [TRANSLATION] “rent and administration”.

[66] Ms. Lalonde also stated at the hearing that, in 2020, the amount of $4,300 entered on her income tax return as rental income was partly for rent because, at the time, she was renting a room in her house to her husband’s company for which she was working. However, the 2020 income tax return does not indicate any employment income, despite the fact that Ms. Lalonde worked one or two days a week, as mentioned above. Ms. Lalonde also did not adduce any cheques in evidence for 2020.

[67] In short, not only was this information not before the second officer, but the applicant’s evidence is not reliable for any of the years in question. If her income tax returns prior to 2019 showed only rental income, even though the cheques marked “rent” also included a portion of self-employment income, the same situation may have been true for 2019 and 2020.

[68] It is also important to note that, even if she had reported $5,000 in eligible income in her 2019 income tax return, evidence from an income tax return is not conclusive. She therefore should have provided more evidence to show that she had actually met that CRB requirement. As stated by the Court in *Aryan*:

> [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*.
>
> [36] In her answers to the written cross-examination, the Officer states that she did consider the income claimed on the Applicant's 2020 tax assessment, however, that CRA requires documents to support the Applicant's income amount claimed on her return. Further, agents are trained not to take the taxpayer filing their tax return as sole proof of income. She explained this by stating that "Filing a tax return is a self-assessed document and we as reviewers are required to ensure that this income was in fact earned and received by the taxpayer as would be the same in an audit procedure".

[69] Canada's tax system is a self-reporting system. It is based on the principle that the taxpayer is able to provide all relevant documents in support of their return (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 37).

[70] In this case, the second officer indicated in the [TRANSLATION] "Additional comments or concerns" section of his notes that Ms. Lalonde was [TRANSLATION] "in the process of amending her return to change her rental income to eligible income". Knowing that, and being in possession of the applicant's income tax returns for 2018 to 2020, the second officer nonetheless decided that Ms. Lalonde was not able to demonstrate $5,000 in eligible income. The second officer justified his decision on the basis of the evidence before him, including cheques and bank statements showing "rent" cheque deposits. The second officer, therefore, in full knowledge of the facts, found that the applicant's explanations, including the amendment of her 2019 income tax return, lacked credibility.

[71] As explained by the Court in *Aryan*, it was reasonable for the officer not to consider an income tax return conclusive of eligible income and to come to his own conclusions on the basis of other evidence before him. As a result, the second officer's decision concerning the $5,000 in eligible income requirement is reasonable, even though he knew that Ms. Lalonde might submit an amended return showing a change in her reported income of $6,242. In other words, as in *Aryan* and *Ntuer*, the amended 2019 income tax return would not have helped Ms. Lalonde discharge her burden of proof in light of the evidence as a whole.

[72] In short, as submitted by the respondent, and in light of the 2018 to 2020 income tax returns, cheques indicating a payment for "rent" and Ms. Lalonde's attempts to provide explanations in calls with the second officer, it was reasonable for the second officer to not find Ms. Lalonde credible.

[73] In my view, given the evidence before him as a whole, including cheques from several years marked "rent" and the 2018 to 2020 income tax returns showing only rental income (and no self-employment income even though the appellant stated that she had been working for her husband's company for five years), it was reasonable for the second officer to find Ms. Lalonde not credible in respect of her self-employment income and to conclude that she had not discharged her burden of proof.

[74] I therefore do not agree with Ms. Lalonde's arguments that filing an amended income tax return for 2019 would have constituted sufficient evidence to satisfy the second officer. Despite the information provided in Ms. Lalonde's memorandum and arguments, it is still impossible to

know with enough certainty whether she really earned $5,000 in eligible income during the relevant period.

[75] As discussed, it was the applicant's responsibility to establish that she met the eligibility criteria for the CRB and to submit sufficient and correct evidence (*Ntuer* at para 26). The second officer's conclusion that the evidence presented by Ms. Lalonde was not sufficient or credible enough is not unreasonable. The second officer's reasoning regarding that eligibility criterion is coherent, based on the evidence before him and justified in light of the CRBA. The internal rationality of his reasons is satisfactory. It is not for this Court's to substitute its preferred outcome.

(2) Presence in Canada during the claimed two-week periods

[76] Under section 6 of the CRBA, Ms. Lalonde had to prove, to the second officer's satisfaction, that she was in Canada for each of the periods for which she claimed a payment. To that end, she had to provide any information required by the CRA in respect of her application.

[77] In a conversation between Ms. Lalonde and the second officer, Ms. Lalonde said that she had left Canada in 2020–2021 to go on holiday, but that she was unable or unwilling to disclose the dates she was away.

[78] In her affidavit, which I reject for the reasons discussed above, Ms. Lalonde said that she had only been away from Canada on April 5 and 25, 2021, and that she had not applied for the CRB for those dates. At the hearing, she also explained that she drove to Florida to get

vaccinated and that it takes more than 24 hours to drive there. However, the evidence shows that for Period 14, from March 28 to April 10, 2021, she did, in fact, submit an application, as she did for Period 15, from April 11 to 24, 2021, just before April 25, 2021, when the applicant received her second vaccination.

[79] At the hearing, the applicant clarified this by explaining that she had been supposed to leave earlier for the United States, in March 2021, to receive her two doses, but that her appointment was postponed to April 2021. Ms. Lalonde added that she had not applied for the CRB for the March weeks in because that was when she had been supposed to leave Canada. The reason why she received a CRB payment for the April weeks was essentially to compensate for the fact that she had not received one for the weeks in March when she was supposed to be in the United States to be vaccinated.

[80] However, contrary to the applicant's claims, the evidence on the record shows that Ms. Lalonde did in fact apply for and receive the CRB for Period 12, from February 28 to March 13, 2021; for Period 13, from March 14 to 28, 2021; and for Period 14, from March 28 to April 10, 2021. In addition, and as discussed, she applied for Period 15 (right before April 25).

[81] Needless to say, this undermines the appellant's credibility. Even if her affidavit had been deemed admissible, it would not be conclusive on this question. Furthermore, the second officer's notes mention that Ms. Lalonde told him that she had left Canada in 2020–21 to go on holiday. The hearing did not clarify this statement, although Ms. Lalonde acknowledged owning a property in Florida from which she could work remotely.

[82] Regardless, this information was not before the second officer, and Ms. Lalonde was unable to show him that she was in Canada for each of the two-week periods for which she claimed a CRB payment, despite the second officer specifically asking her to do so. The second officer's decision is reasonable in light of the evidence and the documents before him.

(3) Reduction of 50% or more due to COVID-19

[83] Regardless of whether the applicant was in Canada for the periods in question, or even if she had amended her 2019 income tax return, the application must fail as she does not meet the requirement of a 50% reduction in income due to COVID-19.

[84] Ms. Lalonde explained to the second officer that her husband's company, for which she had been working for at least five years, suffered a 60% loss in goodwill as a result of the pandemic. She explained that she therefore worked only one or two days a week, despite having worked there almost full-time before the pandemic. However, Ms. Lalonde also told the second officer that, with her husband's agreement, she worked some hours during the pandemic without billing for them in order to prioritize the payment of suppliers during those difficult economic times.

[85] In light of this evidence, it was not unreasonable for the second officer to conclude that Ms. Lalonde was unable to discharge her burden of proving that her income had in fact been reduced by 50% or more due to COVID-19.

[86] First, as she worked without billing for her work, it was impossible to establish with sufficient certainty that her income would have been reduced by 50% or more if Ms. Lalonde had billed for all the hours she actually worked.

[87] In addition, as discussed earlier, Ms. Lalonde said that, after the pandemic began, she worked one or two days a week. However, she did not submit any invoices or cheques to the second officer for 2020, and the 2020 income tax return only reveals the amount of $4,300 in rental income. As Ms. Lalonde's actual employment income was not disclosed, it is therefore impossible to verify whether that income for 2020 was less than 50% of her previous employment income in order to determine her eligibility.

[88] Regardless, the second officer's decision that Ms. Lalonde was unable to show a 50% reduction in her income due to COVID-19 is not unreasonable in light of the evidence before him.

(4) Ability and job search

[89] Finally, to obtain the CRB, Ms. Lalonde had to show that, despite a reduction in her work hours, leading to a loss of 50% of her income, she tried to find extra work to make up for her loss.

[90] The second officer asked Ms. Lalonde about this during their telephone conversation, and Ms. Lalonde replied that she was not looking for other work because her current employment was continuing despite her working fewer hours.

[91] At the hearing, the applicant reiterated that she did not look for work at all because she had been waiting for work to pick up at her husband's company.

[92] In the circumstances, the second officer's conclusion that Ms. Lalonde did not look for work to make up for her lost income is reasonable. Paragraph 3(1)(i) of the CRBA is clear in this respect. For each two-week period applied for, the taxpayer had to demonstrate that she sought work, particularly as she was self-employed. She had to actively look for employment opportunities and offer her services to other potential clients, including through advertising, as described in the CRB guidelines.

[93] Ms. Lalonde failed to do this, and this is consistent with her assertion in paragraph 19 of her memorandum that she is retired and has been working for her husband's company for a very modest salary since her retirement.

[94] As a result, Ms. Lalonde does not meet a mandatory requirement for the CRB. It was not unreasonable for the second officer to reject her application on the basis of this mandatory requirement.

VI. Conclusion

[95] Having reviewed Ms. Lalonde's supporting documents, the second officer's analysis report and the documents in the file below, and having considered the parties' arguments, I find for all the foregoing reasons that the second officer's decision is reasonable. It meets the requirements of being internally coherent, as well as being transparent, justified and intelligible.

[96] The application for judicial review is dismissed.

[97] The respondent has requested costs in this matter, but, in exercising my discretion, I do not find this to be an appropriate case to award costs.

[98] Finally, at the respondent's request, in accordance with section 303 of the Rules, the style of cause is amended so as to designate the Attorney General of Canada as respondent.

JUDGMENT in T-660-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

"Guy Régimbald"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-660-22
STYLE OF CAUSE:	LILLIAN LALONDE v CANADA REVENUE AGENCY
PLACE OF HEARING:	VIA VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 29, 2022
JUDGMENT AND REASONS:	RÉGIMBALD, J.
DATED:	JANUARY 10, 2023

APPEARANCES:

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Audrey Turcotte	FOR THE RESPONDENT

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