

Federal Court



Cour fédérale

Date: 20230419

File: T-1810-21

Citation: 2023 FC 567

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 19, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

PIERRETTE BOUDREAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Pierrette Boudreau, is representing herself. She is self-employed and established her own business in 2019, which she describes as [TRANSLATION] “Pierrette Boudreau - Wellness Consultant”. She also holds a certificate in transformational coaching. Previously, she was a psychotherapist, but no longer uses this title.

[2] Ms. Boudreau is seeking judicial review of the decision of a Canada Revenue Agency [CRA] Compliance Officer [the Officer] , dated November 1, 2021 [Decision], whereby, following a second review, the Officer concluded that Ms. Boudreau was not eligible for the Canadian Recovery Benefit [CRB]. The CRA denied Ms. Boudreau’s application on the grounds that she did not earn at least \$5,000 in net self-employment income in 2019, 2020 or in the 12-month period preceding the date of her first application, and that she was capable of working but not seeking employment.

[3] Ms. Boudreau claims that the Decision is unreasonable, as in her view she did meet the criteria of the *Canadian Recovery Benefits Act*, LC 2020, c 12 [Act]. Ms. Boudreau argues that, contrary to the CRA’s conclusion, she met both of the criteria mentioned in the Decision, namely that she earned income in excess of \$5,000 and that she did not cease self-employment.

Ms. Boudreau also argued that she wanted to submit proof of income she received in cash, but that the Officer told her she didn’t need it. Ms. Boudreau claims that the Officer did not properly exercise her discretion, in that she was stiff and asked closed questions, causing Ms. Boudreau to feel [TRANSLATION] “accused before she said anything” and [TRANSLATION] “didn’t feel she had any rights”. Ms. Boudreau stated that at no time was she informed that [TRANSLATION] “anything [she said] could be used against [her]”.

[4] The respondent argues that the Decision is reasonable considering that Ms. Boudreau declared a loss of \$3,821 in net business income for 2019 and \$12,098 for 2020. Given that the business-related income was negative income, Ms. Boudreau was ineligible for the CRB on the grounds that she did not earn at least \$5,000 in employment income or net self-employment

income in 2019, 2020, or in the 12 month period preceding the date of her first application. The respondent also argues that considering the information Ms. Boudreau communicated to the Officer during their telephone conversation, the Officer reasonably concluded that Ms. Boudreau was not seeking employment as an employee or self-employed person, and therefore did not meet the second criterion set out in the Act.

[5] For the reasons that follow, I conclude that the Officer's Decision is not unreasonable. Accordingly, Ms. Boudreau's application must be dismissed.

II. Background

[6] The CRB is part of a package of measures introduced by the Government of Canada in response to the impact caused by the COVID-19 pandemic. This benefit was available for any two-week period between September 27, 2020, and October 23, 2021, to eligible employed and self-employed individuals who were directly affected by the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]).

[7] Eligibility criteria for the CRB are set out in detail in the Act. Among other things, these criteria require the employee or self-employed person to have earned at least \$5,000 in employment income or net self-employment income in 2019, 2020, or in the 12 month period preceding the date of his or her last application (paragraph 3(1)(e) of the Act). In addition, the employee or self-employed person must have sought work during each two-week period claimed (paragraph 3(1)(i) of the Act).

[8] In order to qualify for the CRB, the employee or self-employed person must submit an application for each two-week period. A total of 26 periods were offered between September 27, 2020, and October 23, 2021. Ms. Boudreau applied for and received benefits for the period from September 27, 2020, to June 5, 2021, for a total of 8 periods. She then reapplied for benefits for the period from June 6, 2021, to September 25, 2021, for periods 19 to 26.

[9] On March 19, 2021, her file was selected for an initial CRB eligibility review . On September 1, 2021, a compliance officer concluded that Ms. Boudreau was ineligible for the CRB on the grounds that she had not earned at least \$5,000 in employment income or net self-employment income in 2019, 2020 or in the 12 month period preceding the date of her first application.

[10] At Ms. Boudreau's request, a second eligibility review was conducted by the Officer. The Officer determined that Ms. Boudreau was ineligible for the CRB as she (1) did not earn at least \$5,000 in employment earnings or net self-employment earnings in 2019, 2020 or in the 12 month period preceding the date of application; and (2) was able to work, but did not seek work.

[11] On November 30, 2021, Ms. Boudreau filed an application for judicial review against the Decision.

III. Standard of review

[12] It is well established that the applicable standard of review in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Aryan* at paras 15-16).

[13] To be reasonable, a decision must be justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 at para 85 [*Vavilov*]). The burden is on Ms. Boudreau, the party challenging the Decision, to show that the Decision is unreasonable (*Vavilov* at para 100).

[14] The reviewing court must adopt an attitude of restraint and intervene only “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). To be able to intervene, the reviewing court must be convinced by the party challenging the decision that there are “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”, and that these alleged flaws or shortcomings “must be more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100).

[15] The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker, and, absent exceptional circumstances, will not interfere with its factual findings (*Vavilov* at para 85). The court must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion it would have reached in the administrative decision maker’s place.

IV. Analysis

A. *Preliminary issues*

[16] The first preliminary issue is as follows. The respondent argued that the Attorney General of Canada should be named as respondent rather than the Canada Revenue Agency.

Paragraph 303(1)(a) and subsection 303(2) of the *Federal Courts Rules*, SOR/98-106, provide that a tribunal to which the application is brought cannot be named as a respondent, and that the Attorney General of Canada must be named when no respondent can be named under subsection 303(1). I therefore order that the style of cause be amended accordingly.

[17] The second preliminary issue relates to certain documents that were included with Ms. Boudreau's affidavit dated January 15, 2022, namely Exhibits C, D, E, and F. In the Officer's affidavit dated February 15, she confirmed that she had no knowledge of these documents. She stated that even though she had no knowledge of Exhibit F (comparative summary - Q1 2020), she took into account the information contained therein because she had access to it.

[18] Ms. Boudreau described Exhibit C as an attestation that she had prepared to request her clients' permission to disclose their information and to record the number of consultations in which they had participated. The purpose of the attestation document, although not completed, was [TRANSLATION] “to allow Pierrette Boudreau to validate her proof of net self-employment income and to prove her eligibility for the CRB”.

[19] Exhibits D and E are two handwritten documents containing lists of amounts broken down by month. For each month, the documents show a number of meetings and sessions, along with the associated dates. Apart from the number of participants, the documents contain no information on the customers or their identities.

[20] The affidavit also contains a section entitled [TRANSLATION] “Part B - Additional Facts”, which was not before the Officer.

[21] As a general rule, the evidentiary record before the Court on judicial review of an administrative decision must be the same as that before the administrative decision maker (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). Although there are exceptions to the general rule (*Access Copyright* at para 20), I do not believe that they apply to the new evidence presented in this case.

[22] Apart from Ms. Boudreau's comments on the Officer's Decision and subsequent events, all the alleged events, points raised, or documents produced, either took place prior to the Decision or are dated prior to the Decision.

[23] For these reasons, I conclude that certain paragraphs of Ms. Boudreau's affidavit and accompanying Exhibits C, D and E are inadmissible. For the benefit of Ms. Boudreau, who represents herself, even if the documents had been admitted into evidence, they would not have ultimately changed the Court's decision. This new evidence does not remedy the fatal flaw in Ms. Boudreau's claim, namely that, although she earned income, she did not earn a net income of at least \$5,000 during the applicable period.

[24] During the hearing, Ms. Boudreau pleaded that she wished to submit further documents, but was prevented from doing so. I note that Ms. Boudreau had already used a fax machine to

submit information, so there was nothing to prevent her from doing so. Furthermore, as stated above, even if the additional documentation contained in her affidavit had been submitted, I am of the opinion that it would not remedy the fundamental defect in her application.

B. *The Decision is not unreasonable*

[25] As mentioned above, the burden is on Ms. Boudreau, in her application for judicial review, to show that the Officer's Decision is unreasonable.

[26] Ms. Boudreau claims that the Decision is unreasonable because the Officer allegedly did not allow her to submit documents proving her income and told her that she did not need them. Ms. Boudreau argued that she earned an income of over \$5,000 and never stopped working to develop her business.

[27] Ms. Boudreau raises a number of issues that she believes have a bearing on her judicial review, including the theft of her social insurance number, the difficulties she has experienced with Self-Employment Benefit (SEB) payments, the difficulty in finding a space for her wellness consulting business, and the tone adopted by the CRA Officer. However, I conclude that these elements are not relevant to Ms. Boudreau's application.

[28] The respondent argues that the Decision is reasonable because the Officer applied the eligibility criteria as established by the Act, the latter being statutory and non-discretionary. Among other things, the Act stipulates that to be eligible for the CRB, a person must have earned

at least \$5,000 (before taxes) in employment income or net self-employment income in 2019, 2020 or in the 12 month period preceding the date of his or her first application.

[29] The respondent argues that Ms. Boudreau simply does not meet these criteria.

Ms. Boudreau is actually in default because her declared net income was less than \$5,000, with her company reporting negative net business income—a loss of \$3,821 in 2019 and a loss of \$12,098 in 2020. In fact, the Officer reportedly explained this default to Ms. Boudreau during their telephone conversation, and also reviewed with her the income that appeared on her tax returns.

[30] The respondent argues that the Officer reasonably concluded that Ms. Boudreau did not meet the eligibility criterion requiring a person to have searched for work during each two-week period.

[31] Having reviewed Ms. Boudreau's supporting documentation, the record before the Officer, and having considered the arguments of the parties, I conclude that the Officer's Decision is reasonable. It satisfies the stated criteria, being internally coherent as well as being transparent, justified and intelligible.

[32] I understand that this situation is very difficult for Ms. Boudreau, but on the basis of the record and the information presented to the Officer, I cannot conclude that the Officer committed a reviewable error. Based on all the evidence, it was not unreasonable for the Officer to conclude that Ms. Boudreau had not met the eligibility criteria set out in the Act.

V. Conclusion

[33] Ms. Boudreau failed to meet her burden of establishing that the Officer's Decision is unreasonable. Accordingly, the application for judicial review is dismissed.

[34] In view of all the circumstances, and following the respondent's counsels' submissions in this regard, I agree that the respondent is entitled to costs following the dismissal of Ms. Boudreau's claim. I am of the opinion that the lump sum of \$500 is reasonable and justified.

JUDGMENT in T-1810-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended to designate the Attorney General of Canada as the respondent.
3. Costs are awarded in favour of the respondent in the amount of \$500.

“Vanessa Rochester”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1810-21

STYLE OF CAUSE: PIERRETTE BOUDREAU v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING : HELD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 7, 2022

JUDGMENT AND REASONS : ROCHESTER J.

DATED: APRIL 19, 2023

APPEARANCES:

Pierrette Boudreau

FOR THE APPLICANT
(SELF-REPRESENTED)

Dominique Gallant

FOR THE RESPONDENT

LAWYERS OF RECORD :

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Halifax, Nova Scotia

FOR THE RESPONDENT