

Federal Court



Cour fédérale

Date: 20241216

Docket: T-2727-23

Citation: 2024 FC 2033

Ottawa, Ontario, December 16, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

ZINA ALHUSAINI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Zina Alhusaini [Applicant] brings this application for judicial review of a decision [Decision] dated November 23, 2023, in which her claim for the Canada Recovery Benefit [CRB] was denied by an officer of the Canada Revenue Agency [CRA].

[2] The CRA officer found that the Applicant was not eligible to receive the CRB benefits because she did not demonstrate a reduction of at least 50% in her average weekly earnings when compared with the previous 12 months of earnings, due to COVID-19.

[3] For the following reasons, the judicial review is dismissed. The Court is not satisfied “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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100 [Vavilov]). Based on the reasons, the evidence and record before me, I am not satisfied that the Applicant has met her burden to demonstrate that the decision is unreasonable. The CRA’s decision ruling that the Applicant is ineligible to the CRB benefits is reasonable.

II. Background Facts

[4] The Applicant was employed by Off the Hook [OTH] as a sales representative from July 2020 to January 2021. Her hours at Off the Hook were significantly reduced from an average of about 30 hours every two weeks to an average of around 20 hours every two weeks due to the lack of work during the COVID-19 pandemic.

[5] In the month of October 2020, the Applicant also began working at Canada College [College] as a self-employed instructor, teaching a Childhood Development course, to improve her financial situation during the pandemic. As there was no employment contract signed, the Applicant assumed that she was self-employed and was sending her invoices in due course, which were then paid by the College.

[6] The Applicant's employment with OTH was terminated on January 9, 2021, as a result of COVID-19.

[7] In January 2021, Canada College sent an e-mail to its instructors notifying them that they would no longer have to send invoices for their services, but instead provide timesheets. There was no mention of a change of status of instructors from being self-employed to becoming employees of the College.

[8] From January 2021 to June 2021, the Applicant worked minimal hours as a substitute instructor at the College. The reason why the Applicant did not have her proper course load was due to a misunderstanding relating to her availabilities when courses were allocated to instructors by the College in November 2020.

[9] As of June 11, 2021, the Applicant began teaching the same Childhood Development course she had previously taught in the Fall 2020 term and continued to do so for the Summer 2021 and Fall 2021 terms.

[10] The Applicant understood that she remained a self-employed instructor at the College. She only learned in February 2024 that her status had been changed by the College in January 2021, without her consent or notification, when the College began to require the filing of timesheets instead of invoices. The College also issued a T4 for the 2021 fiscal year, whereas it issued a T4A for the 2020 fiscal year.

[11] The Applicant applied for and received CRB benefits between December 6, 2020, and October 23, 2021, for a total of 22 periods between periods 6 and 28.

[12] In support of her eligibility, the Applicant submitted the following documents:

- a. An explanation letter dated October 20, 2022;
- b. RBC bank statements from February to September 2021;
- c. A T4 from her employer OTH for the taxation year 2020;
- d. Statement of earnings and deductions from OTH for August, October, November and December 2020;
- e. Record of employment OTH (August – December 2020);
- f. Letter from OTH dated January 9, 2021 – layoff January 10 to February 8, 2021;
- g. An explanation letter dated March 25, 2023;
- h. A table showing her total income per month with her personal comments.

[13] On November 3, 2023, a CRA agent asked the Applicant to provide specific information regarding her 2020–2021 income, such as a 2020–2021 pay slip or a letter from her employer, any other documents for amounts received from 9414-3807 Québec inc., or information relating to her 2020 net income showing earnings/month or pay period, or a College Canada 2020–2021 pay slip/record of employment or a letter from the employer (Certified Tribunal Record [CTR] at 6, 27).

[14] The Applicant was not able to provide the information requested.

III. Issues and Standard of Review

[15] The issue is whether the CRA's decision is reasonable.

[16] The appropriate standard of review of a decision of a CRA officer is reasonableness (*Vavilov* at paras 16–17; *Maltais v Canada (Attorney General)*, 2022 FC 817 at paras 18–19 [*Maltais*]). The role of this Court is to examine the reasoning of the administrative decision maker and the result reached to determine whether the decision is “based on an inherently coherent and rational chain of analysis” and is justified in light of legal and factual constraints (*Vavilov* at para 85). The burden of proof to show that a decision is unreasonable is on the party challenging the decision (*Vavilov* at para 100; see also *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 45 [*Aryan*]; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 14; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 29 [*Kleiman*]).

IV. Analysis

A. *The new evidence filed by the Applicant is not admissible*

[17] In 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 presented to the decision maker. Generally, documents that were not available to the decision maker are not admissible on judicial review, and the Court should not consider them (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Association of Universities*]; *Canada (Attorney General) v*

Canadian North Inc., 2007 FCA 42 at paras 3–5, 7–9, 12; *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at paras 17–22; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 92–100).

[18] Nevertheless, the Federal Court of Appeal has recognized three (3) exceptions to this general rule: (1) the new evidence contains general contextual information; (2) the new evidence responds to questions of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision maker (*Association of Universities* at paras 19–20).

[19] In the context of judicial reviews of CRA decisions under the CRB or similar types of benefit programs existing as a result of COVID-19, the Court has ruled that it should not consider additional documents provided in an affidavit and not previously submitted to CRA (*Datta v Canada*, 2022 FC 973 at paras 29–30; *Lussier v Canada*, 2022 FC 935 at para 2; *Maltais* at paras 20–21; *Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at paras 19–23; *Desautels v Canada (Attorney General)*, 2022 FC 1774 at para 27).

[20] In this case, Exhibits B, C, D, E, G, H, I, J, K and L of the Applicant’s Affidavit were not submitted to the CRA for review and do not fall within the exceptions to be allowed to be admitted as evidence on judicial review. Moreover, that information was available to the Applicant and ought to have been provided to CRA in due course. As a result, I will not give any weight to these documents on judicial review of the CRA’s decision. In any event, these documents would not have had any impact on the reasonableness of the CRA decision.

B. *The CRA decision is reasonable*

[21] The CRB was introduced by the Government of Canada as part of a set of measures in response to the consequences caused by the COVID-19 pandemic (*Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*]). Pursuant to paragraph 3(1)(f), an applicant will be eligible for CRB, if “during the two-week period, for reasons related to COVID-19, [...] they were not employed or self-employed or they had a reduction of at least 50% [...] in their average weekly employment income or self-employment income for the two-week period relative to [...] their total average weekly employment income and self-employment income for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application.”

[22] The burden is on the person making a claim for CRB benefits to establish that they meet the cumulative criteria of the *CRB Act*, on the balance of probabilities (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 55 [*Walker*]; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 24 [*Ntuer*]). The eligibility criteria are also non-discretionary (*Flock v Canada (Attorney General)*, 2022 FC 305 at para 23 [*Flock*]). To do so, the Applicant had to provide enough evidence to support her claim (*Payette v Canada (Procureur général)*, 2023 CF 131 at para 35 [*Payette*]).

[23] Canada’s tax system is a self-assessment system. It assumes that the taxpayer is able to provide all relevant documents in support of their return (*Walker* at para 37). To this end, the Applicant had to produce sufficient evidence to support her claim (*Payette* at para 35; *Walker* at para 55), and the CRA could ask her to provide additional documents or information to prove her

eligibility to the CRB (*Aryan* at para 34). As the Court explained in *Aryan* at paragraphs 35–36, it is reasonable for the CRA to draw their conclusions from all of the evidence before them.

[24] It is important to note that in analyzing the reasonableness of the CRA’s decision, the Court may consider the CRA’s decision report and internal notes. These form part of the CRA’s reasons, as do the Global Case Management System notes used by immigration officers (*Aryan* at para 22; *Kleiman* at para 9; *Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431 at para 36; *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251 at para 17; *McClintock’s Ski School & Pro Shop Inc v Canada (Attorney General)*, 2021 FC 471 at paras 26–27; *Vavilov* at paras 94–98). In the present case, the record reveals that the CRA examined all documents and oral representations submitted by the Applicant.

[25] The Applicant understands the CRA’s decision as having relied only on one of the three conditions for the eligibility criteria of the *CRB Act*, namely that she did not experience a reduction of at least 50% of her income as compared with the previous year. The Applicant does not contest that assessment—she does not argue having incurred a reduction of at least 50% of her income as compared with her average weekly income during the previous year.

[26] However, she argues that the eligibility criteria are “not” cumulative. According to her interpretation, paragraph 3(1)(f) of the *CRB Act* provides that during the two-week period for which the application is submitted, the individual must be (1) either not employed or self-employed due to COVID-19; “or” (2) had a reduction of at least 50% in average weekly income

compared to the previous year due to reasons related to COVID-19 (Applicant's written representations at para 19).

[27] In other words, the Applicant understood the criteria that to be eligible for CRB benefits, the individual had to, during the two-week period for which the application is submitted, not be employed because of COVID-19 or be self-employed because of COVID-19. The Applicant submits that she does not need to meet the third criterion because it is distinct and inapplicable to her situation: having suffered a reduction of at least 50% in average weekly income compared to the previous year due to reasons related to COVID-19.

[28] In the Applicant's view, she was laid off from her employer OTH in January 2021 and began working at Canada College as a self-employed worker in October 2020 until August 2023, and both situations have occurred due to COVID-19. As the Applicant was not employed, having been laid off by OTH because of COVID-19, but also being self-employed because of COVID-19, she meets the criteria to be eligible for the CRB. In her view, the only reason why she is not eligible is because the College changed her status from self-employed to being an employee, without her knowledge and consent, and that unilateral change disqualifies her from the CRB eligibility—she is no longer self-employed because of COVID-19 and loses that eligibility criterion.

[29] The Applicant therefore applied for the CRB in good faith with the belief that she was self-employed throughout the periods for which she applied for CRB, after having not been informed of the sudden and imposed change in her working status.

[30] Unfortunately, the Applicant misunderstood the eligibility criteria. As explained above, the eligibility criteria is cumulative and not discretionary (*Walker* at para 55; *Ntuer* at para 24; *Flock* at para 23).

[31] Under paragraph 3(1)(f) of the *CRB Act*, to be eligible, an individual, due to COVID-19, had to (1) not be employed or self-employed because of COVID-19 (in other words, they have lost their source of income because of COVID-19); or (2) if employed or self-employed, that the earnings have been reduced by at least 50% due to COVID-19 in each two-week period. In the latter scenario, the person continues to work, as an employee or as self-employed, but there is a reduction of work that has an impact on earnings of at least 50%, due to COVID-19. The fact that the status of the Applicant changed from self-employed to employee of the College has no impact on the eligibility to CRB in her case.

[32] Indeed, the reason why the Applicant is not eligible for CRB benefits for the periods that she claimed is because she continued to work and have an income, but she failed to present sufficient information to CRA to demonstrate that her income was reduced as compared to the previous year's weekly average earnings by at least 50%.

[33] The fact that the College changed her status from self-employed to being an employee is not material in this case. Whether or not the Applicant was employed or self-employed, the issue is that she was not able to demonstrate, for any of the two-week periods for which she requested CRB benefits, that she suffered a 50% or more reduction in her net weekly income.

[34] Based on the information provided by the Applicant, the CRA was not able to determine the income earned by the Applicant during each two-week CRB period requested in 2021, even though a CRA Officer had asked for the necessary documentation during a telephone call on November 3, 2023 (for income information between December 2020 and October 2021). The Applicant failed to provide any such documents (CTR at 6, 8, 27–28).

[35] The CRA concluded that the documents provided by the Applicant did not show for what two-week period the income was earned in 2021, nor demonstrate a reduction of at least 50% of her earnings during these periods. The CRA's conclusion was justified on the following reasoning (CTR at 7–8, 27–28):

- a. The average weekly income of the Applicant for 2019 was \$ 109.42;
- b. The average weekly income of the Applicant for 2020 was \$ 205.76;
- c. The average weekly income of the Applicant for 2021 was \$ 330.73;
- d. The average weekly income of the Applicant in the twelve months before the first CRB application was \$ 204.25;
- e. There is information on earnings in 2021, but it is impossible to confirm that the Applicant experienced an income reduction during the CRB periods requested because the Applicant did not provide proof of her 2021 earned income for each specific period. It is therefore impossible to calculate and compare the income earned with the average income of the 12 months preceding the date of application.

[36] The CRA's conclusion that the Applicant did not prove having suffered a reduction of at least 50% in her average weekly income due to COVID-19 for each two-week period sought is reasonable on the evidence and information provided by the Applicant in this case (CTR at 28). The decision to refuse the Applicant's eligibility for the CRB, based on the evidence that was

submitted, is consistent, coherent and justified. The decision therefore has the attributes of reasonableness.

[37] In its notes and Decision report, the CRA states that while it had information on some of the Applicant's income in 2021, it did not have sufficient information to attribute the income earned to specific CRB periods to fairly calculate the income reduction, and compare it with the average earnings during the 12 months preceding the application. Because of that, the CRA sought additional information on November 3, 2023 to permit the Applicant to demonstrate her eligibility for each period (CTR at 8, 27–28). Since the Applicant was not able to provide any additional information, it was reasonable for the CRA to conclude that she did not discharge her burden to demonstrate that she was eligible for the CRB benefits for any of the claimed period.

[38] Moreover, even if the new Exhibits filed by the Applicant in her Affidavit had been admitted in evidence, the Applicant still cannot discharge her burden of proof. In fact, the new evidence adduced demonstrates that for many of the periods for which a proof of income is provided, the Applicant earned more than 50% of her weekly income of the previous year; in fact, her earnings are sometimes higher than the prior year.

[39] In her written representations, the Applicant makes no argument in support of an assertion that her earnings for any of the two-week periods for which she claimed CRB benefits were less than 50% of her average earnings of the prior year. In oral argument, the Applicant conceded that she did not incur a reduction of at least 50% of her earnings in 2021 in any period

and that she would not be eligible under that criterion. The Applicant's sole argument is related to her good faith in making her application for CRB benefits (the Applicant's good faith is not contested), and that she erroneously interpreted the criteria on her eligibility to CRB for being self-employed due to COVID-19. The evidence adduced in her Affidavit does not rehabilitate her eligibility.

[40] Consequently, the Applicant has not demonstrated that the CRA made an unreasonable decision in finding that she failed to prove her eligibility to CRB benefits, because she was employed or self-employed and did not incur a loss of at least 50% of her average weekly earnings as compared with the previous year, because of COVID-19.

V. Conclusion

[41] The application for judicial review is dismissed, without costs.

JUDGMENT in T-2727-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2727-23

STYLE OF CAUSE: ZINA ALHUSAINI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL (QUÉBEC)

DATE OF HEARING: DECEMBER 11, 2024

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: DECEMBER 16, 2024

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