

Federal Court



Cour fédérale

Date: 20220405

Docket: T-1099-21

Citation: 2022 FC 466

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 5, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

MOHAMED SID SEGHIR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Until March 2020, Mohamed Sid Seghir was a taxi driver with 25 years of experience.

The onset of the COVID-19 pandemic gave Mr. Sid Seghir cause for concern because of his medical history. On March 19, 2020, he therefore decided to stay home for a while before going back to work. He never did return. His colleagues told him that it was not cost-effective to lease

a taxi during the pandemic and that only taxi owners would be able to pull through. Mr. Sid Seghir did not have his own taxi, and the owner of his taxi refused to lower his lease payments.

[2] On October 27, 2020, Mr. Sid Seghir started applying for the Canada Recovery Benefit (CRB), a measure introduced by the Government of Canada to give income support to Canadian employees and self-employed individuals directly affected by the impacts of COVID-19. His applications were accepted without review, and Mr. Sid Seghir received benefits for the requested periods. On June 9, 2021, after two separate reviews of his file, an officer of the Canada Revenue Agency (CRA) concluded that Mr. Sid Seghir had left his job voluntarily and that his lack of employment and the drop in his income were not related to COVID-19. The officer therefore concluded that Mr. Sid Seghir was not eligible for the CRB and that he had to refund the CRA for the payments he had received.

[3] For the reasons that follow, I find the officer's decision to be unreasonable. The officer did not decide the central question of the eligibility analysis, namely, whether Mr. Sid Seghir was not employed for reasons related to COVID-19 during the relevant two-week periods between October 11, 2020, and May 22, 2021. The officer's reasons, which turned on the fact that Mr. Sid Seghir initially left his job in March 2020 without a medical recommendation or being laid off, and that safety measures had been implemented in taxis, are logically unrelated to this central question in order to be able to justify the decision.

[4] The application for judicial review is therefore allowed, and the determination of Mr. Sid Seghir's eligibility for the CRB is referred back to another CRA officer for reconsideration.

II. Issues and standard of review

[5] Mr. Sid Seghir's application raises the following issues:

- A. Are the additional facts submitted by Mr. Sid Seghir eligible for this application?
- B. Is the officer's decision concluding that Mr. Sid Seghir was not eligible for the CRB reasonable?
- C. If not, what remedy should be granted by the Court?

[6] The second issue, which concerns the merits of the decision, requires the application of the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is based on an internally coherent reasoning and justified in light of the legal and factual constraints that bear on the decision: *Vavilov* at paras 102–107. The court conducting a reasonableness review must focus its attention on the decision of the administrative decision-maker, including its transparency, intelligibility, and justification, and not on the conclusion the court itself would have reached in the administrative decision-maker's place: *Vavilov* at para 15.

[7] The other issues are procedural and remedial. They can be decided without a standard of review having to be applied.

[8] I also note at this stage that Mr. Sid Seghir's application has named the CRA as the respondent. At the request of the Attorney General of Canada, without objection from Mr. Sid

Seghir, and in accordance with section 303 of the *Federal Courts Rules*, SOR/98-106, the style of cause is amended so as to designate the Attorney General of Canada as respondent.

III. Analysis

A. *The Court cannot admit the additional evidence*

[9] In his notice of application and his written submissions, Mr. Sid Seghir states that the owner of his taxi chose to repossess the taxi in March 2020 given the unstable and precarious situation caused by the COVID-19 outbreak. Mr. Sid Seghir did not submit this particular fact to the CRA officer when his CRB application was validated. The CRA file filed with the Court contains notes taken by officers who had telephone conversations with Mr. Sid Seghir throughout the process. As discussed in more detail below, these notes include some of the explanations provided by Mr. Sid Seghir, including the reference to the owner of his taxi. However, they do not mention that the owner chose to repossess the taxi.

[10] In the case of an application for judicial review, the Court's role is to review the legality of the administrative decision-maker's decision, including its reasonableness in the legal and factual context brought before the decision-maker. It is not for the Court to re-decide the merits of what the CRA officer did: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 18 [*Access Copyright (2012)*]. Because of this role, the evidentiary record before the Court on judicial review is generally restricted to the evidentiary record that was before the decision-maker: *Access*

Copyright (2012) at para 19. Exceptions to this general rule are limited: *Access Copyright (2012)* at para 20.

[11] None of these exceptions applies in this case. There is no indication that Mr. Sid Seghir did mention to CRA officers the owner's decision to repossess the taxi and that this was simply not recorded in their notes. On the contrary, according to Mr. Sid Seghir's submissions, he [TRANSLATION] "unfortunately did not emphasize to the officer that his taxi had been taken from him." Consequently, this fact is not admissible before this Court, even if it had been supported by an affidavit, which it was not: *Access Copyright (2012)* at para 19.

[12] These principles were explained to Mr. Sid Seghir's counsel at the hearing. The Court also denied Mr. Sid Seghir's requests to have the taxi owner testify at the hearing or for him to file an additional affidavit, for the same reasons and because of additional concerns regarding their lateness. The hearing of this application for judicial review therefore proceeded on the basis of the facts as presented in the file before the CRA officer at the time of his decision. The Court's will analyze the decision on the same basis.

[13] It should be noted in this respect that the affidavit filed by the Attorney General is admissible, with the minor exception of one sentence. This affidavit, sworn by the officer who made the decision regarding Mr. Sid Seghir's ineligibility, has two parts. The first provides a general description of the CRB and the process followed by the CRA to validate CRB applications. This part "provides general background in circumstances where that information might assist [the Court] in understanding the issues relevant to the judicial review" and is

admissible as one of the exceptions to the general rule: *Access Copyright (2012)* at para 20(a). The second part provides an overview of Mr. Sid Seghir’s applications and the information contained therein, and attaches excerpts from the CRA file as evidence. This part, which primarily clarifies the information before the decision-maker at the time of the decision, is consistent with sections 307 and 310 of the *Federal Courts Rules: 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.

[14] However, the statement in the affidavit that, as part of the review, the officer [TRANSLATION] “consulted the documents provided by the applicant . . . as well as the following information and documents” is inadmissible. This statement, which indicates not only which documents were before the officer at the time of the decision, but which ones *the officer consulted* could add facts to the file and/or reasons to the decision. Although this statement is consistent with the statement in the June 9, 2020, decision that the officer had [TRANSLATION] “carefully reviewed the information [Mr. Sid Seghir] provided”, and the statement in the affidavit does not change anything in the context of this case, I will not rely on it for the purposes of this decision.

B. *The decision is unreasonable*

(1) Legal and factual framework

[15] The *Canada Economic Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA], came into force on October 2, 2020, and established the CRBA, the Canada Recovery Sickness Benefit and

the Canada Recovery Caregiving Benefit. The Act provided for benefits of between \$300 and \$500 per week, before tax, for two-week periods: CRBA, ss 7–9.

[16] Section 3 of the CRBA sets out the eligibility requirements for the CRB. There are several, but those relevant to this case are found in paragraphs 3(1)(f) and (i) of the CRBA:

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

...

(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

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 :

...

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) 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, and

(ii) in the case of an application made under section 4 in respect of a two-week period beginning in 2021, 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;

...

(i) they sought work during the two-week period, whether as an employee or in self-employment;

...

[Emphasis added.]

(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,

(ii) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou 2020 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 2021;

...

i) elle a fait des recherches pour trouver un emploi ou du travail à exécuter pour son compte au cours de la période de deux semaines;

...

[Je souligne.]

[17] Mr. Sid Seghir submitted CRB applications for 14 two-week periods between October 11, 2020, and May 22, 2021. The first nine of these applications were accepted without review, and the benefits were paid.

[18] Mr. Sid Seghir's file was selected for a first eligibility review on March 19, 2021. In April and May 2021, Mr. Sid Seghir sent documents to the CRA and had several telephone conversations with CRA officers. The notes from these interviews in the CRA computer system indicate that Mr. Sid Seghir stated that he had been a taxi driver for 25 years and that he stopped in March 2020. As the Attorney General points out, the notes show that in the calls with CRA officers Mr. Sid Seghir cited several factors explaining his decision to stop working in March 2020. On April 8, 2021, he explained that he had not been working since March 2020 because of a period of convalescence following cancer surgery and medical recommendations he had received to the effect that he should not be in direct contact with clients. On April 20, 2021, he said that his work had stopped because people were working from home and therefore no longer needed his services as a taxi driver.

[19] On May 27, 2021, Mr. Sid Seghir received a call from the officer responsible for the first review of his file. During this call, Mr. Sid Seghir explained that in March 2020, he had tried to reduce the lease payments for his taxi, but the owner refused. He also mentioned his fragile health following his cancer surgery in 2015 and his concerns about contracting COVID-19. He stated that during the CRB period, he had [TRANSLATION] "nonetheless contacted friends who had advised him not to lease a car to drive a taxi because the income would not cover the lease fees, only owners could get by".

[20] Based on this information, the officer responsible for the first review concluded that Mr. Sid Seghir was not eligible for the CRB because (i) he had left his job voluntarily; (ii) he

was not employed for reasons not related to COVID-19; and (iii) he was able to work but was not looking for a job. The officer issued a decision to this effect on June 3, 2021.

[21] After reading the decision on the same day, Mr. Sid Seghir contacted the CRA. He reiterated that he had left his job because of his health and because of COVID-19. He explained that he was looking for a job as a bus driver. In a second conversation that same day with another officer, Mr. Sid Seghir said, among other things, that he was in distress. Following a call with the CRA team leader, a second review was initiated.

[22] In the second review, the notes from a call dated June 4, 2021, indicate that Mr. Sid Seghir said that [TRANSLATION] “the government [had] offered the taxi owner to buy back the vehicle[s], and so [he] could no longer lease the taxi he was using”. He nonetheless confirmed that he had stopped driving a taxi on March 19, before the official announcement of emergency benefits. His plan had not been to apply for benefits, but to return to work quickly, which he had been unable to do.

[23] Following this call, Mr. Sid Seghir submitted bank statements; his learner’s licence for heavier vehicles including buses effective September 29, 2020; and some medical documents confirming a medical appointment in January 2021 and a future one in July 2021.

(2) The CRA officer's decision

[24] The CRA officer responsible for the second review issued a decision on June 9, 2021. In the officer's decision letter of the same date, the officer identified the following reasons for the conclusion that Mr. Sid Seghir was not eligible for the CRB:

[TRANSLATION]

You do not meet the following criterion:

- You are not employed for reasons not related to COVID-19.
- Your average weekly income has not decreased by 50% compared to the previous year for reasons related to COVID-19.

[25] The letter states that since Mr. Sid Seghir did not meet the eligibility criteria, all future CBR applications would be denied [TRANSLATION] "unless [he] could provide proof that [he was] able to meet the eligibility criteria".

[26] The officer's reasons for this decision can be found in a [TRANSLATION] "Second Review Report". This report includes a summary of the file history, a copy of the notes on file regarding the exchanges with Mr. Sid Seghir, and the second officer's review. In a box entitled [TRANSLATION] "Explain Your Decision", the officer wrote as follows:

[TRANSLATION]

The Taxpayer left his job voluntarily in March 2020 without a medical recommendation or being laid off as a result of COVID-19. His field of employment (Taxi) was quieter during the pandemic, but the necessary steps were taken to make the work as safe as possible.

[Original reproduced as written.]

[27] In the matter at bar, everyone agrees that (i) the officer's reasons are those set out in the officer's letter and report, read in the context of the case; (ii) the officer's decision is based exclusively on paragraph 3(1)(f) of the CRBA, meaning the officer had accepted that Mr. Sid Seghir was looking for a job, as required by paragraph 3(1)(i) of the CRBA; and (iii) the decision was not based on whether there had been a decline in income, but only on the conclusion that Mr. Sid Seghir was not employed for reasons not related to COVID-19.

(3) The decision is unreasonable

[28] Under paragraph 3(1)(f) of the CRBA, the question before the officer was whether, during the two-week period—or during each of the two-week periods in question—Mr. Sid Seghir was not employed for reasons related to COVID-19. In the officer's explanation for the decision, reproduced above in paragraph [26], the officer did in fact give two reasons for his conclusion: (1) Mr. Sid Seghir left his job voluntarily without a medical recommendation or being laid off for reasons related to COVID-19; and (2) public health measures had been implemented to make work safe for taxi drivers.

[29] The circumstances in which a taxpayer leaves their job are undoubtedly relevant to the question of whether the taxpayer was not employed during the two-week period for reasons related to COVID-19. However, the reasons given by the officer do not directly answer this central question. Mr. Sid Seghir explained that he decided to stay home temporarily at the beginning of the pandemic because he had concerns about the unknown risks of COVID-19, especially in light of his medical history. In these circumstances, I find it difficult to accept that

this decision was “voluntary” and not related to COVID-19, even in the absence of a medical recommendation.

[30] I cannot therefore accept the Attorney General’s argument that the officer’s decision was based on the various pieces of information Mr. Sid Seghir provided to the CRA with respect to his work stoppage. The officer did not say that he found Mr. Sid Seghir’s statements to be inconsistent. According to his reasons, he also did not reach a negative conclusion as to Mr. Sid Seghir’s credibility. He simply noted that Mr. Sid Seghir had not received a medical recommendation or been laid off.

[31] In any event, even if we accept this characterization, the issue before the officer was not whether Mr. Sid Seghir left his job voluntarily in March 2020. It was whether the reasons for Mr. Sid Seghir’s not being employed in October 2020 were related to COVID-19. In analyzing this issue, the officer started by addressing Mr. Sid Seghir’s health. However, she gave no consideration to Mr. Sid Seghir’s statements that his intention in March 2020 had been to return to work quickly, but that this became impossible because people were working from home and no longer taking taxis, meaning that it was no longer financially viable to lease a taxi so that he could work as a driver. These statements were very relevant in determining whether Mr. Sid Seghir was not employed in October 2020 for reasons related to COVID-19. If, as a result of the pandemic, the state of the taxi industry was such in his city in October 2020 that Mr. Sid Seghir was losing money by working, it seems to me at least possible to conclude that he was not employed for reasons “related” to COVID-19. But the CRA officer did not address this issue.

[32] The officer clearly acknowledged that the taxi industry was affected by COVID-19, noting that Mr. Sid Seghir's field of employment [TRANSLATION] "was quieter". However, the officer merely noted that steps had been taken to make his job [TRANSLATION] "safe". He did not look at whether Mr. Sid Seghir could earn an income as an independent taxi driver during the pandemic, aside from the health risks. Mr. Sid Seghir expressly stated that it was impossible to earn an income as a taxi driver in October 2020 and therefore impossible to be self-employed in this field, but the officer did not meaningfully grapple with these factors. An important aspect of a reasonable decision is that it meaningfully grappled with key issues or central arguments raised by the parties: *Vavilov* at para 128.

[33] The Attorney General submits that Mr. Sid Seghir's health concerns did not prevent Mr. Sid Seghir from working as a taxi driver in October 2020, noting that he is also in direct contact with the public as a bus driver. However, even if there had been no medical reason, paragraph 3(1)(f) of the CRBA does not require "reasons related to COVID-19" to be medical ones. Mr. Sid Seghir stated that he could not earn an income as a taxi driver because of the effect of the pandemic on this field of work. The officer should have assessed this statement in a meaningful manner.

[34] I therefore find the officer's decision to be unreasonable because it did not properly consider the central and relevant issues and concerns raised by Mr. Sid Seghir in respect of the central question of paragraph 3(1)(f) of the CRBA.

C. *The Court will not order a remedy of indirect substitution*

[35] Mr. Sid Seghir is asking that the Court recognize his eligibility for the CRB retroactively from September 27, 2020, to October 23, 2021, the day on which the CRB ended. As explained by the Supreme Court of Canada, “where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court’s reasons”: *Vavilov* at para 141. In my opinion, there is no reason to do otherwise in this case.

[36] The Supreme Court has recognized that the reviewing court does have discretion in some cases to make a decision in place of the tribunal instead of referring the matter back: *Vavilov* at para 142. It may indeed order a tribunal to reach a particular conclusion, thereby indirectly substituting its own view so to speak: *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 78–82. However, such a remedy is rarely appropriate: *Vavilov* at para 142; *Tennant* at para 80. I am not satisfied that it is here.

[37] The issue of Mr. Sid Seghir’s eligibility for the CRB is therefore referred back to another CRA officer for redetermination.

IV. Conclusion

[38] For these reasons, the application for judicial review is allowed, and the issue of Mr. Sid Seghir’s eligibility for the CRB is referred back to the CRA for redetermination by another officer.

[39] In accordance with the agreement between the parties, Mr. Sid Seghir will, as the successful party, be awarded costs in the amount of \$1,875.

JUDGMENT in T-1099-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed, and the issue of Mr. Sid Seghir's eligibility for the Canada Recovery Benefit is referred back to the Canada Revenue Agency for redetermination by another officer;
2. The applicant is entitled to his costs in the amount of \$1,875; and
3. The style of cause is amended to designate the Attorney General of Canada as the respondent.

"Nicholas McHaffie"

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1099-21

STYLE OF CAUSE: MOHAMED SID SEGHIR v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 1, 2022

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: APRIL 5, 2022

APPEARANCES:

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