

Federal Court



Cour fédérale

Date: 20220719

Docket: T-1434-21

Citation: 2022 FC 1067

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 19, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

JACQUES MONETTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Jacques Monette, is a writer and an independent driver and delivery person operating under the banner of UBER Canada Inc. [UBER]. He is not represented by counsel.

Mr. Monette applied for and received the Canadian Recovery Benefit [CRB]. On September 7, 2021, a benefit processing officer [the officer] of the Canada Revenue Agency [CRA] concluded that Mr. Monette was ineligible for the CRB and required him to reimburse the benefits he had

received. Mr. Monette has applied for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, and has asked the Court to set aside that decision and find him eligible for the CRB for the specified periods.

[2] In my opinion, given the reasons that follow, the decision rendered by the CRA officer is reasonable, and I therefore dismiss the application for judicial review.

II. Background

[3] Between October 2020 and December 2020, Mr. Monette filed five applications for the CRB. On the basis of these requests, the CRA granted him benefits of \$1,000 for each two-week period from September 27 to December 5, 2020, for a total of \$5,000.

[4] Mr. Monette's CRB applications were reviewed. On December 21, 2020, Mr. Monette sent documents to the CRA, namely UBER's tax summary for 2019 and bank statements from December 22, 2019, to May 21, 2020. On February 22, 2021, Mr. Monette sent new documents to the CRA, namely UBER's tax summary for 2020 and his bank statements for all of 2020.

[5] On March 3, 2021, an officer advised Mr. Monette that he was not eligible for the CRB. He had not stopped working, his hours of work had not been reduced, and his average weekly income had not decreased by half compared to the previous year because of COVID-19. The CRA also sent Mr. Monette a paper copy of this decision dated March 4, 2021.

[6] Mr. Monette immediately requested a second review of his CRB application in which he stated that he continued to work during the pandemic, but that [TRANSLATION] “the situation, because of the lockdown and the closure of bars and restaurants and non-essential shops and [later] the curfew, considerably decreased [his] net income”. On May 13, 2021, a second officer concluded that Mr. Monette was ineligible for the CRB on the basis that he did not have a 50% reduction in his average weekly income compared to the previous year because of COVID-19.

[7] On June 2, 2021, Mr. Monette submitted an application for judicial review of the May 13, 2021, decision. On or about July 6, 2021, Mr. Monette and the representatives of the Attorney General of Canada agreed that his application would be reconsidered by another officer, this time covering the 14 two-week periods he had received the CRB, from September 27, 2020, to April 10, 2021.

[8] After reviewing the documents Mr. Monette submitted on December 21, 2020, and February 22, 2021, and having talked with Mr. Monette on several occasions, the officer responsible for the reconsideration made the following findings:

- Mr. Monette is a self-employed worker who has been providing UBER Taxi services since 2019.
- Mr. Monette allegedly changed his status from UBER Taxi to UBER Eats between March 29 and April 5, 2021.
- Mr. Monette made himself available for rides and waited for requests via the UBER Taxi app. The hours worked and income depended on the number of requests.
- He [only] put UBER Taxi on standby as of 5 p.m.
- The hours spent on UBER Taxi and the resulting income varied depending on his availability and the number of rides he provided.

- Prior to the periods under review, Mr. Monette's income from his activities with UBER Taxi varied from week to week.
- Mr. Monette is also a writer and devotes his days (morning and afternoon) to writing.
- During the period in question, Mr. Monette allegedly tried several times to make himself available during the day. Having found, after a few attempts, that the average pay for a ride during the day was less than that of the evening, Mr. Monette maintained his UBER operations in the evening only.
- Mr. Monette blamed his decline in income on the curfew. However, the curfew was only put in place starting on January 9, 2021, and therefore cannot have had an impact for the first seven two-week periods, from September 27, 2020, to January 2, 2021.
- From November 20, 2020, to February 8, 2021, Mr. Monette's UBER Taxi activities were suspended by UBER pending confirmation that his vehicle was in good condition and that he did not have a criminal record.

[9] Thus, on September 7, 2021, the officer concluded that Mr. Monette was not eligible for the CRB because it was not COVID-19 that had prevented him from working and he did not experience a 50% decrease in his average weekly income compared to the previous year for reasons related to COVID-19 [the decision].

III. Legal framework

[10] The CRB was introduced by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act], assented to on October 2, 2020, to provide financial assistance to employees and self-employed workers directly affected by the COVID-19 pandemic who were not entitled to employment insurance benefits. The CRB was offered after the end of the Canada Emergency Recovery Benefits program for the period of September 27, 2020, to October 23, 2021. Subsection 3(1) of

the amended Act sets out the eligibility criteria for receiving the CRB, including:

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

...

(d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from the following sources:

(i) employment,

(ii) self-employment,

(iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*,

(iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in

Admissibilité

3(1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

...

d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, **ses revenus** provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :

(i) un emploi,

(ii) un travail qu'elle exécute pour son compte,

(iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*,

(iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas

respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and

(v) any other source of income that is prescribed by regulation;

...

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application, and

(ii) in the case of an application made under

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

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

...

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020,

(ii) tous ses revenus hebdomadaires moyens

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;

[Emphasis added.]

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;

[Je souligne.]

IV. Issue

[11] This application for judicial review raises a single issue: is the decision that Mr. Monette is not eligible for the CRB unreasonable?

V. Standard of review

[12] The standard of review applicable to decisions rendered by a CRA officer pursuant to the Act is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 [*Vavilov*]; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16).

[13] The role of the court is to examine the administrative decision maker's reasoning and the outcome to determine whether the decision is “based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

VI. Analysis

A. *Preliminary issue*

[14] The respondent submits that the Attorney General of Canada rather than the Canada Revenue Agency should be named as a respondent. Paragraph 303(1)(a) and subsection 303(2) of *the Federal Courts Rules*, SOR/98-106, provide that a tribunal in respect of which the application is brought cannot be designated as a respondent and that the Attorney General of Canada must be designated when no respondent can be named under subsection 303(1). I therefore order that the style of cause be amended accordingly.

B. *The September 7, 2021, decision that Mr. Monette is not eligible for the CRB is not unreasonable*

[15] Mr. Monette's file contains contradictory information that does not make it possible to determine whether he meets the minimum net income requirement of \$5,000 under paragraph 3(1)(d) of the Act. However, I prefer to disregard this issue as it is not the basis for the decision. Mr. Monette argues that he is eligible for the CRB. According to him, he suffered a 50% reduction in his average weekly income compared to the previous year for reasons related to COVID-19. First, he claims that he was unable to conduct his driving activities for several weeks since he was unable to obtain the mechanical inspection required by UBER because non-essential business were closed and he was unable to have his documents processed because UBER's offices were closed. Second, he argues that, even when he was able to resume operations, the income he earned was less than what he earned before the COVID-19 pandemic because of the curfew introduced by the Quebec government.

[16] I am not persuaded by Mr. Monette's arguments. The officer did a thorough review of the file, including the reports of previous officers, and considered the conversation she had with Mr. Monette. She wrote a report detailing the reasons for her decision, observing that Mr. Monette had little weekly income for some weeks in 2020, even before the pandemic, without there being an adequate explanation for this. Mr. Monette undeniably manages his own time and, to use the officer's words, he works when he chooses to work. It was therefore reasonable to find that the mere absence of income for a few weeks during the COVID pandemic was not, in itself, proof of a loss of income for reasons related to COVID-19.

[17] Next, the officer concluded that the curfew could not be considered as a reason as it was not in place before January 9, 2021. In addition, according to the officer, Mr. Monette could have sent his inspection documents to UBER online or by fax even if UBER's office was closed because of the pandemic:

[TRANSLATION]

Moreover, we are not considering the argument regarding the curfew that "really affected him" for periods 1 to 7 inclusive because the curfew was not in place before January 9, 2021. The taxpayer therefore had no employment income from the inspection of the vehicle on November 20, 2020, until February 8, 2021, because, he claimed, the Uber office was closed, causing a processing delay because things move faster in person. The applicant did state that he faxed the vehicle inspection to Uber. We thus consider, whether the office was closed or not, that he could have sent other documents by fax or online on the Uber website. And, even though he said the Uber office was closed, he mentioned that he could speak with Uber employees outside of Canada. . . . Finally, he repeatedly referred to a decrease in income as a result of the curfew, non-essential businesses being closed, Uber's delay in processing the inspection and the closed Uber Center. He often states that Uber blocked him because of the inspection. He justified his decline in income by stating that the Uber office blocked him because of the inspection (annual inspection), because the office was closed during the pandemic and

the time it took to process his papers and said that things are faster in person.

[18] In addition, the officer stated in her detailed notes that she did not believe the explanations of Mr. Monette, who claimed that he had difficulty getting a garage to perform an inspection because of the pandemic:

[TRANSLATION]

No income in December 2020 and January 2021 . . . can you explain it?

Answer: The TP explained that it was UBER's inspection of the vehicle, stating: I was blocked by UBER because I needed the paper proving that I don't have a criminal record. Said garages were not available to do the inspection. We told him that garages were not closed because they were considered essential services. Answer: Not all mechanics can do this type of inspection, so the time was longer because of COVID-19. UBER does not accept all mechanics, they must be certified and UBER does not accept all garages. TP stated that Canadian Tire and Mr. Muffler were allowed.

[19] Mr. Monette did not provide any confirmation of the date on which he requested an inspection of his vehicle, nor of the date on which he finally obtained an appointment for the inspection. He simply claimed that the annual inspection of his car was delayed because of COVID-19. The officer concluded that this delay could not have been caused by the pandemic since garages were considered to be an essential service and were not affected by the closures. I see nothing unreasonable in such a conclusion given that Mr. Monette did not submit any relevant evidence.

[20] Finally, the officer took into account the fact that Mr. Monette was free to change his schedule to work during the day, but did not do so, and therefore reduced his hours voluntarily:

[TRANSLATION]

Also, considering that the taxpayer denied any allegations regarding the following statement, namely, that he does not work during the day to look after his mother as a daytime caregiver, we asked him why he didn't change his daytime schedule (e.g., 8:00 a.m. to 4:30 p.m.) rather than from 5:00 p.m. until the curfew (5:00 p.m. to 9:30 p.m. and 5:00 p.m. to 8:00 p.m.) and the taxpayer replied that he makes less driving during the day and that he works at home as a writer during that time. Nevertheless, he repeatedly mentioned the curfew to justify his decline in income. Curfew January 9 to May 25, 2021.

[21] The link that Mr. Monette attempted to establish between his loss of income and COVID-19 is not probative, and I cannot therefore say that the officer's findings are unreasonable given the information before her. The burden was on Mr. Monette to show that the CRA's decision is unreasonable. But I am 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" (*Vavilov* at para 100).

VII. Conclusion

[22] I am of the opinion that the CRA's decision is consistent, evidence-based and justified with respect to the Act. I therefore dismiss the application.

JUDGMENT in T-1434-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The style of cause is amended to name the Attorney General of Canada as the respondent.

“Peter G. Pamel”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1434-21

STYLE OF CAUSE: JACQUES MONETTE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 17, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: JULY 19, 2022

APPEARANCES:

Jacques Monette

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Alain Gareau

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT