

Federal Court



Cour fédérale

Date: 20221221

Docket: T-1291-21

Citation: 2022 FC 1781

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 21, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

LMAN KONLAMBIGUE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Lman Konlambigue, is seeking judicial review of a decision rendered by a benefits validation officer [officer] of the Canada Revenue Agency [CRA], dated July 21, 2021, following a second review of Ms. Konlambigue's file. The officer concluded that she was ineligible to receive the Canada Recovery Benefit [CRB] because she had not earned at least

\$5,000 in employment income or net self-employment income in 2019 or in 2020 or in the 12 months preceding the day on which she had made her first application.

[2] On August 17, 2021, Ms. Konlambigue filed an application for judicial review of the officer's decision. She submits that the decision is unreasonable because it does not state the basis on which it was made. Specifically, Ms. Konlambigue submits that she provided all the evidence necessary to show that she had earned more than \$5,000 as a self-employed worker in 2020 and that the decision fails to explain why the officer considered this evidence to be insufficient. She asks this Court to set aside the officer's decision and grant her request to be declared eligible for the CRB on the basis of the evidence provided.

[3] For the reasons that follow, I find that the officer's decision is not unreasonable and that Ms. Konlambigue's application should be dismissed.

I. Legislative framework and background

A. *Canada Recovery Benefit*

[4] 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 employed and self-employed workers directly affected by the COVID-19 pandemic and not entitled to employment insurance benefits. The CRB was offered from September 27, 2020, to October 23, 2021. Subsection 3(1) of the Act sets out the eligibility criteria for receiving the CRB:

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

- (a) they have a valid social insurance number;
- (b) they were at least 15 years of age on the first day of the two-week period;
- (c) they were resident and present in Canada during the two-week period;
- (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

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 :

- a) elle détient un numéro d'assurance sociale valide;
- b) elle était âgée d'au moins quinze ans le premier jour de la période de deux semaines;
- c) elle résidait et était présente au Canada au cours de la période de deux semaines;
- 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

because of pregnancy or in 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	d'un régime provincial, en cas 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) any other source of income that is prescribed by regulation;	(v) une autre source de revenu prévue par règlement;
(e) in the case of an application made under section 4 by a person other than a person referred to in paragraph (e.1) in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 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 sources referred to in subparagraphs (d)(i) to (v);	e) dans le cas d'une demande présentée en vertu de l'article 4, par une personne qui n'est pas visée à l'alinéa e.1), à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (v) pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande s'élevaient à au moins cinq mille dollars;
...	...

B. *Background*

[5] Ms. Konlambigue applied for the CRB for periods 1 to 12, from September 27, 2020, to March 13, 2021, and received benefits for periods 1 to 7 on the basis of her applications.

Ms. Konlambigue's applications for periods 8 to 12 were suspended because her file was selected for review, and she therefore did not receive the CRB for these periods.

[6] On January 28, 2021, Ms. Konlambigue contacted the CRA to find out why she had not received the CRB for period 8. During the telephone call, Ms. Konlambigue stated that she had

been outside Canada, in Togo, for more than 18 months, from February 2019 to September 2020, that she had received Canadian income abroad from January 25, 2020, to February 10, 2020, and that, although the income for that period was slightly less than \$5,000, she could meet the \$5,000 income requirement by including a few invoices from September.

[7] The same day, Ms. Konlambigue provided the CRA with the following documents: her bank statements from the Royal Bank of Canada dated March 13 to December 14, 2020; a work order from La Maison de l'Entrepreneur dated January 25, 2020, to organize humanitarian training from January 25 to February 8, 2020, on behalf of Pro-CEMA; an invoice dated September 22, 2020, for 2,200,000 CFA francs, or 5,238 Canadian dollars, for services rendered to La Maison de l'Entrepreneur; and a list of the health measures in effect in Togo on March 20, 2020, taken from the government's official information website.

[8] On April 7, 2021, the first review officer spoke to Ms. Konlambigue on the telephone. Ms. Konlambigue stated that she had been back in Canada since September 27, 2020, and had not worked since then, but was looking for employment. On April 13, 2021, on the basis of information from Ms. Konlambigue, the first review officer concluded that Ms. Konlambigue was ineligible for the CRB because she had not earned at least \$5,000 in income in 2019 or in 2020 or in the 12 months preceding the day on which she had made her first application for the CRB, and because her reasons for not working were other than COVID-19.

[9] On May 3, 2021, Ms. Konlambigue challenged the decision of April 13, 2021. In a telephone call with the officer assigned to the second review of her application,

Ms. Konlambigue stated that she had been on assignment in Togo during the period in question, working for the European Commission. The officer asked Ms. Konlambigue when she received payment for the work, which was completed in February 2020, as the invoice she had sent was dated September 22, 2020. Ms. Konlambigue then stated that she had not yet received any payment, because work assignments had been suspended due to COVID-19, and that she would be paid only once she had completed the work.

[10] On July 21, 2021, the officer issued a decision that Ms. Konlambigue was ineligible for the CRB because she had not earned at least \$5,000 in employment income or net self-employment income in 2019 or in 2020 or in the 12 months preceding the day on which she had made her first application. The agent concluded that his conversation with Ms. Konlambigue confirmed that the \$5,238 reported as self-employment income on her 2020 return had not been received. This conclusion was also corroborated by the bank statements provided by Ms. Konlambigue, which showed that she had not deposited her fees.

[11] On August 17, 2021, the applicant filed an application for judicial review of the officer's decision declaring her to be ineligible for CRB.

II. Issues and standard of review

[12] This application for judicial review raises only one issue: was the CRA officer's decision reasonable? In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*], the Supreme Court of Canada established a presumption that reasonableness is the applicable standard whenever a court is reviewing the merits of an

administrative decision. The role of the court is to examine the administrative decision maker's rationale for the decision and the outcome to which it led to determine whether the decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

III. Analysis

[13] Ms. Konlambigue claims that the impugned decision is unreasonable because it fails to explain why the officer did not consider her to have had an income of \$5,000 in 2020, even though the \$5,238 reported as other income on her 2020 tax return was supported by an invoice showing that she had indeed performed work equivalent to that amount. Ms. Konlambigue submits that it was not necessary for her to have received payment for her services because, in her view, [TRANSLATION] "earned income" does not mean [TRANSLATION] "paid income". She further submits that that income had been earned because the work had been completed. Otherwise, the Act would produce an arbitrary situation where a taxpayer who had worked but had not been paid would be unable to claim the benefits to which the taxpayer would otherwise be entitled.

[14] I am of the opinion that the determinative issue in this case is whether it was reasonable for the officer not to consider the \$5,238 reported by Ms. Konlambigue to be income within the meaning of paragraphs 3(1)(d) and (e) of the Act, on the basis of the information she provided in support of her application.

[15] Ms. Konlambigue stated before me that she left Canada for Togo in February 2019 and that she returned to Canada in September 2020. Ms. Konlambigue admits that, although she worked on various assignments while residing in Togo, she never issued an invoice for her services and did not report the income in her Canadian tax return for 2019. In fact, her 2019 tax return shows her income as being \$1. She argued before me that she was not required to report her 2019 income to the CRA because it had been earned outside Canada, and it was therefore her choice whether to report the amounts. However, Ms. Konlambigue did not identify any provision of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA], that would support her argument.

[16] In any event, Ms. Konlambigue never issued an invoice for her work in 2019, and it remains unclear whether she was in fact paid, in either Canada or Togo, for the work she had carried out during that period.

[17] In January 2020, while she was still living in Togo, Ms. Konlambigue was apparently hired by a company called La Maison de l'Entrepreneur to manage the logistics for a training course on behalf of Pro-CEMA, a program made possible through cooperation between Togo and the European Union. Ms. Konlambigue alleges that she did not sign a contract for this work, and she refers the Court to the work order that was submitted to the CRA. I note, however, that this work order contains no information as to the amount that was agreed on as payment for Ms. Konlambigue's services. That said, I have no reason to believe that the services in question were not provided by Ms. Konlambigue, who was in fact supposed to continue her work on subsequent assignments before the pandemic struck and the work was suspended.

[18] Ms. Konlambigue also stated before me that the work for which she had been hired resumed in September 2020. However, she returned to Canada at exactly that time and therefore did not take part in continuing the work. Having returned to Canada, Ms. Konlambigue applied for the CRB on October 20, 2020. I have no doubt that she was able to understand the eligibility criteria because, as she indicated before me, she had studied taxation and finance. Among the supporting documents sent to the CRA in support of this application was the invoice for 2,200,000 CFA francs. As I noted earlier, this amount does not appear on the work order, but it happens to be equivalent to 5,238 Canadian dollars.

[19] Ms. Konlambigue stated at the hearing that this invoice was never paid, and there is no evidence in the record that she took any concrete action, either with La Maison de l'Entrepreneur or with anyone else, to obtain payment. Rather, the officer's notes and Ms. Konlambigue's testimony at the hearing seem to indicate that she would not be paid until the entire series of assignments had been completed. Nevertheless, Ms. Konlambigue was unable to confirm before me whether the assignments had been completed and, if so, to explain why she had not yet been paid. Again, Ms. Konlambigue failed to provide any evidence to suggest that she had attempted to obtain the alleged amount, more than two years after she finished providing services and more than two years after the date of issue of the invoice supporting her claim.

[20] For the 2020 tax year, Ms. Konlambigue reported a total income of \$21,238, consisting essentially of the unpaid amount of \$5,238 and the \$16,000 in Canada Emergency Response Benefit and CRB payments she had received. I asked Ms. Konlambigue why she reported the income earned in Togo in 2020 in her Canadian income tax return when she had decided not to

report the income she claimed to have earned in Togo in 2019. She acknowledged that she had chosen to do this solely to meet the eligibility criteria set out in the Act.

[21] Moreover, Ms. Konlambigue alleges that the invoice she issued constitutes proof of earnings and that “income” within the meaning of paragraphs 3(1)(d) and (e) is income earned but not necessarily received. Since she earned income in 2020 from completing work assignments, she met the minimum income requirements required by the Act to be eligible for the CRB. She also points out that she did report the \$5,238 in her 2020 income tax return.

[22] To begin with, reporting taxable income on a tax return does not necessarily establish the amount of income received for the purpose of meeting specific requirements of the various laws that deal with personal income tax. Since Ms. Konlambigue’s invoice was never paid and she gave no indication of the likelihood that it would be paid, there is no doubt that the amount reported in 2020 should normally be adjusted to resolve the discrepancy between her reported and received income for that year.

[23] However, “income” for the purposes of the ITA is not necessarily the same as “income” under the Act. The Act does not provide a general definition of “income”; it simply states in paragraphs 3(1)(d) and (e) that it requires income of at least \$5,000 for the periods in question. However, subsection 8(3) of the Act, to clarify the meaning of “income” for the purposes of subsection 8(2), expressly states that the meaning is that given under Part I of the ITA. The respondent in the case, the Attorney General of Canada [AGC], submits that, if Parliament made this clarification in subsection 8(3) of the Act, it must be inferred that it did not intend the ITA

definition of “income” to apply throughout the Act. He argues that Parliament’s choice, combined with the lack of precision as to the meaning of the word “income” in paragraphs 3(1)(d) and (e), supports an interpretation of this word according to its common and ordinary meaning, as recorded in dictionaries. In this respect, the *Oxford Canadian Dictionary* definition indicates that income must in fact have been paid to the person carrying out the specified work, since it is “the money or other assets received, esp. periodically or in a year, from one’s business, work, investments, etc.” (Katherine Barber, ed, *The Canadian Oxford Dictionary* (Don Mills, ON: Oxford University Press, 2005) sub verbo “income”).

[24] As Justice Stratas stated in *Alexander College Corp v Canada*, 2016 FCA 269 at para 11, the appropriate methodology for statutory interpretation is well-known; courts must read the words of an Act “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26).

[25] It should be noted that the meaning of “income” in the context of the Act asserted by Ms. Konlambigue is not supported by any source of authority and is ultimately the product of her own interpretation, which was never submitted to the officer and was not explicitly articulated until the hearing. For this reason, and taking into account the teachings of the Federal Court of Appeal as well as the points of interpretation raised by the AGC, I am not persuaded that it was unreasonable for the officer to conclude that, since Ms. Konlambigue had never been paid for her services and that payment was not in fact due until the end of the assignments, well after her

return to Canada, she had not earned the alleged income. Therefore, I conclude that it was not unreasonable for the officer, in light of the information provided by Ms. Konlambigue in support of her application, to determine that she was not eligible for the CRB because she had not earned at least \$5,000 in 2020. Accordingly, the application for judicial review is dismissed.

IV. Conclusion

[26] The application for review is dismissed, with costs in the amount of \$500 payable to the respondent.

JUDGMENT in T-1291-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. Costs in the amount of \$500 are awarded in favour of the Attorney General of Canada.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1291-21

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OF CANADA

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(on her own behalf)

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