

Federal Court



Cour fédérale

Date: 20221220

Docket: T-592-22

Citation: 2022 FC 1773

Ottawa, Ontario, December 20, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

PAUL DUGGAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Paul Duggan brings this application for judicial review of a decision made by an Officer of the Canada Revenue Agency [CRA]. The Officer found he was not eligible to receive the Canada Recovery Benefit [CRB].

II. Background

[2] The Applicant owns and operates Summit Packaging, a sole proprietorship that supplies glass bottles to the wine, liquor and beer industry. He works as a selling broker on behalf of Encore Glass, a company located in the United States. In this role, he is paid a monthly commission based on completed sales. Commission income is transferred from Encore Glass via bank wire to Summit Packaging's Canadian bank account.

[3] Due to the disruptions caused to his business by the COVID-19 pandemic, the Applicant applied for and received the CRB for seven two-week periods between September 27, 2020 and January 2, 2021.

[4] The CRB was established by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, [*CRB Act*] to provide income support to eligible employed and self-employed individuals who were directly affected by the COVID-19 pandemic. The benefit was available for any two-week period beginning on September 27, 2020 and ending on October 23, 2021 (*CRB Act*, ss 2, 3 and 4). The CRB is administered by CRA.

[5] In December 2020, CRA undertook a validation review of the Applicant's eligibility for the CRB. He provided CRA with documents under the cover of a letter dated February 3, 2021, which included a letter from Encore Glass, bank statements for Summit Packaging and GST/HST NETFILE statements that had been filed in 2019. Payments from Encore Glass are identified on those bank statements, and he advised that he had received a total commission

income for 2019 of \$11,705.32. By letter dated April 23, 2021, the Applicant provided CRA with GST/HST NETFILE statements that had been filed in 2020 and early 2021.

[6] On May 10, 2021, the Applicant was advised he was not eligible to receive the CRB benefit because he “did not earn at least \$5,000 (before taxes) of employment or net self employment income in 2019, 2020, or in the 12 months before the date of [his] first application” [First Decision].

[7] On May 17, 2021, the Applicant requested a review of the First Decision. He claimed that the documentation he had submitted established an income of over \$12,000 in 2019 and that he had been informed by a CRA employee by phone on April 23, 2021 that he met the income requirement. By letter dated February 2, 2022, the Applicant was again advised he was not eligible for CRB [Second Decision].

III. Decision under review: the second review

[8] The relevant portions of the Second Decision state as follows:

We are writing to advise you of our decision regarding your request dated May 18 2021, for a second review of your Canada Recovery Benefit (CRB) application.

We have completed your request and have carefully considered all the information to support your CRB eligibility.

Based on our review, you are not eligible.

You did not meet the following criteria:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

As you did not meet the eligibility criteria to qualify for CRB, any future CRB applications will be denied, unless you can provide proof that you are able to satisfy the eligibility criteria.

If you received a CRB payment that you were not eligible for, you will be required to repay the amount.

[9] Steps taken in the Respondent's review process, as well as the observations and conclusions of the CRA employees, who reviewed the Applicant's eligibility, are summarized in entries made to an electronic notepad and in a document entitled "Second Review Report." These documents form part of the reasons for the CRA Officer's decision (*Kleiman v Canada (Attorney General)* 2022 FC 762 at para 9).

[10] The notepad entries indicate the Applicant's second review was undertaken eight months after the First Decision, in January 2022. According to the Officer's notes, the Applicant was contacted by phone on January 12, 2022 to discuss his circumstances. The Officer promised to call the Applicant back and the notes indicate the Officer did so later that same day to "ask some more questions and [request] more docs." The notes indicate the Applicant did not answer. An entry dated January 31 states the Officer was "unable to contact" the Applicant after the initial January 12 phone conversation, a denial letter was therefore to be sent and the case closed.

[11] The Second Review Report (Certified Tribunal Record [CTR] at page 65) includes space for the Officer to explain the decision reached regarding each criteria the taxpayer did not meet. The Officer wrote "unable to contact [the Applicant] to ask more questions and get more docs to show 5000\$ income requirement."

IV. Relevant Legislation

[12] For ease of reference, extracts from the *CRB Act* are reproduced below:

Canada Recovery Benefits Act, SC 2020, c 12, s 2

Loi sur les prestations canadiennes de relance économique, LC 2020, ch 12, art 2

Eligibility

Admissibilité

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

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) 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:

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)** employment,
- (ii)** self-employment,

- (i)** un emploi,
- (ii)** un travail qu'elle exécute pour son compte,

[...]

[...]

Income from self-employment

Revenu — travail à son compte

(2) For the purpose of paragraphs (1)(d) to (f), income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue.

Application

4 (1) A person may, in the form and manner established by the Minister, apply 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.

Obligation to provide information

6 An applicant must provide the Minister with any information that the Minister may require in respect of the application.

Payment of benefit

7 The Minister must pay a Canada recovery benefit to a person who makes an application under section 4 and who is eligible for the benefit.

(2) Le revenu visé aux alinéas (1)d) à f) de la personne qui exécute un travail pour son compte est son revenu moins les dépenses engagées pour le gagner.

Demande

4 (1) Toute personne peut, selon les modalités — notamment de forme — fixées par le ministre, demander une 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.

Obligation de fournir des renseignements

6 Le demandeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

Versement de la prestation

7 Le ministre verse la prestation canadienne de relance économique à la personne qui présente une demande en vertu de l'article 4 et qui y est admissible.

V. Issues and Standard of Review

[13] The only issue that arises is whether the Second Decision was reasonable.

[14] The standard of review applicable to the merits of the Second Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). When applying that standard “the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

VI. Positions of the parties

A. *Applicant’s position*

[15] The Applicant represents himself on this application. He argues that the CRB eligibility criteria were unclear and that he has done nothing incorrect or illegal in applying for the benefit because he was misled into believing he was eligible. He submits that his CRB application was not reviewed in a fair and reasonable fashion, that the decision is unreasonable and should be overturned, and that he should not be obligated to repay any funds received.

B. *Respondent’s position*

[16] The Respondent submits that the decision is reasonable, and that the Applicant’s self-employment income for the relevant periods is less than the \$5,000 required to satisfy the CRB income requirement. The Respondent submits the Applicant’s expenses in 2019 and 2020 exceed the gross commission income the Applicant earned and the Officer’s decision was justified and intelligible.

VII. Analysis

[17] At the hearing of this matter, the Applicant did not take issue with the Respondent's position that he did not meet the net income threshold as required by the *CRB Act*. Instead, the Applicant clarified in oral submissions that his concerns related to the Respondent's process and his view that his file had been "poorly" handled. He submitted that (1) the Respondent failed to communicate that the \$5,000 income threshold was "net" self-employment income, or income earned after expenses; (2) that even after having received his application and request for a second review, the Respondent did not clearly communicate the requirements; and (3) contrary to notepad entries, the Respondent did not attempt to contact him for additional information after January 12, 2022 prior to rendering the second review decision, nor was his call to the Respondent returned.

[18] While the reasons given to support the non-eligibility decision contained in the Officer's notes and the decision letter are not helpful in understanding how the Officer arrived at the conclusion that the Applicant failed to satisfy the net income threshold, they must be considered within the context of the full record. Having reviewed the CTR, in particular the Applicant's income and deductions summaries (CTR pages 9-11) and the Applicant's GST/HST NETFILE confirmations (CTR pages 30-40), it is evident that the Applicant did not meet the net income threshold for receipt of the CRB.

[19] Mr. Duggan's concerns with the transparency of the review process and the communication of qualifying criteria as they applied to his circumstances are understood, but

they do not undermine the reasonableness of the decision. Even if I were convinced otherwise, returning the matter for redetermination would be of no consequence. The Respondent is bound by the statute to ensure the *CRB Act* requirements are met (*Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at paras 22-23) and the Applicant is undisputedly ineligible for the CRB.

[20] Finally, I want to briefly address the Applicant's submission that in applying for the CRB and seeking a review, he did nothing incorrect or illegal. I agree. There is nothing in the record to suggest the Applicant acted in anything other than good faith and I note the Respondent has not, in any way, suggested otherwise.

VIII. Conclusion

[21] The application for judicial review is denied.

[22] Counsel for the Respondent confirmed in the course of oral submissions that costs were not being sought and none will be awarded.

JUDGMENT IN T-592-22

THIS COURT'S JUDGMENT is that:

1. The Application is denied.
2. No order for costs.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-592-22

STYLE OF CAUSE: PAUL DUGGAN v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 14, 2022

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 20, 2022

APPEARANCES:

Paul Duggan

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Daniel G. Segal

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Edmonton, Alberta

FOR THE RESPONDENT