



Date: 20230127

Docket: T-1845-21

Citation: 2023 FC 131

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 27, 2023

PRESENT: Mr. Justice Régimbald

BETWEEN:

PHILIPPE PAYETTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Philippe Payette, has filed an application for judicial review of a decision dated November 15, 2021, in which a benefits compliance officer of the Canada Revenue Agency [the CRA] found that the applicant was not eligible for the Canada Recovery Benefit [the CRB].

[2] Mr. Payette argues that since December 1, 2012, he has been suffering from a severe and permanent disability that prevents him from working. He claims that the CRA's allegations that he does not meet the criteria of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [the CRBA] are false because he met the criteria by earning a net income of more than \$5,000 for 2020 and experiencing a reduction of more than 50% in his income.

[3] On judicial review, the role of the Court is not to decide whether Mr. Payette is eligible for the CRB or not. The role of the Court is simply to determine, in light of the evidence and arguments before the officer, whether the decision is reasonable.

[4] For the reasons that follow, and in accordance with the Court's role, I find that the officer's decision is reasonable.

II. Background

[5] The CRBA came into effect on October 2, 2020, and established the CRB. The CRB was made available to provide income support for any two-week period beginning on September 27, 2020, and ending on October 23, 2021, to eligible employed and self-employed individuals who were directly affected by the COVID-19 pandemic. The Minister responsible for the CRB is the Minister of Employment and Social Development (CRBA, ss 2, 3 and 4). However, the CRB is administered by the CRA.

[6] To be eligible, a taxpayer must meet the cumulative criteria set out in section 3 of the CRBA, including the following:

- The taxpayer must demonstrate that his or her income was at least \$5,000 in 2019 or 2020 or in the 12 months before the date he or she applied.
- For each two-week period for which benefits are claimed, the taxpayer must not have been employed or self-employed, or must have had a reduction of at least 50% of his or her average weekly employment income or self-employment income in relation to the previous year or in the 12-month period preceding the day on which he or she makes the application, for reasons related to COVID-19.
- For each two-week period for which benefits are claimed, the taxpayer must also demonstrate that he or she looked for work or self-employment in order to make up for the shortfall.
- The taxpayer must demonstrate that he or she was present in Canada and able to work during the two-week period for which benefits are claimed.

[7] The burden of proof as to eligibility for the CRB falls to the taxpayer. Under section 6 of the CRBA, the applicant must provide any information that the officer may require in respect of his application.

A. *CRA's first decision*

[8] Mr. Payette applied for the CRB for periods 1 to 26 between September 27, 2020, and September 25, 2021. His CRB applications for periods 1 to 14, between September 27, 2020, and April 10, 2021, were accepted without review by a benefit validation officer, and the applicant received payments for those periods.

[9] According to the notes to file in the CRA's internal system, the applicant subsequently telephoned on April 27, 2021, to apply for the CRB for the following periods. During this

conversation, the officer assigned to the file noted that he had made several applications for the Canada Emergency Response Benefit and the CRB but had not filed any income tax returns since 2014.

[10] On May 28, 2021, the applicant called the CRA for assistance in accessing his file online. During this conversation, the officer on the telephone invited Mr. Payette to file his tax returns for previous years. The applicant also told the officer that he had faxed his proof of income and amended his T4 from January to March 2020 to add \$6,650 to his income tax return.

[11] On June 4, 2021, the applicant called again to follow up on his CRB application. The officer told him that the CRA had received his T4 on May 20, 2022. During this call, the applicant stated that he had worked from January 1 to March 1, 2020, as a self-employed worker, as a manager in the field of robotic titanium. He stated that he was paid in cash in the amount of \$6,650 and that, for this reason, he was unable to send banking documentation proving that he had received this money.

[12] During this conversation, the applicant added that his 2020 T4 was, in his view, sufficient proof that he had earned this income. He also explained that he had stopped working because there was no more work at that time (referring to the pandemic) and he was unable to work because of his disability. He also stated that he was not looking for work and had not filed income tax returns from 2014 to 2020.

[13] In support of his CRB applications, on or around June 7, 2021, the applicant submitted:

- an email dated May 19, 2021, which detailed the amounts received for 2021; and
- a T4A slip (Statement of Pension, Retirement, Annuity, and Other Income) for the 2020 taxation year, amended by hand.

[14] On or about June 16, 2021, also in support of his CRB applications, the applicant submitted:

- a fax cover sheet that detailed the amounts received in 2021;
- the 2020 T4 and the amount of a fraud totalling \$986,271;
- a medical document dated August 15, 2012;
- pages 2 and 3 of the statement of revenue and expenditure for the period of March 1, 2009, to September 30, 2010, relating to condos located in Montréal;
- A document entitled [TRANSLATION] “P-32 liquidation Payette SR”.

[15] On June 23, 2021, a CRA officer contacted the applicant by telephone. On this occasion, the applicant stated that he:

- had suffered a heart attack and had lost his memory and a lot of ability;
- had been receiving disability benefits since 2013;
- had been defrauded by his family;
- had received \$6,650 in cash in 2020 and had no evidence to prove it; and
- claimed that he had amended the Government of Canada T4A slip by hand to add this amount.

[16] To conduct the first review, the officer considered that the applicant had not submitted any data for 2019 (only disability benefits) or 2020 (only disability benefits and emergency benefits). He also considered the documents that had been submitted by the applicant—those submitted on June 7 and 16, in addition to the amended T4 received on May 20, 2022. He also considered the fact that the applicant had not filed income tax returns since 2014.

[17] On June 23, 2021, the officer made the first decision regarding the applicant's eligibility for the CRB, in which he found that the applicant was not eligible for the CRB because the applicant:

- had not earned at least \$5,000 in employment or net self-employment income in 2019 or 2020 or in the 12 months prior to the date of his first application. The officer specified in his observation notes that although the applicant had stated that he had received \$6,650 in 2020, he had also specified that he had received this amount in cash, and as a result, there was no evidence that this amount had been paid and deposited. In addition, the applicant had not filed an income tax return since 2013, and the only slips are his disability benefit that he has received since 2013;
- had not stopped working for reasons related to COVID-19; and
- did not have a 50% reduction in his average weekly income compared with the previous year for reasons related to COVID-19.

[18] The applicant received the denial letter on June 28, 2021.

B. *CRA's second decision*

[19] On July 4, 2021, the applicant sent the following documents to the CRA to prove that he had earned the required \$5,000:

- an explanatory letter intended for the CRA officer;
- pages 3, 4 and 5 of the statement of revenue and expenditure for the period of March 1, 2009, to September 30, 2010, regarding condos located in Montréal (property of Pour l'ère du Titane Inc.);
- the first page of the decision of June 28, 2021;
- articles 1458, 1474 and 1476 of the *Civil Code of Québec*; and
- the applicant's birth certificate.

[20] Later, on July 8, 2021, the applicant sent the CRA six invoices from Titanium Era Inc., with the subject line [TRANSLATION] "fraud calculation-registry office" for a total of \$6,650.

[21] On July 13, 2021, Mr. Payette took advantage of his right to request a second review of the decision dated June 28, 2021.

[22] That same day, the applicant called the CRA. During this call, a CRA officer assigned to his file for his second review (the second officer) informed the applicant that the CRA had received his new documents for his second review. The second officer also told him that he should submit an explanatory letter and supporting documents for his second review.

[23] On August 10, 2021, the applicant called the CRA again. According to the observations noted in the file, the second officer told him that it would be preferable to send his bank statements to prove the deposit of \$6,650 in 2020. The applicant then indicated that he had sent

the T4E to which he had made corrections. The officer on the telephone told him that the CRA needed to receive the correct T4E because the one he had sent only showed the emergency benefits received.

[24] On August 13, 2021, the applicant sent a T4 “Statement of Remuneration Paid” slip for the 2020 taxation year, filled out by hand.

[25] On August 24, 2021, a supervisor called the applicant back. The supervisor explained to the applicant that, according to the information on file, no income tax return had been filed since 2013, that he received benefits from the Quebec pension plan (RRQ) and that no eligible slips had been added to the file. The supervisor took the time to ask the applicant about his income, and the applicant had informed him that he had been paid in cash and that he could not show that he had received the amounts mentioned.

[26] On August 25, 2021, the applicant sent a new T4 “Statement of Remuneration Paid” slip for the 2020 taxation year, this time filled out by computer.

[27] On October 8, 2021, a supervisor called the applicant back to advise him that the CRA had received his application and additional documents. The supervisor also informed the applicant that he also had to file his 2019 and 2020 income tax returns.

[28] On November 8, 2021, the second officer contacted the applicant by telephone for clarifications and obtained the following information:

- a) In June 2017, Mr. Payette reportedly found \$7,605 in U.S. currency in a cabinet located in his company's former plant (Titanium Era Inc.), which has now been inactive for a few years.
- b) Titanium Era Inc. was the victim of fraud.
- c) Starting in January 2020, the applicant prepared a case to defend the interests of Titanium Era Inc. for the purpose of representing it in court to recover money.
- d) Titanium Era Inc. has gone bankrupt and is currently inactive.
- e) Titanium Era Inc. paid him \$6,650 in cash for his services as a self-employed worker.
- f) There is no evidence that this money was deposited in his personal account.
- g) The company does not have a business account.

[29] On November 15, 2021, following an in-depth review of the applicant's file, the second officer made his decision that the applicant was ineligible for the CRB for the same reasons as in the first decision.

[30] The second officer found that it was impossible for him to verify that the applicant had in fact earned \$5,000 of income as a self-employed worker because he had no information regarding the origin of the amount alleged to be self-employment income or confirmation that the applicant had actually received such an amount. In addition, the second officer added in his notes to file that the applicant's employer was his former company, which is currently inactive.

[31] The second officer also stated that the applicant also could not claim a reduction in income of at least 50% since he had no eligible income before January 2020. Indeed, the second

officer stated that the last of the applicant's income tax statements dates back to 2013 and that he had not worked since his heart attack. In addition, the second officer stated that there was nothing preventing the applicant from doing research and working on his business case during the pandemic.

[32] Still disagreeing with the decision, the applicant filed his application for judicial review on December 3, 2021.

III. Issue and standard of review

[33] This application for judicial review raises a single issue:

1. Is the decision dated November 15, 2021, by the second CRA officer concluding that Mr. Payette is ineligible to receive the CRB unreasonable?

[34] The appropriate standard of review for the decision of a CRA officer is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 16–17 [*Vavilov*]; *Maltais v Canada (Attorney General)*, 2022 FC 817 at paragraphs 18–19 [*Maltais*]). The role of our 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 paragraph 85). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at paragraph 100 [see also *Aryan v Canada (Attorney General)*, 2022 FC 139 at paragraph 16 [*Aryan*]; *Hayat v Canada (Attorney General)*,

2022 FC 131 at paragraph 14; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at paragraph 29 [*Kleiman*]).

IV. Analysis

A. *Reasonableness of decision*

[35] The onus is on Mr. Payette to demonstrate to the CRA that, on a balance of probabilities, he meets the criteria set out in the CRBA to receive a benefit (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at paragraph 55 [*Walker*]). As Justice Diner recalled in *Ntuer v Canada (Attorney General)*, 2022 FC 1596 [*Ntuer*] at paragraph 24, “[t]he eligibility criteria under section 3 of the Act are cumulative, that is, an applicant must meet all the criteria to be eligible to receive benefits under the CRB and/or CRSB.”

[36] As discussed, the onus is also on Mr. Payette, as part of his application for judicial review, to show that the second officer’s decision is unreasonable.

[37] It is important to note that in the analysis of the reasonableness of the second officer’s decision, the Court may consider the report on the CRA’s second review and this officer’s internal notes to file. These are part of the officer’s reasons, as are the notes from the Global Case Management System used by immigration officers (*Aryan* at paragraph 22; *Kleiman* at paragraph 9; *Vavilov* at paragraphs 94–98).

[38] In reading the reasons explaining the second officer's decision, it is clear that he reviewed all the information provided by Mr. Payette during his initial application, as well as in his numerous telephone interactions with the CRA, and considered the documents filed by the applicant. The second officer also looked at the various CRA internal records that were relevant to the analysis of this question of fact.

[39] The second officer relied on all the evidence available to him to conclude that the applicant did not meet the criteria of the CRB.

[40] After analyzing these documents and Mr. Payette's answers to his questions, the second officer found that he could not validate that the applicant had actually earned \$5,000 in net self-employment income in 2020 or for another relevant period for the purposes of the CRB.

[41] In fact, although the applicant claims to have earned self-employment income of \$6,650 in 2020, the second officer was not able to determine the source of this money. No copies of cheques or bank statements that could be used to establish that this payment had in fact been made or cashed were added to the file.

[42] In addition, the applicant has not filed an income tax return since 2013. The second officer was therefore unable to verify whether the applicant had in fact lost 50% of his income. Mr. Payette was also unable to show that he was no longer working due to reasons related to COVID-19.

[43] In my view, the record shows that the second officer considered all the documents and information provided by Mr. Payette, as well as his explanations. In fact, as the respondent submits, the amount of information provided by the applicant has cast doubt on the income that he earned.

[44] I have considered the applicant's submissions against the legislative framework of the CRBA and the parties' evidence on the record and find that the applicant has identified no significant errors or omissions in the second decision warranting the Court's intervention.

[45] The reasons given by the second officer to deny Mr. Payette's CRB application are intelligible and justified in light of the evidence and the record before him. The second officer reviewed the evidence on record and talked with the applicant to give him an opportunity to justify the weaknesses of his application. He was not able to send the information needed to discharge his burden of proof.

B. *No proof of \$5,000 in eligible income*

[46] Mr. Payette was unable to show that he had earned employment income or net self-employment income of more than \$5,000 in 2019, 2020 or in the 12 months preceding the date of his first application.

[47] The applicant claims that he qualified for this requirement by earning \$6,650 in 2020. However, in his second review report, the second officer raised doubts as to the origin of this amount, which the applicant claims to have received as net self-employment income.

[48] The applicant sent a T4 completed by hand with this amount and another T4 done by computer with the same amount. However, the two T4s do not match and were completed by the applicant himself. In addition, the applicant did not submit any evidence that this amount was deposited in his personal bank account.

[49] In one of his letters, the applicant submits that Titanium Era Inc. resumed its operations on January 1, 2020, which explains why Titanium Era Inc. paid him \$6,650 for work done for the company between January 1 and March 13, 2020. However, the applicant did not provide any information or evidence to demonstrate this alleged fact. In fact, the applicant even contradicted himself, since he claimed during his telephone conversation with the second officer on November 8, 2021, that the company had gone bankrupt and was now inactive.

[50] The written observations in the second officer's report show that, given this contradiction, he had doubts about the applicant's credibility in relation to this amount coming from his company. This finding is reasonable in light of the facts and the evidence available to the second officer. According to the CRA's internal notes to file for the years 2013 to 2020, the applicant also only received disability benefits and no type of employment income or other income, such as a dividend from his company, which according to him was active.

[51] Thus, the only amount on which the CRA could rely to verify that the applicant met this criterion is the \$6,650 disclosed by Mr. Payette. However, as discussed, there is no way of determining the source of this amount and whether the applicant did in fact receive it.

[52] Canada's tax system is a self-reporting one. It proceeds from the principle that the taxpayer is able to provide all the relevant documents in support of his or her income tax return (*Walker* at paragraph 37). In this case, the applicant had not completed any returns since 2013, which is detrimental to the applicant in this case.

[53] Although the applicant submitted that his T4 should be sufficient to show that he had actually earned \$6,650 in 2020, this is not the case. Thus, as specified in *Ntuer*:

[27] ... a Notice of Assessment is insufficient to establish that an applicant earned a net income of at least \$5,000 (*Aryan* at paragraph. 35). The Officer was required to assess not only the Notices of Assessment submitted by Mr. Ntuer but also the other evidence on file, including invoices and client payment receipts submitted by Mr. Ntuer, as well as the information available through the CRA's internal records, to verify that Mr. Ntuer had indeed earned a net income of at least \$5,000.

[Emphasis added.]

[54] The second officer's finding that the evidence presented by Mr. Payette was neither sufficient nor sufficiently credible is therefore reasonable. The second officer's reasoning regarding this eligibility requirement is consistent, based on the evidence before him and justified in terms of the CRBA. The internal logic of his reasons is satisfactory.

[55] As a result, the applicant did not discharge his burden of proving that he met the criterion of having earned a minimum of \$5,000 in net self-employment income in 2020 or for any other relevant period for the purposes of the CRB.

C. *Work stoppage for reasons related to COVID-19*

[56] Like the first reviewing officer, the second officer found that the applicant did not work for reasons other than COVID-19.

[57] In fact, in his report, the second officer stated that the applicant could have continued researching and working on his case to defend the interests of Titanium Era Inc. during the pandemic and, therefore, did not stop working for reasons related to COVID-19. In his reasons, he also raised doubts as to the plausibility of the company hiring the applicant to represent it in court.

[58] In addition, during a conversation with a CRA officer on June 4, 2021, the applicant himself admitted that he was unable to work due to his disability. The second officer's finding that the applicant had not worked since his heart attack and that he therefore had not stopped working due to COVID-19 is reasonable in light of the evidence before him.

D. *Income reduced by 50% or more due to COVID-19*

[59] Even if the applicant had stopped working for reasons related to COVID-19, his application would still have been denied because he did not meet the criterion of having his income reduced by 50% due to COVID-19.

[60] In fact, the second officer found that Mr. Payette was not able to demonstrate that his average weekly earnings had decreased by at least 50% relative to the previous year for reasons related to COVID-19, since he had not worked since his heart attack in 2012. Mr. Payette

contends that his income went from \$650 per week to \$0, a decrease of 100%. However, he has not filed any income tax returns since 2013 and only receives disability benefits.

[61] Therefore, it was impossible for the second officer to measure the loss that the applicant had suffered for the periods when he applied for the CRB, since he had no evidence on which to rely to verify that his income was lower than 50% of his income for a relevant earlier period.

[62] Due to this lack of evidence, it was therefore reasonable for the second officer to find that Mr. Payette had not been able to discharge his burden of proving that his income had actually been reduced by 50% or more due to COVID-19. His reasons are intelligible, justified in light of the evidence and the case before him and illustrate a satisfactory internal logic.

V. Conclusion

[63] After reviewing Mr. Payette's supporting documents and after considering the arguments of the parties, I find, for all the foregoing reasons, that the second officer's decision is reasonable. It meets the requirements of being internally coherent as well as being transparent, justified and intelligible.

[64] The application for judicial review is dismissed.

[65] No costs are claimed by the respondent.

[66] Finally, I note that at the request of the respondent, in accordance with section 303 of the *Federal Courts Rules*, SOR/98-106, the style of cause is amended so that the Attorney General of Canada is designated as respondent.

JUDGMENT in T-1845-21

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No costs are claimed by the respondent, and no costs are awarded.

“Guy Régimbald”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1845-21

STYLE OF CAUSE: PHILIPPE PAYETTE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 16, 2023

JUDGMENT AND REASONS: RÉGIMBALD, J.

DATED: JANUARY 27, 2023

APPEARANCES:

Philippe Payette

FOR THE APPLICANT
(SELF-REPRESENTED)

Claude Lamoureux

FOR THE RESPONDENT

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FOR THE RESPONDENT