

Federal Court



Cour fédérale

Date: 20230314

Docket: T-1017-22

Citation: 2023 FC 349

Toronto, Ontario, March 14, 2023

PRESENT: Madam Justice Go

BETWEEN:

SOHAIL M YOUSOF

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Sohail Yousof [Applicant] applied for the Canada Recovery Benefit [CRB] for the 27 two-week period from September 27, 2020 to October 9, 2021 through two applications. The Canada Revenue Agency [CRA] reviewed the Applicant's applications and by letter dated December 10, 2021, informed him that he was not eligible for the CRB as he had not earned 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 [Original Decision].

[2] The Applicant appealed the Original Decision and a different CRA officer [Officer] conducted a second level review of the Applicant's CRB application. The Officer confirmed the Original Decision in a letter dated April 14, 2022, finding that the Applicant is not eligible for the CRB for the same reason [Decision].

[3] The Applicant seeks judicial review of the Decision. For the reasons set out below, I grant the Applicant's judicial review application.

II. Background

[4] Between 2012 and around May 2019, the Applicant worked part-time at an employment agency called Labour Ready. Throughout this time, the Applicant also operated his own business, eSpydro Webs Inc. [eSpydro], through which he created and updated websites for his mostly small business clients.

[5] The Applicant first applied for the CRB for the 25 two-week period from September 27, 2020 to September 11, 2021. The Applicant's second CRB application was for the two two-week period from September 12, 2021 to October 9, 2021.

[6] The Applicant's first CRB application was accepted and paid out by the CRA, totalling approximately \$23,000. After the payouts, the CRA began its validation process to review both CRB applications.

[7] During the review of the Applicant's CRB applications, the Applicant submitted copies of invoices, calculations and information from his income tax return [Initial Submissions].

[8] On December 7, 2021, a CRA agent contacted the Applicant via telephone and requested documentation to support that he deposited the money he received from the submitted invoices. The Applicant informed the agent that he did not have a bank account and could not deposit the funds.

[9] The CRA agent determined that the Applicant is not eligible to receive the CRB based on the available information and sent the Applicant the Original Decision on December 10, 2021.

[10] The Applicant requested a second level review on December 30, 2021 and submitted further documents including written representations, copies of invoices, calculations, and information from his income tax return [Subsequent Submissions].

[11] The Applicant included his 2019 income tax return in the Subsequent Submissions, which states that he earned \$6,065 of Other income. The Applicant asserts that this amount is for the work he performed as an independent contractor for eSpydro.

[12] The invoices submitted as part of the Subsequent Submissions were also pertaining to the work the Applicant performed for eSpydro between February 2019 and July 2020, and added up to an amount of \$5,073.75.

[13] The Applicant's Subsequent Submissions also included a police incident report dated August 23, 2020 [police report], in which the Applicant reported a theft that took place on August 21, 2020 at Union Station in Toronto. The Applicant reported that two of his personal bags were stolen. The police report indicates that these bags contained "other important articles including and related to my personal and business usage, such as tax forms filled with tax information, bank papers, etc."

[14] During a phone call with the Officer on April 8, 2022, the Applicant explained again that he did not have a bank account and that he cashed out the cheques he received.

[15] The Officer reviewed the material on file and prepared a report detailing their case analysis for the second review [Second Review Report].

[16] The Officer confirmed the Original Decision on April 14, 2022, finding that the Applicant is not eligible to receive the CRB as he had not earned 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.

[17] The explanation for the Decision contained in the Second Review Report read as follows:

Taxpayer submitted invoices for contract work in 2019 and 2020 totalling 5073.75\$; however advised he was paid cash and was unable to provide cheques/bank statements to support income was received; he explained during that time he did not have a bank account and so he was paid mainly cash and through western union; he explained he has no further docs to provide to confirm his income aside from the invoice

[18] The Second Review Report shows that the Applicant's repayment debt to the CRA for the CRB payouts he received is \$22,500.

III. Analysis

[19] The determinative issue in this case is whether the Decision was reasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16.

[20] At the hearing, the Respondent conceded that the Decision was unreasonable. The Court welcomes this concession.

[21] I need not address the issues of procedural fairness raised by the Applicant.

[22] The eligibility criteria at issue for the CRB are enumerated in the *Canada Recovery Benefits Act*, Part 1 of the *COVID-19 Response Measures Act*, SC 2020, c 12, s. 2.[*CRB Act*], the relevant portions of which are found in Appendix A.

[23] Section 6 of the *CRB Act* empowers the CRA to request information from an applicant and obliges the applicant to provide the information as requested to prove their eligibility. However, as the Applicant submits, the CRA guidelines entitled “Confirming CERB, CRB, CRSB or CRCB Eligibility” [CRA Guidelines] contain a list of acceptable proof of income, which includes, among other things, invoices for services rendered, contracts, and “any other documentation that will substantiate \$5,000.00 in self employment income.”

[24] As this Court explained in *Santaguida v Canada (Attorney General)*, 2022 FC 523

[*Santaguida*]:

[26] The Applicant was required, pursuant to section 6 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, to provide any information required by the CRA in respect of the application.

[27] In determining if an applicant was eligible, the officers used a document entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guideline] to guide them. It addressed the documentation required to establish the \$5,000 minimum income. For employment income, acceptable proof would consist of recent pay slips, employment verification letters, record of employment, bank statements showing the name, address and payroll deposit and any other documentation that will substantiate employment income for \$5,000. As for self-employment income, the CRA Guideline provided several examples of what would constitute acceptable proof. An example of such proof would consist of invoices to clients showing the date of the service, the name of the client, the cost of the service and the type of payment received.

[Emphasis added]

[25] In this case, the Applicant provided to the CRA a type of proof that was included in the CRA Guidelines and highlighted by the Court in *Santaguida* as acceptable.

[26] Further, as the Respondent noted in their written submission, the Officer acknowledged the Other income reported in the amount of \$6,065 when they reviewed the 2019 income tax return. The Respondent also noted that the Officer reviewed the eSpydro invoices submitted as part of the Initial and Subsequent Submissions, and calculated a total of \$5,073.75 for the period between February 2019 and July 2020. Thus, the only reason the Officer found the Applicant to be ineligible was the Applicant's inability to produce cheques and bank statements to verify that he deposited the self-employment income.

[27] As the Applicant explained during both the first and second reviews, he was unable to provide such documentation because he did not have a bank account and because his business records were stolen with his bags in August 2020.

[28] The CRB was introduced to provide financial assistance to employed and self-employed workers directly affected by the COVID-19 pandemic and those not entitled to Employment Insurance benefits. It is a benefit-conferring statute aiming to provide timely assistance to those in need.

[29] Neither the *CRB Act* nor the CRA Guidelines mandates bank statements as the only permissible proof of income. As an *obiter*, I take judicial notice of the fact that there are certain segments of the Canadian population who live on the margin and who may not have a bank account, who would be disproportionately affected should bank statements be treated as a mandatory requirement.

[30] As Justice Furlanetto noted in *Sjogren v Canada (Attorney General)*, 2022 FC 951:

[29] Imposing such a mandatory requirement for bank statements effectively precludes the Applicant from obtaining CRB if she does not deposit the cash received in the bank and does not appear to recognize the varied information that could be provided as proof of income per the CRB Guidelines.

[31] Justice McHaffie reached a similar conclusion in *Crook v Canada (Attorney General)*, 2022 FC 1670 [*Crook*]:

[15] In my view, the officer's decision does not meet the standards of justification, transparency, and intelligibility required of a reasonable decision. I reach this conclusion primarily because of the lack of explanation by the officer as to why the "detailed invoices" provided by Mr. Crook were insufficient in the context to substantiate his having earned at least \$5,000 in self-employment income in the 12-month period prior to his application for CRB. Although the officer accepted the plausibility of Mr. Crook's statements, and made no adverse findings as to his credibility, he appears to have concluded that bank statement showing cash deposits, receipts for materials, or some other documentation were necessary to establish Mr. Crook's income. This conclusion was reached despite the nature of Mr. Crook's work, which on its face would not generate documents such as receipts, and Mr. Crook's explanation why he did not deposit each cash payment of a few hundred dollars in the bank, an explanation that was not questioned by the officer.

[Emphasis added]

[32] I agree with the Applicant that, besides bank statements and cheques, there are other ways for the CRA to verify his income. The Applicant had submitted invoices with names, phone numbers and emails of his clients to the CRA. The Officer could have contacted these companies to confirm the work that the Applicant completed and the amounts he received for his work.

[33] By insisting on something that the Officer knew the Applicant could not produce for reasons beyond his control, while providing no explanation for finding that the documents provided by the Applicant were insufficient proof, the Decision lacked the requisite transparency, intelligibility and justification and was thus unreasonable.

[34] Further, as noted in *Crook* at para 17: “[a]n unexplained departure from guidelines can be indicative of an unreasonable decision.” At para 20, the Court continued:

Situations where small businesses take cash payments are clearly contemplated in the Guideline, which shows a number of ways that can be used to prove income without necessarily requiring bank deposits or other receipts, including, notably, invoices generated by the business. Nonetheless, the officer in this case gave no explanation why Mr. Crook’s “detailed invoices” were not acceptable, and no explanation for his departure from the Guideline’s description of such documents as acceptable proof of income. Absent such an explanation, I conclude the decision does not bear the hallmarks of reasonableness: *Alexion* at para 58 [...]

[35] Similarly in this case, the Officer unreasonably departed from the CRA Guidelines by requiring the Applicant to produce bank statements, notwithstanding the detailed invoices that the Applicant already submitted as proof of income.

IV. Relief Sought

[36] The Applicant asks the Court to quash the Decision finding that he does not meet the eligibility criteria to qualify for the CRB. The Applicant maintains that he should not repay any CRB payments received to the CRA, and argues that the remaining CRB payments must be resumed. The Applicant also asks the Court for costs.

[37] While I find the Decision unreasonable, it is not my role to order the CRA to cancel the Applicant's debt and resume payments to the Applicant. I can only set aside the Decision and refer the matter back for redetermination by a different decision-maker. I expect the CRA to provide the Applicant an opportunity to provide further documents in support of his CRB claim, while it pursues other avenues to verify the Applicant's stated self-employment income.

[38] In conceding the Decision to be unreasonable, the Respondent asks the Court to reduce the costs it shall award, if any, in favour of the Applicant, as the Applicant has twice refused to accept the Respondent's offers to settle.

[39] I note that in *Crook*, the Court ordered the Respondent to pay the Applicant costs of \$1,120. In light of all the circumstances of this case, I order costs of \$800 against the Respondent.

V. Conclusion

[40] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision-maker.

[41] The Respondent shall pay the Applicant costs in the amount of \$800.00.

JUDGMENT in T-1017-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision-maker.
3. The Respondent shall pay the Applicant costs in the amount of \$800.00.

"Avvy Yao-Yao Go"

Judge

APPENDIX A

Canada Recovery Benefits Act, SC 2020, c 12, s. 2
Loi sur les prestations canadiennes de relance économique, LC 2020, c 12, art. 2

Eligibility	Admissibilité
<p>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</p> <p>[...]</p> <p>(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:</p> <p style="padding-left: 20px;">(i) employment, (ii) self-employment</p> <p>[...]</p> <p>(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);</p>	<p>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 :</p> <p>[...]</p> <p>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 :</p> <p style="padding-left: 20px;">(i) un emploi, (ii) un travail qu'elle exécute pour son compte</p> <p>[...]</p> <p>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;</p>

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1017-22

STYLE OF CAUSE: SOHAIL M YOUSOF v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 1, 2023

JUDGMENT AND REASONS: GO J.

DATED: MARCH 14, 2023

APPEARANCES:

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FOR THE APPLICANT
(ON THEIR ON BEHALF)

Tigra Bailey

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