

Federal Court



Cour fédérale

Date: 20231228

Docket: T-2227-22

Citation: 2023 FC 1765

[ENGLISH TRANSLATION]

Montréal, Quebec, December 28, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

JANIE GRANDMONT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Janie Grandmont, seeks judicial review of a decision dated January 10, 2022 [Decision], in which the Canada Revenue Agency [CRA] determined that she was ineligible for the Canada Recovery Benefit [CRB]. The CRA denied Ms. Grandmont's application for five different reasons: Ms. Grandmont did not earn at least \$5,000 in employment

income or net self-employment income in 2019, 2020 or in the 12 months preceding the date of her first application; she left her job voluntarily; she was not working for reasons other than COVID-19; she was capable of working but was not seeking employment; and she had not experienced a 50% reduction in her average weekly income from the previous year for reasons related to COVID-19.

[2] Ms. Grandmont argues that the Decision is unreasonable because the CRA erred in its calculation of her employment income and in determining that she was no longer working for a reason other than COVID-19. In addition, she alleges that her evidence and arguments were misinterpreted by the CRA, leading to an unreasonable decision.

[3] For the reasons that follow, Ms. Grandmont's application for judicial review will be dismissed. Having reviewed the CRA's reasons, the evidence on the record, and the applicable law, I am not satisfied that the CRA's Decision can be characterized as unreasonable. The Decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker.

II. Background

A. *Facts*

[4] The CRB was one of numerous measures introduced by the federal government beginning in March 2020 to address the economic impacts of the COVID-19 pandemic. It provided targeted monetary payments designed to financially support workers who had experienced a loss of income due to the pandemic and were not entitled to benefits from the

regular employment insurance plan. The CRA is the federal agency responsible for administering the CRB on behalf of the Minister of Employment and Social Development.

[5] The CRB was available for any two-week period between September 27, 2020, and October 23, 2021, to eligible employed and self-employed individuals who had experienced a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]). The eligibility criteria for the CRB are set out and explained in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA]. One of the requirements was that employees or self-employed workers must have earned at least \$5,000 in employment income or net self-employment income in 2019, 2020 or in the 12 months preceding the date of their most recent application. In addition, employees or self-employed workers must have experienced a 50% reduction in their average weekly income compared with the previous year for reasons related to COVID-19, be looking for work, and not have left their job voluntarily.

[6] In the 2019 and 2020 tax years, Ms. Grandmont worked for Construction Martin Lefebvre, a construction company owned by her husband. She was also employed at the SAQ during this period. She took maternity leave from the SAQ from February 17 to July 6, 2019, with the possibility of unpaid parental leave from July 7, 2019, to July 7, 2021. Ms. Grandmont therefore stopped working for the SAQ during this period.

[7] Because of the pandemic, her husband's company experienced a shortage of work. In response to this shortage of work, Ms. Grandmont applied for the CRB for a total of 14 periods of two weeks each, from September 27, 2020, to April 10, 2021. She received benefits from September 27, 2020, to March 13, 2021, for a total of 12 periods.

[8] On April 7, 2021, the CRA conducted a first review of Ms. Grandmont's eligibility for the CRB. As a result of the first review, the CRA determined that Ms. Grandmont was not eligible for CRB benefits as she did not meet the criterion of having earned at least \$5,000 (before taxes) in employment income in 2019, 2020 or in the 12 months preceding the date of her first application. The CRA also determined that Ms. Grandmont was not working for reasons other than COVID-19.

[9] Ms. Grandmont disagreed with these findings and requested a second review of her eligibility. Following the second review, a new CRA review officer [Officer] again denied Ms. Grandmont's application. The CRA again determined that Ms. Grandmont did not earn at least \$5,000 in employment income in 2019, 2020 or in the 12 months preceding the date of her first application and that she was not working for reasons other than COVID-19. The Officer added that Ms. Grandmont had left her job voluntarily, was capable of working but was not looking for work, and had not experienced a 50% reduction in her average weekly income compared to the previous year for reasons related to COVID-19.

[10] With regard to the \$5,000 criterion, the Officer denied Ms. Grandmont's application given that the evidence in the file did not point to any wage deposits during the period in which Ms. Grandmont claims to have been paid by her husband. According to Ms. Grandmont, she received \$5,500 in wage income for work performed in early 2020. Her husband allegedly paid her irregularly for this work by means of cash advances through virtual credit cards and Interac e-transfers. The Officer determined, however, that such cash advances do not constitute wages. Furthermore, it is not possible to trace the wages reported by Ms. Grandmont on her tax returns through the bank statements she submitted, and there are no bank deposits corresponding to the

amounts shown in her returns. For these reasons, the Officer also concluded that Ms. Grandmont did not experience a 50% reduction in her average weekly income compared to the previous year.

[11] As for the conclusion that Ms. Grandmont was not working for reasons other than COVID-19, the Officer observed in the notes from her conversations with Ms. Grandmont that the latter was not working because there was no daycare available and that she was on unpaid maternity leave until July 2021. The Officer therefore determined that Ms. Grandmont was not working not because of the pandemic, but rather because she was looking after her daughter. The Officer also concluded that Ms. Grandmont had voluntarily extended her maternity leave from the SAQ to qualify for unpaid parental leave until July 2021, that she had not approached her former employer to shorten her parental leave or return to work, and that she had eventually left her job at the SAQ. According to the Officer, Ms. Grandmont explained that she was waiting for her husband to resume his company's activities so she could start working for him again.

[12] On August 18, 2022, following the CRA's decision declaring her ineligible for CRB benefits, Ms. Grandmont received a Notice of redetermination for COVID-19 benefits, indicating that she owes the CRA \$11,300, less any amounts paid but not yet processed.

[13] On October 26, 2022, Ms. Grandmont filed this application for judicial review of the Decision.

B. Standard of review

[14] It is well established that the standard of review applicable to the merits of CRA decisions regarding CRB benefits is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [*He*]; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16).

[15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and 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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The reviewing court must consider “the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is not enough for the outcome of a decision to be justifiable. Where reasons are required, the decision “must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies” [emphasis in original] (*Vavilov* at para 86). Therefore, review on the reasonableness standard is concerned with both the outcome of the decision and the reasoning process (*Vavilov* at para 87).

[16] Review on the reasonableness standard must include a robust evaluation of administrative decisions. However, a reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion

(*Vavilov* at para 84). The reviewing court must exercise restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). The standard of reasonableness finds its starting point in the principle of judicial restraint and deference, and requires reviewing courts to demonstrate respect for the distinct role that the legislature has chosen to confer on administrative decision makers rather than on courts (*Vavilov* at paras 13, 46, 75). A decision will not be set aside on the basis of mere superficial or peripheral errors; rather, to be overturned, a decision must contain serious flaws, such as reasoning that is internally incoherent (*Vavilov* at paras 100–101).

[17] The party challenging the administrative decision bears the burden of showing that it is unreasonable (*Vavilov* at para 100).

III. Analysis

[18] In her application for judicial review, Ms. Grandmont argues that the Decision is unreasonable and asks the Court to consider certain facts and explanations that were not submitted to the CRA’s administrative decision makers in the context of the first and second reviews of her application for benefits.

[19] None of the arguments put forward by Ms. Grandmont are sufficiently persuasive to warrant the Court’s intervention.

A. *Additional explanations*

[20] Ms. Grandmont is of the opinion that the evidence and arguments she sent to the CRA were misinterpreted, unfairly considered inadmissible, and taken out of context. According to Ms. Grandmont, the Officer was mistaken with regard to the extent of her role in her husband's company, misunderstood a comment made by her husband about the shortage of daycare centres and ignored the fact that she had made numerous efforts to find work for her husband's company.

[21] In her affidavit and memorandum filed in support of her application for judicial review, Ms. Grandmont provides additional explanations with regard to her work situation and her job search, but she did not file any documents in support of her allegations. For example, Ms. Grandmont states that she phoned contractors in her area to see if they had work, contacted former customers and suppliers, posted ads on Marketplace and Kijiji, and handed out business cards. These explanations were not included in the information provided to the CRA during the first and second reviews of her application for benefits.

[22] Ms. Grandmont also argues that, contrary to what the Officer stated in her notes about the resumption of construction activities in March 2020, this was not the case in rural areas. She asserts that in rural areas, renovations slowed sharply due to the rising cost of materials, supply disruptions and labour shortages. Ms. Grandmont adds that this situation led to a shortage of work for her husband's company, and subsequently to a reduction in her wages from the company. Once again, these explanations were not presented to the Officer.

[23] The respondent, the Attorney General of Canada [AGC], points out that many of the comments and explanations put forward by Ms. Grandmont were not before the CRA Officer at the time of the Decision, and submits that Ms. Grandmont cannot introduce this new evidence in her memorandum and affidavit on judicial review.

[24] I agree with the AGC.

[25] As the AGC correctly observed, the Court cannot consider new evidence that was not before the CRA. Indeed, it is well established that, on judicial review, the general rule is that the reviewing court can only consider documentation that was before the administrative decision maker, with few exceptions (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20 [AUCC]; *Aryan* at para 42). These exceptions apply in particular to documents that: 1) provide background information that may assist the reviewing court in understanding the issues; 2) bring attention to procedural defects or breaches of procedural fairness in the administrative proceeding; or 3) highlight the complete absence of evidence before the decision maker (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23–25; *AUCC* at paras 19–20; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16–18). It is clear, in my view, that the information Ms. Grandmont wishes to bring to the Court's attention does not fall within any of these exceptions.

[26] I reiterate that the essential purpose of judicial review is the review of administrative decisions, not the determination, by trial *de novo*, of questions that were not adequately

canvassed in evidence before the relevant administrative decision maker (*Cozak v Canada (Attorney General)*, 2022 FC 1351 at para 22 [*Cozak*]). An application for judicial review is not an appeal (*Paiani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 514 at para 1).

[27] There is therefore no doubt that, in its judicial review to determine the reasonableness and legality of the Decision, the Court cannot examine Ms. Grandmont's additional explanations that were not presented to the Officer (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 17; *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 24 [*Lavigne*]). These elements are therefore not part of the record that is subject to judicial review.

B. Reasonableness of the Decision

[28] The crux of Ms. Grandmont's arguments concerns the unreasonableness of the Decision. Ms. Grandmont maintains that the CRA's Decision was incorrect given that the conclusions as to her ineligibility for CRB benefits disregarded the evidence provided in connection with her net income for 2020 and the reductions in her income for 15 CRB periods.

[29] With respect, I do not share Ms. Grandmont's view.

[30] It is well established that reports and notes prepared by a CRA review officer in the context of a request for review of CRB eligibility form part of the reasons for CRB decisions (*He* at para 30; *Aryan* at para 22). These notes are recorded by CRA officers in the course of their duties. For example, in *Cozak*, the Court found that, even if the decision letters did not set out the reasoning that led to the conclusion that an applicant is ineligible, the report of the second review

prepared by CRA officers during the review of applications for benefits forms part of the reasons for the decision (*Cozak* at para 22).

[31] In this case, it is clear from the notes that the Officer's analysis of the file was very thorough, and that she offered Ms. Grandmont several opportunities to provide additional documents and information in support of her applications for benefits. Ms. Grandmont had a duty to provide information to the Officer so that the latter could assess her applications based on all the relevant evidence. Here, the Officer expressly considered the comments and documentary evidence submitted by Ms. Grandmont.

[32] Among other things, the Officer considered Ms. Grandmont's statements about her employment with her husband's company, the documents provided about her duties and about her maternity leave from the SAQ, her bank statements, and what she and her husband stated about her job search.

[33] In her analysis, the Officer relied on several elements of the file and on her reports to conclude that Ms. Grandmont was ineligible. In her report, the Officer therefore determined that Ms. Grandmont was unable to demonstrate how she met the \$5,000 criterion. Despite Ms. Grandmont's assertions to the contrary, the Officer was of the opinion that the advances shown in her bank statements did not constitute wages. She arrived at this conclusion on the basis that there was no evidence to support Ms. Grandmont's assertion that she was paid wages and that the existence of various lump-sum transfers was not sufficient to demonstrate receipt of wages.

[34] Moreover, the amounts referred to by Ms. Grandmont and shown in the bank statements represented the gross pay she apparently received, without any payroll or tax deductions. In such circumstances, it was reasonable for the Officer to find that the bank transfers were not sufficient to establish employment income.

[35] In addition, the Officer was entitled to consider that the subsequent payment of deductions at source by Ms. Grandmont's husband's company did not constitute sufficient proof of employment income actually earned by Ms. Grandmont.

[36] Furthermore, it is well established that an applicant's tax returns and T4 forms are insufficient to establish eligibility for benefits such as the CRB (*Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 27 [*Ntuer*]). As the AGC pointed out, the Court has repeatedly held that, in terms of eligibility for the Canada Emergency Response Benefit or the CRB, a notice of assessment does not constitute conclusive evidence that an applicant earned and received the amount shown on his or her tax return for a tax year, and this income does not determine eligibility for benefits (*Lavigne* at para 43; *Aryan* at para 35).

[37] Finally, I note that the eligibility criteria for the CRB are cumulative (*Ntuer* at para 24), and Ms. Grandmont's failure to meet the criterion of \$5,000 in income was sufficient to deny her applications for benefits.

[38] The onus was on Ms. Grandmont to establish that she met, on a balance of probabilities, the criteria in the CRB Act (*Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15; *Walker v Canada (Attorney General)*, 2022 FC 381 at paras 37, 55; *Lavigne* at para 44). In this

case, the Officer found the documents and explanations provided by Ms. Grandmont to be lacking in this regard.

[39] Under the standard of reasonableness, the reasons for the Decision had to satisfy the Court that the CRA's conclusions were based on an internally coherent and rational chain of analysis and were justified in relation to the facts and law that constrain the administrative decision maker (*Vavilov* at para 85). In Ms. Grandmont's case, the CRA's analysis bears all the required hallmarks of transparency, justification and intelligibility (*Vavilov* at para 99), and the Decision does not exhibit any reviewable errors or serious shortcomings (*Vavilov* at paras 100–101).

[40] To be clear, this does not at all mean that Ms. Grandmont was dishonest in submitting her CRB applications or attempting to qualify for the CRB. It only means that she did not establish her eligibility for benefits to the satisfaction of the Officer.

[41] In my opinion, the reasons provided in the Officer's letter and notes justify the Decision in a transparent and intelligible manner. They enable the Court to understand the basis on which the Decision was rendered and confirm that no relevant facts were omitted. The Officer's notes are thorough and consistent, demonstrating in particular that the CRA carefully reviewed Ms. Grandmont's documents and gave her an opportunity to respond and provide evidence of her employment income. The Officer did not disregard the documents provided by Ms. Grandmont, but rather deemed them unconvincing and insufficient to support her application.

[42] Since *Vavilov*, particular attention must be paid to the decision-making process and the justification of administrative decisions. One of the objectives advocated by the Supreme Court of Canada in applying the standard of reasonableness is to “develop and strengthen a culture of justification in administrative decision making” (*Vavilov* at paras 2, 143). Ultimately, a reviewing court “must develop an understanding of the decision maker’s reasoning process” and determine “whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99).

[43] In Ms. Grandmont’s case, the record shows that the Officer followed rational, coherent and logical reasoning in her analysis, and that she considered Ms. Grandmont’s arguments and documents. Although Ms. Grandmont would have preferred a different outcome, the Decision is consistent with the relevant legal and factual constraints that bear on the outcome and the issue (*Vavilov* at paras 105–107). I would reiterate that the reasons for an administrative decision do not have to be exhaustive or perfect. Indeed, the reasonableness standard of review is not concerned with the degree of perfection of the decision, but rather with its reasonableness (*Vavilov* at para 91). It is sufficient that the reasons be intelligible and justify the administrative decision. Moreover, in the context of an application for judicial review, it is not the role of the reviewing court to reweigh and reassess the evidence on file (*Vavilov* at para 125).

Ms. Grandmont has certainly demonstrated her disagreement with the conclusion reached by the Officer and with the weight given to her documents in support of her employment income; but that is not a reason for the Court to intervene. The Officer’s reasons illustrate a straightforward internal logic, and it is not for the Court to substitute a determination it might consider preferable.

[44] In a judicial review such as this one, reviewing courts must always consider the conclusions of the administrative decision maker from a perspective of reasonableness and restraint, with respectful attention to the reasons and expertise of the decision maker. A reviewing court should not find that an administrative decision maker's decision is unreasonable simply because it does not like the outcome, considers it generally unjust or would have decided otherwise. Even in situations in which the factual context of an application may arouse some sympathy, as in Ms. Grandmont's case, the reviewing court must resist the temptation to rule on the application for judicial review on the basis of the conclusion that it could have itself drawn had it occupied the place of the decision maker (*Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at paras 51–52).

IV. Conclusion

[45] For the above reasons, Ms. Grandmont's application for judicial review is dismissed. Under the standard of reasonableness, the reasons for the Decision had to demonstrate that the CRA's conclusions were based on an internally coherent and rational chain of analysis and were justified in relation to the facts and law that constrained the administrative decision maker. That is the case here.

[46] At the hearing, the AGC informed the Court that he was not seeking costs, and the Court will therefore not award any.

[47] The style of cause is amended to name the AGC as respondent rather than the CRA.

JUDGMENT in T-2227-22

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

“Denis Gascon”

Judge

Certified true translation
Norah Mulvihill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2227-22

STYLE OF CAUSE: JANIE GRANDMONT v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 26, 2023

JUDGMENT AND REASONS: GASCON J.

DATED: DECEMBER 28, 2023

APPEARANCES:

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FOR THE APPLICANT
ON HER OWN BEHALF

Samantha Jackmino

FOR THE RESPONDENT

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FOR THE RESPONDENT