Federal Court Cour fédérale

Date: 20240202

Docket: T-2373-22

Citation: 2024 FC 172

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 2, 2024

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

PRISCILLA LAPOINTE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Priscilla Lapointe, is a self-employed music worker who delivers music workshops, among other things. She is seeking judicial review of two decisions of a Canada Revenue Agency [CRA] officer [Officer] dated October 14, 2022 [Decisions], in which,

following a second review, the Officer concluded that the applicant was ineligible for the Canada Recovery Benefit [CRB] and the Canada Worker Lockdown Benefit [CWLB].

[2] The benefits were available to eligible employees and self-employed workers who suffered a loss of income because of the COVID-19 pandemic. The CRA denied the applicant's applications on the grounds that she had not earned at least $5,000 in net employment or self-employment income in 2019 or 2020 for the CRB and in 2020 or 2021 for the CWLB, or in the 12-month period preceding the date of her first application for the CRB and CWLB.

[3] The applicant claims that the Decisions are unreasonable because, according to her, the documents, invoices, and requests for adjustments to her filed tax returns show that she earned more than $5,000 in net income. As a result, the requirements of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act] and the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [CWLB Act] were met.

[4] The respondent submits that the Officer reasonably concluded that the applicant had not demonstrated an income of more than $5,000, as the applicant's income prior to the adjustments was below $5,000 for2019, 2020, and 2021. The applicant's 2022 adjustment requests were made after the first review with the objective of reaching an income of more than $5,000, and the documents she submitted as proof of her income are inconsistent with her tax returns.

[5] For the following reasons, these applications for judicial review are dismissed. Having reviewed the CRA's reasons, the evidence on the record, and the applicable law, I am not satisfied that the CRA's Decisions can be considered unreasonable.

II. Standard of review

[6] It is well established that the applicable standard of review in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 15–16 [*Aryan*]).

[7] To be reasonable, a decision must be 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*]). A reasonable decision is one that is internally coherent and that "bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at paras 85, 99; *Crook v Canada (Attorney General)*, 2022 FC 1670 at para 4).

[8] The burden is on the applicant, the party challenging the Decisions, to show that they are unreasonable (*Vavilov* at para 100).

[9] 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). To be able to intervene, the reviewing court must be satisfied by the party challenging the decision that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility

and transparency", and that any alleged flaws or shortcomings "are more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[10] The court must focus on the decision actually made by the administrative decision maker, especially on its justification, and not on the decision it would have made in its place. Absent exceptional circumstances, a reviewing court must not interfere with factual findings. Furthermore, in an application for judicial review, this Court must refrain from reweighing and reassessing the evidence considered by the decision maker (*Vavilov* at para 125; *Clark v Air Line Pilots Association*, 2022 FCA 217 at para 9).

III. Analysis

[11] In her written submissions to this Court, the applicant is attempting to file new documents to show that she meets the eligibility criteria for both the CRB and the CWLB. These new documents were not submitted to the Officer during the decision-making process and consist of an invoice, statements of accounts, a T4A form, and income tables and documents.

[12] As a general rule, documents and information that were not available to the decision maker are not admissible on judicial review before the Court. As pointed out by Justice Denis Gascon in his decision *Lavigne v Canada (Attorney General)*, 2023 FC 1182 [*Lavigne*], it is well established that, on judicial review, the general rule is that a reviewing court can only consider evidence that was before the administrative decision maker, with some 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 [*Access Copyright*]; *Aryan* at para 42; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at paras 25–26; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 12; *Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at para 23).The exceptions include documents that (1) provide general background that might assist the reviewing court in understanding the issues; (2) bring attention to procedural defects or unfairness 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; *Access Copyright* at paras 19–20; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16–18).

[13] In my view, the new documents submitted by the applicant do not meet any of the exceptions set out in *Access Copyright* and the other decisions cited above. Since the new documents were not submitted to the Officer, the Court cannot examine them on judicial review to determine the reasonableness or legality of the Decisions (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 17; *Lavigne* at para 24). In any event, I do not believe that the new documents would have changed the outcome of this judicial review.

[14] As discussed above, in this application for judicial review, the burden of proof rests with the applicant to demonstrate that the Officer's Decisions are unreasonable.

[15] The applicant submits that the Decisions are unreasonable because she meets the established eligibility criteria, including the requirement of having earned a net income of more than $5,000. She states that she added her expenses and missing invoices with the help of her

accountant in the adjustments to her tax returns for 2019, 2020, and 2021. She explains that she initially misunderstood and used her net income instead of her gross income for 2019. She therefore requested the adjustments to correct the issue and to indicate her gross income.

[16] The respondent argues that the reasoning behind the Decisions is reasonable and based on a number of facts and findings, including the following: (1) the applicant's income before the adjustments is less than $5,000 for 2019, 2020, and 2021; (2) the documents submitted by the applicant justifying her income are cut off and inconsistent with both the original tax returns and the returns after adjustments; (3) in a letter dated August 10, 2022, for the second review, the applicant stated that she had [TRANSLATION] "removed all expenses for the three years" for the adjustments; (4) during a call with the Officer, the applicant stated that she had not reported all her income; and (5) during the same call, the applicant stated that she had changed her returns to meet the $5,000 net income requirement for the CRB and CWLB and asked the Officer to speak with her accountant so that she could report the correct amounts to be eligible.

[17] The respondent points out that the applicant informed the Officer that she had removed her expenses to meet the $5,000 requirement, but the CRB Act and the CWLB Act clearly state that "income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue" (CRB Act at ss 3(2); CWLB Act at ss 4(2)).

[18] I have carefully reviewed the Decisions and the record on which the Decisions are based, and I find that the applicant was unable to identify a flaw or shortcoming sufficiently significant or serious to render the Decisions unreasonable.

[19] Despite the applicant’s explanation at the hearing about the changes made to her tax returns in 2022, I find that it was reasonable for the Officer not to be satisfied on the basis of the record before her that the applicant met the requirements of the CRB Act and the CWLB Act, including the requirement of having earned $5,000 in net income.

[20] The Officer considered the documents and submissions provided by the applicant, but was not satisfied, in light of the history of the applicant’s returns and her explanations about the adjustments, that the applicant had actually earned $5,000 in net income during the periods concerned. The Officer was also not persuaded because the documents provided did not match the amounts reported. The applicant is asking the Court to reassess the evidence considered by the Officer, which a reviewing court must refrain from doing, absent exceptional circumstances (*Vavilov* at para 125).

[21] With respect to the applicant’s income adjustment after the first ineligibility decisions, the respondent submits that the applicant could not make herself eligible for the CRB and the CWLB simply by going back and removing expenses to increase her income (*Laplante v Canada (Attorney General)*, 2023 FC 1450 at para 19 [*Laplante*]). I agree with the respondent that the fact that the applicant made adjustments to her income after the fact to become eligible for benefits does not require the Officer to agree with her (*Laplante* at para 19; *Morin v Canada (Attorney General)*, 2023 FC 751 at paras 22–23). It was reasonable for the Officer to conclude that the adjustments were insufficient to demonstrate that the applicant had earned at least $5,000 in net income during the relevant periods. This is all the more so because the documents

provided do not correspond to the reported amounts and the applicant informed the Officer that she had amended her returns to become eligible.

[22] Canada’s tax system is based on the principles of self-reporting and self-assessment. In the context of COVID-19 benefits, adjustments, amended tax returns, and notices of assessment do not prove that an applicant actually earned the income they reported (*Hussain v Canada (Revenue Agency)*, 2023 FC 1382 at para 21; *Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 23; *Walker v Canada (Attorney General)*, 2022 FC 381 at paras 29–38; *Aryan* at para 35).

[23] I am satisfied that the Officer’s conclusion that the applicant has not demonstrated that she earned at least $5,000 in net self-employment income in 2019, 2020 or 2021, or in the 12-month period preceding the date of her first application is reasonable. The Decisions are consistent with the requirements of *Vavilov*: the underlying logic and reasoning of the Decisions is apparent from the reading of the record. The logic and reasoning are coherent and based on the evidence. Accordingly, the Officer’s Decisions are reasonable.

IV. Conclusion

[24] The applicant did not discharge the burden of proving that the Officer’s Decisions are unreasonable. Therefore, the applications for judicial review are dismissed.

[25] The respondent seeks the costs to which he is entitled as a result of the dismissal of the applications. I am of the opinion that the amount of $250 is reasonable and justified.

JUDGMENT in T-2372-22

THE COURT'S JUDGMENT IS as follows:

1. The applications for judicial review are dismissed.
2. Costs of $250 are awarded to the respondent.

"Vanessa Rochester"
Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2373-22
STYLE OF CAUSE:	PRISCILLA LAPOINTE v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 23, 2024
JUDGMENT AND REASONS:	ROCHESTER J.
DATED:	FEBRUARY 2, 2024

APPEARANCES:

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Louis-Roch Desjardins Christophe Tassé-Breault	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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