

Federal Court



Cour fédérale

Date: 20230925

Docket: T-2493-22

Citation: 2023 FC 1285

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 25, 2023

PRESENT: Mr. Justice Régimbald

BETWEEN:

ABASSE ASGARALY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Abasse Asgaraly, is seeking judicial review of a decision of a Canada Revenue Agency [CRA] benefit compliance officer [officer] dated November 29, 2022, in which the officer determined that the applicant was not eligible for the *Canada Recovery Benefit* [CRB].

[2] The impugned decision found that the applicant was not eligible for the CRB because he did not earn at least \$ 5,000 (before taxes) of employment or net self-employment income for 2019, for 2020 or in the 12 months before the date of his first application.

[3] On judicial review, the role of the Court is not to make a decision on Mr. Asgaraly's CRB eligibility. The Court's role is simply to determine, in light of the evidence and the arguments before the officer, whether the decision is reasonable.

[4] For the reasons that follow, and within the scope of the Court's role, I conclude that the officer's decision is reasonable.

II. Facts

[5] Mr. Asgaraly is self-employed in the field of travel insurance.

[6] In June 2017, Mr. Asgaraly was dismissed from a private insurance company. He then received employment insurance benefits from 2017 to 2019.

[7] Mr. Asgaraly started his own business, KMB Consulting Inc., which provides business strategy and development advice in the travel insurance and medical and travel assistance industries. COVID-19 got in the way of his business project.

[8] Mr. Asgaraly applied for the CRB for periods 2 to 15, 14 two-week periods from October 11, 2020, to April 24, 2021. Mr. Asgaraly's CRB applications for periods 2 to 13 were

initially accepted without review and he received payments for those periods. His CRB applications for periods 14 and 15 were put on hold because his file was selected for review.

[9] On July 27, 2021, Mr. Asgaraly sent the first review officer: (i) an invoice dated December 24, 2020, issued by Mr. Asgaraly to SITATA Inc. for an amount of €3,705, or approximately Can\$5,668.65; and (ii) two bank transfer confirmations in February 2021 from SITATA Inc. for payment of the December 2020 invoice.

[10] On August 4, 2021, Mr. Asgaraly was informed that, after the first review, he was not eligible for the CRB for periods 14 and 15 because he did not earn at least \$5,000 (before taxes) of employment or net self-employment income for 2019, for 2020 or in the 12 months before the date of his first application.

[11] On August 10, 2021, Mr. Asgaraly requested a second review of his eligibility for the CRB for periods 14 and 15. The second review officer was designated to determine Mr. Asgaraly's CRB eligibility for periods 2 to 13.

[12] On July 15, 2022, Mr. Asgaraly was advised at the end of the second review that he was ineligible for the CRB for the periods 2 to 15 on the basis that (i) he had not earned at least \$5,000 (before tax) in employment income or net self-employment income in 2019, 2020, or in the 12 months preceding the date of his first application; (ii) the reasons why he did not work were not related to COVID-19; and (iii) he did not experience a reduction of at least 50% of his average weekly income compared to the previous year for reasons related to COVID-19.

[13] On August 5, 2022, Mr. Asgaraly filed with the Federal Court a notice of application for judicial review of the second review officer's decision regarding periods 2 to 13.

[14] On November 18, 2022, Mr. Asgaraly discontinued his application for judicial review after the respondent consented to refer the file back to an independent reviewer for reconsideration of periods 2 to 15 [third review].

III. Decision under judicial review

[15] On November 29, 2022, the third review officer [Officer] rendered a decision that informed Mr. Asgaraly he was not eligible for the CRB for periods 2 to 15 [Decision] because he did not earn at least \$5,000 (before taxes) of employment or net self-employment income for 2019, 2020 or in the 12 months before the date of his first application.

[16] The Officer considered the documents Mr. Asgaraly submitted, the notes of the first and second review officers and the information contained in Mr. Asgaraly's tax returns for the 2019 to 2021 taxation years as recorded in the CRA's systems.

[17] The Officer determined that the income reported by Mr. Asgaraly in 2019 (Old Age Security, CPP/QPP benefits, employment insurance benefits, RRSP income, Net Federal Supplement) are not considered employment income and are not eligible for the \$5,000 criterion. The Officer noted that in 2020, Mr. Asgaraly reported the same types of income as in 2019 and that they were therefore inadmissible. The Officer also determined that Mr. Asgaraly's business

income in 2020 (a loss of \$14,903 was claimed in the income tax return) was not sufficient to meet the \$5,000 test.

IV. Issue and standard of review

[18] The only issue is whether the CRA Officer's Decision finding that Mr. Asgaraly is ineligible to receive the CRB is reasonable.

[19] The standard of review applicable to decisions rendered by a CRA officer is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Maltais v Canada (Attorney General)*, 2022 FC 817 at paras 18–19). The role of this 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 para 85). The burden of proof to show that a decision is unreasonable is on the party challenging the decision (*Vavilov* at para 100; see also *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16 [*Aryan*]; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 14; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 29 [*Kleiman*]).

V. Analysis

[20] The *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA], came into force on October 2, 2020, and established the CRB. This benefit was offered to provide income support for any two-week period between September 27, 2020, and October 23, 2021, to eligible

employees and self-employed persons 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.

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

Taxpayers must demonstrate a net income of at least \$5,000 for 2019, 2020 or in the 12 months before the date they applied.

For each two-week period for which benefits are claimed, taxpayers must have been prevented from being employed or self-employed for reasons related to COVID-19, or had their average weekly income from employment or self-employed work reduced by at least 50% relative to the previous year or the 12-month period preceding the date on which they submitted the application, for reasons related to COVID-19.

For each two-week period for which they apply, taxpayers must also demonstrate they were seeking work during the period, either as an employee or in self-employment, in order to mitigate the lack of income.

Taxpayers must demonstrate that they were present in Canada and able to work during the two-week period for which benefits are claimed.

[22] The burden of proof for CRB eligibility is on the taxpayer. Under section 6 of the CRBA, an applicant must provide the officer with any information the officer may require in respect of the application.

[23] The burden is on Mr. Asgaraly to demonstrate to the CRA that he meets, on a balance of probabilities, the criteria established by the CRBA in order to receive a benefit (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55 [*Walker*]). ““As Justice Diner

pointed out in *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at paragraph 24, “the 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”.

[24] It is important to note that in analyzing the reasonableness of the Officer’s decision, the Court may consider the CRA’s review report and the internal notes to file. These are part of the Officer’s reasons, like the Global Case Management System notes used by immigration officers (*Aryan* at para 22; *Kleiman* at para 9; *Vavilov* at paras 94–98).

[25] Canada’s tax system is a self-reporting system. It starts from the principle that taxpayers are able to provide all the relevant documents in support of their own returns (*Walker* at para 37).

[26] Mr. Asgaraly argues that the decision is unreasonable because he met all the requirements to obtain the CRB for each of the periods for which he applied. Mr. Asgaraly claims that in 2019, he reported income of \$59,739, which included (i) what he earned as a self-employed worker and (ii) his employment insurance benefit. Mr. Asgaraly points out that the CRB application process is fully automated and that there was no clarification to differentiate between gross income applicable for salary income and net income applicable for a self-employed worker like him.

[27] In addition, Mr. Asgaraly argues that his employment insurance benefit was \$16,833, and alleges that this employment insurance benefit is considered an eligible source of income under paragraph 3(1)(e.1) of the CRBA.

[28] The Attorney General of Canada [AGC] submits that the decision is reasonable and that Mr. Asgaraly's argument that he earned income of at least \$5,000 in 2019, 2020 or in the 12 months preceding the date of his first application is without merit because (i) his net income as a self-employed person did not exceed \$5,000 in either 2019 or 2020, and (ii) his employment insurance benefit does not come from one of the sources listed in paragraph 3(1)(d) of the CRBA.

[29] The AGC argues that the business income Mr. Asgaraly reported in 2020 is gross income whereas subsection 3(2) of the CRBA provides that a self-employed person must report net income, which takes into account the expenses incurred to earn this income.

[30] In addition, the AGC submits that, contrary to Mr. Asgaraly's submissions, paragraph 3(1)(e.1) of the CRBA does not apply in this case when paragraph 3(1)(d) of the CRBA is taken into account in calculating the income criterion of at least \$5,000. Paragraph 3(1)(e.1) applies only for employment insurance benefit periods established on or after September 27, 2020. Since the applicant's employment insurance benefits ended in 2019, they are not eligible in this case.

[31] In my opinion, the Officer's Decision is reasonable. The Officer's conclusions regarding Mr. Asgaraly's income are reasonable and justified in light of all the evidence on the record. It was up to Mr. Asgaraly to establish with the CRA that he meets, on a balance of probabilities, the criteria of the CRBA (*Walker* at para 55), which he did not do in this case.

[32] Mr. Asgaraly submitted only one invoice and two bank transfer confirmations from SITATA Inc. to establish that he earned net income of more than \$5,000 as a self-employed worker. These documents did not contain any information on the expenses Mr. Asgaraly incurred to earn this income, as required by subsection 3(2) of the CRBA. Most importantly, Mr. Asgaraly reported a net business loss of \$14,903 in 2020. It was therefore reasonable for the Officer to conclude that Mr. Asgaraly did not earn at least \$5,000 in net income from self-employed work in 2020, even despite SITATA Inc.'s payment of \$5,668.65 (*Flock v Canada (Attorney General)* 2022 FC 305 [*Flock*] at para 20).

[33] The Officer reasonably determined that Mr. Asgaraly's other reported sources of income were not eligible under paragraph 3(1)(d) of the CRBA, including employment insurance benefits (*Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at para 24).

[34] Paragraphs 3(1)(e.1) and 3(1)(g) provide as follows:

Canada Recovery Benefit	Prestation canadienne de relance économique
<p>Eligibility</p> <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>Admissibilité</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>

(e.1) in the case of an application made under section 4 by a person referred to in paragraph (g) whose benefit period was established on or after September 27, 2020 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), (ii), (iv) and (v) and from *regular benefits* and *special benefits*, as defined in subsection 2(1) of the *Employment Insurance Act*;

...

(g) no *benefit period*, as defined in subsection 2(1) of the *Employment Insurance Act*, was established or could have been established in respect of the person in respect of any week that falls within the two-week period or, if such a benefit period was established on or after September 27, 2020 in respect of the person in respect of any week that falls within the two-week period,

e.1) dans le cas d'une demande présentée en vertu de l'article 4, par une personne visée à l'alinéa g) dont la période de prestations a été établie le 27 septembre 2020 ou après cette date, à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i), (ii), (iv) et (v) ainsi que des *prestations régulières* et des *prestations spéciales*, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, s'élevaient, pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, à au moins cinq mille dollars;

...

g) aucune période de prestations, au sens du paragraphe 2(1) de la Loi sur l'assurance-emploi, n'a été établie ou n'aurait pu être établie à l'égard de toute semaine comprise dans la période de deux semaines ou, si une telle période de prestations a été établie le 27 septembre 2020 ou après cette date à l'égard d'une telle semaine:

(i) the person was paid *regular benefits*, as defined in that subsection, for the maximum number of weeks for which those benefits may be paid in that benefit period under Part I of that Act, or

(i) ou bien la personne a reçu des *prestations régulières*, au sens de ce paragraphe, pour le nombre maximal de semaines à l'égard desquelles ces prestations peuvent être versées au cours de la période de prestations au titre de la partie I de cette loi,

(ii) the person was paid *regular benefits and special benefits*, as defined in that subsection, for the maximum number of weeks for which both those benefits may be paid in that benefit period under Part I of that Act;

(ii) ou bien la personne a reçu des *prestations régulières* et des *prestations spéciales*, au sens de ce paragraphe, pour le nombre maximal de semaines à l'égard desquelles ces deux prestations peuvent être versées au cours de la période de prestations au titre de la partie I de cette loi;

[Emphasis added.]

[Je souligne.]

[35] Paragraph 3(1)(e.1) refers to paragraph 3(1)(g), which explains that in order to be eligible for the CRB, applicants must not have been eligible for employment insurance benefits during the weeks they are claiming the CRB, or if a benefit period was established after September 27, 2020, then the person received those benefits for the maximum number of weeks.

[36] Paragraph 3(1)(e.1) then states that for a person referred to in paragraph (g) whose benefit period was established on or after September 27, 2020, employment insurance benefits

obtained (and therefore paid after September 27, 2020) may be an eligible source of income.

Paragraph 3(1)(e.1) therefore only applies when the second element of paragraph 3(1)(g) does.

[37] But the applicant falls under the first element of paragraph 3(1)(g) (“no benefit period, as defined in subsection 2(1) of the Employment Insurance Act, was established or could have been established in respect of the person in respect of any week that falls within the two-week period”), not the second element (“or, if such a benefit period was established on or after September 27, 2020 in respect of the person in respect of any week that falls within the two-week period”).

[38] Therefore, paragraph 3(1)(e.1) does not apply to the applicant’s employment insurance benefits that ended in 2019 (these were not established and paid on or after September 27, 2020, as required by paragraph 3(1)(g)). Mr. Asgaraly’s employment insurance benefits are therefore not an eligible source of income.

[39] Finally, the applicant submits that the process for applying for the CRB was automated and that there was no clarification as to the eligible sources of income, nor was there a distinction between gross and net income. In other words, Mr. Asgaraly argues that the criteria were not clear. He submits that since his applications were accepted and paid, he had a legitimate expectation that he would be eligible for benefits. These arguments are unfounded in law. Unfortunately, the criteria are prescribed by the CRBA and are not discretionary. There can therefore be no estoppel in the face of an explicit provision of the CRBA. Even if the applicant may have reasonably believed he would be eligible for the CRB because he had been able to

apply for it, the legal doctrine of legitimate expectations does not ensure a particular outcome (*Flock* at para 23).

[40] Consequently, the CRA Officer's conclusion that Mr. Asgaraly failed to meet his burden of proving that he earned an eligible amount sufficient to qualify for the CRB is not unreasonable. In light of the evidence provided, it was reasonable for the Officer to conclude that the applicant had not generated a net income of at least \$5,000 from self-employment in 2019, 2020 or in the 12 months preceding his claims for benefits. The Officer's reasoning is coherent, based on the evidence before him and justified in light of the CRBA. The reasons illustrate a satisfactory internal logic.

VI. Costs

[41] As is stated in section 400 of the *Federal Courts Rules*, SOR 98/106 [*Rules*] the Court "shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid". Having considered the factors listed in subsection 400(3) of the *Rules*, as well as the amount claimed by the AGC, and all other circumstances of that case, I do not find it appropriate to award costs in this case. Mr. Asgaraly was not represented by counsel in these proceedings, but his arguments were reasoned and well expressed. In light of all of the circumstances, I exercise my discretion not to award costs against him.

VII. Conclusion

[42] Having reviewed Mr. Asgaraly's supporting documents and having considered the parties' arguments, I conclude, for all of the foregoing reasons, that the Officer's Decision is reasonable. It meets the requirements of being internally coherent as well as being transparent, justified and intelligible.

[43] The application for judicial review is dismissed without costs.

JUDGMENT in T-2493-22

THIS COURT'S JUDGMENT is as follows:

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

“Guy Régimbald”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2493-22

STYLE OF CAUSE: ABASSE ASGARALY v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 21, 2023

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: SEPTEMBER 25, 2023

APPEARANCES:

Abasse Asgaraly

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Gabriel Caron

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT