

Federal Court



Cour fédérale

Date: 20240426

Docket: T-1026-23

Citation: 2024 FC 648

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, April 26, 2024

PRESENT: Mr. Justice Sebastien Grammond

BETWEEN:

MOHAMED RADHOUENE SAADI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Saadi applied for the Canada Recovery Benefit [CRB]. At the review stage, his application was refused on the grounds that he had not had a reduction of at least 50% of his average income calculated over the 12-month period preceding the day on which he made his application. He is now seeking judicial review of this refusal. He submits that only the weeks he worked should be taken into consideration when calculating his average weekly income, rather than calculating his average income over a 52-week period.

[2] I am dismissing Mr. Saadi's application. The eligibility conditions for the CRB are established by statute and the Canada Revenue Agency [CRA] officer has no discretion to change them. The refusal of Mr. Saadi's application was based on a reasonable interpretation of the legislation.

I. Background

[3] Mr. Saadi arrived in Canada in 2019 and began working shortly afterwards. He worked as a driver for Uber between January and March 2020. He had to stop this work because of the health measures in force at the time. He received the Canada Emergency Response Benefit [CERB] for that period. He resumed working as an Uber driver from June to September 2020, but he states that he was forced to stop working a second time because of the pandemic. In the meantime, he began working part time as a school bus driver. He calculates that he worked only 22 weeks in total in 2020.

[4] Mr. Saadi applied for and received the CRB for the periods from September 27, 2020, to January 2, 2021. He states that before submitting these applications, he telephoned the CRA and was assured by an officer that he was eligible. However, in January 2021, the CRA informed him that he was no longer eligible. He applied for a review, which resulted in the first decision of ineligibility in May 2021. In June 2021, he requested a second review, and he received a second decision of ineligibility in December 2021. He filed an application for judicial review of that decision on January 7, 2022. On August 15, 2022, my colleague Justice Peter G. Pamel rendered a decision setting aside the second decision and remitting the matter to a new officer for redetermination: *Saadi v Canada (Attorney General)*, 2022 FC 1195.

[5] The third review officer concluded that Mr. Saadi was ineligible for the CRB for the periods at issue. Mr. Saadi then submitted a second application for judicial review, which he withdrew after reaching an agreement with the Attorney General for the CRA to conduct a fourth review of his application.

[6] The fourth reviewing officer refused Mr. Saadi's application. For the first six periods at issue, she found that he had not had a reduction of more than 50% of his average weekly income compared with the preceding year for reasons related to COVID-19. As for the last period, she found that Mr. Saadi had stopped working for reasons other than COVID-19. The fourth decision is the subject of this application for judicial review.

II. Analysis

[7] The Court's role on judicial review is to determine whether the administrative decision maker, in this case the officer who conducted the second review, made a reasonable decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov].

[8] In deciding Mr. Saadi's application, the officer had to apply the following provisions of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [the Act], of which I reproduce only the relevant excerpts:

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la

on September 27, 2020 and ending on October 23, 2021 if

période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

...

...

(f) during the two-week period, for reasons related to COVID-19 ... they were not employed or self-employed or they had a reduction of at least 50% ... in their average weekly employment income or self-employment income for the two-week period relative to

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, ... soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent ... de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application....

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020....

[9] In this case, the determinative issues are the method used for calculating average weekly income and the definition of “not employed or self-employed” at paragraph 3(1)(f) of the Act.

[10] With respect to the first issue, Mr. Saadi claims that his average weekly income should be calculated by taking the sum of his gross earnings and dividing it by the number of weeks he

worked, i.e., 22 weeks. He recognizes that under the calculation method chosen by the CRA officer, he is ineligible for the CRB.

[11] Because Mr. Saadi worked for only two months in 2019, the fourth reviewing officer determined that the period for calculating the comparative average income would be the 12-month period preceding each of his applications. The officer based the calculation on two-week periods rather than weekly periods, but this has no significant impact of the result. Any error is superficial and does not affect the reasonableness of the analysis: *Vavilov* at paragraph 100.

[12] The officer's method of calculation was to add up the income earned over the 52 preceding weeks, divide the total by 26 weeks, and then divide the result by 2 to obtain the amount corresponding to 50% of the reference average income for a two-week period. It should be noted that under subsection 3(2) of the Act, self-employment income is calculated on the basis of net income, not gross income.

[13] The officer then compared this amount with the income earned by Mr. Saadi during each period. She concluded that the income earned during the first six periods at issue was greater than half of the reference average income. Mr. Saadi therefore did not have a 50% reduction of his income during these periods and was ineligible for the CRB.

[14] The CRA officer's decision is reasonable. She applied an interpretation of the Act based on the ordinary meaning of the words. Indeed, subparagraph 3(1)(f)(i) explicitly states that the basis of comparison is the "average weekly employment ... in the 12-month period preceding the

day” of the application. According to the ordinary sense of the concept of average, the periods during which income is zero must be taken into account. Mr. Saadi has not demonstrated that this interpretation is unreasonable.

[15] Given that the interpretation applied by the officer is reasonable, I do not need to consider the interpretation proposed by Mr. Saadi. Even when there are two reasonable interpretations of a statutory provision, it is for the administrative decision maker, not the Court, to choose between them.

[16] It is regrettable that the telephone conversation that Mr. Saadi reportedly had with a CRA officer created confusion. However, the fact that a public servant has given incorrect information to a taxpayer does not mean the law no longer applies to the taxpayer. In such situations, the legislation is paramount: *Flock v Canada (Attorney General)*, 2022 FC 305 at paragraph 23; *Bastien v Canada (Attorney General)*, 2023 FC 222 at paragraph 14.

[17] At the hearing, Mr. Saadi submitted that he had stopped working during the first weeks of the pandemic because he is asthmatic and did not want to risk contracting COVID-19 and transmitting it to his daughter, whose state of health was vulnerable. He then resumed working because he wanted to contribute to the society that had taken him in. I do not doubt that Mr. Saadi made these decisions for entirely laudable reasons. However, this sequence of decisions had the effect of making him ineligible for the CRB. The sympathy inspired by Mr. Saadi’s situation did not allow the officer to make an exception to the criteria set out in the Act.

[18] As for the second issue, Mr. Saadi claims that he did not work for the period from December 20, 2020, to January 2, 2021, because of COVID-19. He recognizes that the company he worked for was closed because schools were closed for the holidays. However, he states that he would have worked during that period as an Uber driver had he not been forced to stop this work in September 2020 because of COVID-19.

[19] According to the fourth review officer, during the period at issue, Mr. Saadi voluntarily stopped working as an Uber driver and started a new job as a school bus driver almost three months earlier. The cessation of employment during that period was therefore caused by the school calendar and not by COVID-19.

[20] These are questions of fact. For such questions, the court dealing with an application for judicial review may intervene only “where the decision maker has fundamentally misapprehended or failed to account for the evidence before it”: *Vavilov* at paragraph 126. The officer’s analysis reveals no such error.

[21] As I have stated above, paragraph 3(1)(f) of the Act sets out that a person is eligible for the CRB if, “for reasons related to COVID-19”, they “were not employed or self-employed”. The officer reasonably concluded that Mr. Saadi was working as a school bus driver at the time and that he had not worked during that period because of the school vacation. She took into account the fact that he had stopped working as an independent Uber driver in September 2020, given his concerns for his health and that of his daughter. She also took into account the health measures in force in the fall of 2020 and in February 2021 when Mr. Saadi was working as a taxi

driver. Given the time that had elapsed since he had started his new employment, it was reasonable for the officer to conclude that Mr. Saadi had not been employed during that period because of the school vacation and not because of COVID-19.

[22] The fourth review officer's decision is therefore reasonable because the grounds of ineligibility are supported by a coherent analysis.

III. Decision and costs

[23] Because the fourth review officer's decision was based on a reasonable interpretation of the Act, Mr. Saadi's application for judicial review will be dismissed.

[24] The Attorney General is not seeking costs. Mr. Saadi argued his position in good faith, relying on his interpretation of the legislation and the advice received from a CRA officer. Therefore, I will make no order as to costs.

JUDGMENT in T-1026-23

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

“Sébastien Grammond”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1026-23

STYLE OF CAUSE: MOHAMED RADHOUENE SAADI v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 4, 2024

JUDGMENT AND REASONS: GRAMMOND J

DATED: APRIL 26, 2024

APPEARANCES:

Mohamed Radhouene Saadi

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Albert Brunelle

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Québec, Quebec

FOR THE RESPONDENT