

Federal Court



Cour fédérale

Date: 20221220

Docket: T-1925-21

Citation: 2022 FC 1774

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 20, 2022

PRESENT: Mr. Justice Régimbald

BETWEEN:

STÉPHANE DESAUTELS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Stéphane Desautels, is seeking judicial review of a decision of a Canada Revenue Agency [CRA] benefit compliance officer [officer] dated November 17, 2021, in which the officer determined that the applicant was not eligible for the *Canada Recovery Benefit* [CRB].

[2] Mr. Desautels claims that he is a self-employed person who performs renovations and that he was deprived of income during the COVID-19 crisis because he could not go to clients' homes. He claims that he is eligible for the CRB because he had work income of over \$5,000 in the 12 months prior to the beginning of the COVID-19 pandemic.

[3] Mr. Desautels also attached to his application for judicial review an affidavit including a bank statement showing a deposit of more than \$5,000, made by himself into a German bank account. Mr. Desautels therefore believes that since he was able to make a transfer of more than \$5,000, he therefore had income greater than that amount during the qualifying period.

[4] On judicial review, the role of the Court is not to make a new decision on CRB eligibility or to consider new arguments and evidence on 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 and whether the process was in accordance with the principles of procedural fairness.

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

II. Background

[6] 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.

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

Self-employed taxpayers must demonstrate a net self-employment income of at least \$5,000 for 2019 or for 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 performing employment or self-employment 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.

[8] 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 required the officer may require in respect of the application.

A. *CRA's first decision*

[9] Mr. Desautels applied for and obtained the CRB for a total of seven periods, from September 27, 2020, to January 2, 2021. He also applied for the period from January 17, 2021, to January 30, 2021 (period 9), but did not obtain it because of a review of his file.

[10] According to the notes in the file of the officer responsible for the first review, the CRA contacted the applicant on December 21, 2020. In this conversation, the applicant stated that he had earned \$5,000 in the three months between January and March 2020. This income came from self-employment. Mr. Desautels stated that he had not worked in previous years. The officer's notes state that Mr. Desautels did not report any employment or self-employment income in 2019.

[11] On January 11, 2021, the applicant's file was selected for a thorough review of his CRB eligibility, and the applicant's application for period 9 was blocked because of the review of his file. Therefore, no payment was received for that period.

[12] On or about January 19, 2021, Mr. Desautels sent the CRA two invoices for services he had allegedly rendered. On the first invoice, the applicant stated that he had provided a service of [TRANSLATION] "exterior work on the Pierre-Tétreault Street building between February 3 and 25, 2020" for an amount of \$3,260 for Jasmin Tremblay. On the second invoice, the applicant stated that he had provided a service [TRANSLATION] "for minor work performed" for Lucille Forget in January 2020 for \$2,490. However, Mr. Desautels did not provide any bank statements proving that the invoices had been paid.

[13] On February 9, 2021, the CRA officer conducted the first review of the applicant's CRB eligibility by contacting him by telephone. During this call, the CRA officer confirmed receipt of the applicant's documents (invoices) and reviewed the eligibility requirements for the CRB. The applicant stated that he was self-employed, that he worked in renovations and that he had to stop working because of COVID-19 in March 2021. During this call, the officer asked him to provide further invoices, receipts, bank statements with name and address and a list of expenses from 2020 to present. The officer also asked him for proof of work and proof of job search.

[14] On February 18, 2021, the applicant sent a letter to the CRA to justify the lack of supporting documents for processing his application. In that letter, the applicant once again explained that he had been self-employed for years in renovations and was paid almost exclusively in cash. He also stated that such a practice is common in this profession and that this explains why it is impossible for him to provide bank statements in evidence. The applicant did not specify why it is impossible for him to demonstrate any bank deposits identifying deposits relating to the payment of his invoices with cash. He stated that the invoices used for the work performed also serve as receipts. The applicant also argued in this letter that it was difficult to find clients during the pandemic since it works by word of mouth and no one wanted to have strangers in their home.

[15] On March 4, the applicant telephoned the CRA again. During this conversation, the applicant explained that the [TRANSLATION] "receipts" he had sent on January 17, 2021, are also the invoices for these same services rendered, and that he was paid in cash. He also mentioned

that he did not have bank statements to send to the CRA, as requested during the conversation on February 9, 2021.

[16] On March 10, 2021, a first decision was made on the applicant's eligibility for the CRB, in which the CRA officer concluded that he was not eligible for the CRB. The alleged reason for his ineligibility is that he did not earn at least \$5,000 in employment or self-employment income for 2019, for 2020 or in the 12 months preceding the date of his first application.

[17] On March 16, 2021, the applicant sent a letter to the CRA officer seeking explanations regarding the March 10, 2021, decision. In this letter, the applicant alleges that he sent self-employed invoices to the CRA from the beginning of 2020 and an explanatory letter demonstrating his eligibility. He also asks whether these documents went to the CRA and, if so, what supporting documents are missing.

[18] On March 22, 2021, the applicant contacted the CRA by telephone. According to the officer's notes, it was explained to the applicant that he had not provided enough details and that he had to send other documents, including bank statements.

B. *CRA's second decision*

[19] On March 23, 2021, the applicant sent a letter to CRA seeking a second review of his application. In that letter, the applicant explained that he was unable to produce bank statements associated with the invoices he had already sent (Ms. Forget and Mr. Tremblay). In that letter, he

also reiterates that payments in the renovation community are generally made in cash and states that he does not have any expense reports either, since his business income was not high enough.

[20] On November 15, 2021, the CRA officer carrying out the second review [the second officer] reviewed the decision. The second officer stated that he asked the applicant if he had any other documents for the analysis of his application. He stated that he did not have any other documents or information to provide or any proof of the amounts received. In addition, during that conversation, the applicant stated that he felt it was unnecessary to send statements because he was paid in cash and those payments were not on his statements. During this conversation, he also confirmed the allegation written in his March 23, 2021, letter, that [TRANSLATION] “payments in the renovation community are generally made in cash”.

[21] The evidence on the record shows that the applicant provided the following documents in the first and second reviews of his application:

1. an invoice for services rendered to Lucielle Forget dated February 3, 2020;
2. an invoice for services rendered to Jasmin Tremblay dated March 5, 2020;
3. a letter dated February 18, 2021, explaining the absence of supporting documents for the processing of his file;
4. a letter dated March 16, 2021, addressed to the first validation officer; and
5. a letter dated March 23, 2021, requesting a second review, stating his inability to produce bank statements because payment for services in the renovation field is generally made in cash.

[22] The officer also had the information in the applicant's tax returns for the taxation years from 2017 to 2020, which did not show any eligible income for the purposes of the CRB, except for an amount of \$5,750 for the two invoices noted above for services rendered in 2020, but for which there were no bank statements noting the payments.

[23] On November 17, 2021, following the second review, the second CRA officer concluded that the applicant did not meet the eligibility requirements for the CRB for all the periods covered by his application. The decision is written as follows:

[TRANSLATION]

According to our review, you are ineligible. You do not meet the following eligibility criteria:

You 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 your first application.

You did not experience a 50% reduction in your average weekly income relative to the previous year for reasons related to COVID-19.

[24] Still in disagreement with the decision, the applicant filed his application for judicial review on December 17, 2021.

III. Issues and standard of review

[25] Two issues arise from this application for judicial review:

1. Is the new evidence submitted by Mr. Desautels before the Court admissible?

2. Is the decision of the second CRA officer dated November 17, 2021, finding that Mr. Desautels is ineligible to receive the CRB, unreasonable?

[26] 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 the 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*]).

IV. Analysis

A. *New evidence submitted by Mr. Desautels before Court not admissible*

[27] In support of his application for judicial review, Mr. Desautels filed an affidavit with a bank statement which, according to him, demonstrated the traceability of the amounts collected from his activities as a self-employed worker. This bank statement shows two deposits in a German bank account, which together show a sum of more than \$5,000. According to the applicant, this shows that he had an income of more than \$5,000, which makes him eligible for the purposes of the CRB.

[28] The respondent submits that the applicant cannot enhance his evidence at the judicial review stage by producing documents that were not before the administrative decision maker.

[29] The filing of an affidavit on judicial review is subject to sections 306 et seq. of the *Federal Courts Rules*, SOR/98-106 and a consistent line of cases in the Court of Appeal (*Canada (Attorney General) v Canadian North Inc*, 2007 FCA 42 at paras 3–5, 7–9, 12; *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at paras 17–22). In an application for judicial review, the role of the Court is to examine the legality or reasonableness of the administrative decision maker’s decision, having regard to the legal and factual context presented to the decision maker. Generally, documents that were not before the decision maker are not admissible on judicial review, and the Court must not consider them (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19).

[30] The Federal Court of Appeal recognizes three exceptions to this general rule: (1) the new evidence contains general background information; (2) the new evidence addresses procedural fairness issues; or (3) the new evidence highlights the complete absence of evidence before the administrative decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

[31] In judicial reviews of CRA decisions under the CRBA, the Court has already held that it should not consider additional documents provided in an affidavit in support of the application

that were not previously submitted to the administrative decision maker (*Datta v Canada*, 2022 FC 973 at paras 29–30; *Lussier v Canada*, 2022 FC 935 at para 2).

[32] In this case, Mr. Desautels' affidavit presents evidence, namely a bank statement, which was not before the officer.

[33] During the hearing, the applicant stated that he did not search for this statement because he did not think he would be denied the CRB. However, he should have [TRANSLATION] “suspected” that he might not receive the CRB since his file was under review starting in March 2021, when the first review was carried out. This explanation is not credible, especially since the CRA had asked him for bank statements to prove his self-employment income.

[34] Moreover, as the respondent submits, this document dates from 2020 and therefore existed at the time of the two eligibility reviews. The applicant should therefore have provided them to the CRA when asked if he had any other evidence to support his file.

[35] In addition, the bank statement the applicant submitted contradicts his statements during the CRA review process, in which Mr. Desautels stated that he did not have bank statements showing that he had received amounts for work that had allegedly been done in February and March 2020.

[36] Finally, at face value, the bank statement presented in the affidavit casts doubts as to his reliability. For example, the name of the account holder is not shown on the document, and the bank statement is incomplete.

[37] Even if this document had been accepted into evidence, I would not have attributed any credibility to it. At the hearing, the applicant stated that the amounts appearing on this bank statement corresponded to the amount he himself deposited in an account in Germany, suggesting that these amounts had been earned for the work done for Ms. Forget and Mr. Tremblay. However, the dates of the deposits do not correspond to the “invoices” presented.

[38] At the hearing, Mr. Desautels stated that amounts had been paid in advance. That said, Mr. Desautels’ claim that he cannot submit a bank statement because he is paid in cash is not credible. Even if paid in cash, these amounts should still be deposited into a bank account and reported in his tax return. However, it seems that this was not the case, at least for the years before 2020. Also, there is no evidence that the funds that were used for the transfer to the German bank account come from an eligible source of income for the purposes of the CRB.

[39] Consequently, the affidavit and the bank statement do not fall within the exceptions provided for in the case law. As a whole, Mr. Desautels’ affidavit is therefore inadmissible in evidence, and the Court cannot take it into account. (*Namgis First Nation v Canada (Fisheries and Oceans)*, 2019 FCA 149 at paras 7–12; *Ohwofasa v Canada (Citizenship and Immigration)*, 2020FC 266 at paras 13–15; *Kleiman v Canada (Attorney General)* 2022 FC 762 at para 26).

[40] For all these reasons, the Court will not consider the affidavit in question.

B. *Reasonableness of decision*

[41] The burden is on Mr. Desautels 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).

[42] As discussed, the burden also rests on Mr. Desautels, in his application for judicial review, to show that the second officer's decision is unreasonable.

[43] It is important to note that in analyzing the reasonableness of the second officer's decision, the Court may consider the CRA's second review report and the officer's notes. 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).

[44] I have reviewed the applicant's submissions under the CRB's legislative scheme and the evidence of the parties on the record, and I have concluded that the applicant has not identified any material errors or omissions in the second decision that warrant the Court's intervention.

[45] In his notes, the second officer states that in reaching his decision, he reviewed the information provided by Mr. Desautels in his initial application and considered the first officer's notes, as well as all the documents filed by the applicant. He also contacted the applicant himself to allow him to complete his file.

[46] The reasoning behind the second officer's decision stems from the fact that the applicant was unable to prove that he met the criteria of the CRB. Indeed, given the lack of evidence provided by him, it was impossible for the second officer to establish that he had earned more than \$5,000 in self-employment income in recent years and that he had suffered a loss of more than 50% of his income due to COVID-19.

[47] First, following the conversation with the applicant on November 15, 2021, the second officer noted in his [TRANSLATION] "Observations" communications log in the CRA system that the invoices provided by the applicant do not resemble conventional invoices and seem to be [TRANSLATION] "printed on a blank page at home", and that the information seems to be directed to the CRA rather than to his client.

[48] The second officer also stated that during his conversation with the applicant, he reiterated that he had no other statements because he was paid in cash, which is common for renovation work. No explanation, however, is given as to why Mr. Desautels does not have a bank account that can demonstrate deposits.

[49] In addition, the second officer noted that, following the request to provide more bank statements to show that the applicant had actually collected the amounts for the work he had allegedly performed in 2020, he considered it unnecessary to send statements since the amounts were paid in cash. The applicant stated that he had no further information to provide.

[50] Since the applicant also did not report income as an employee or self-employed person for the 2018 and 2019 taxation years, the second officer noted that it was impossible for him to determine whether the applicant had actually earned at least \$5,000 in self-employment income prior to his first application for benefits.

[51] The second officer was unable to assess the 50% decrease in the applicant's average weekly earnings relative to the previous year for reasons related to COVID-19, as there is no statement of earnings for 2019, or even for 2018. It is also impossible to determine whether Mr. Desautels suffered a drop in income of more than 50% in the last 12 months, since, in the absence of a bank statement, it is impossible to determine whether he received eligible income.

[52] In my view, the record shows that the second officer considered all the documents and information Mr. Desautels provided. In fact, it is the lack of supporting documents that explains the decision maker's decision. The second officer also states at the end of his notes on the review that, [TRANSLATION] "in the absence of evidence of income that he does not have, nothing can reverse the decision."

[53] At that point, during the hearing, Mr. Desautels stated that he was involved in what he called the [TRANSLATION] "informal economy", which, in his view, justified the fact that he was paid in cash, and that he could not prove his income with a bank statement. In response to this statement, the Court cannot characterize the second officer's decision, specifically, that he was unable to determine the applicant's income and that, accordingly, the applicant was unable to demonstrate that he had qualifying income for the purposes of the CRB, as unreasonable. In this

regard, it should be recalled that sections 3 and 6 of the CRBA impose on the applicant the burden of demonstrating that he meets each of the eligibility criteria for entitlement to CRB benefits.

[54] In fact, on reading the record and the information he had, the second officer's reasoning is coherent, based on the evidence before him and justified in light of the CRBA. The second officer's conclusion that this documentary evidence was insufficient is not unreasonable. His reasons are intelligible, are justified in light of the evidence and the file before him and illustrate a satisfactory internal logic.

V. Conclusion

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

[56] The application for judicial review is dismissed.

[57] The parties have agreed to an amount of \$800 to be paid to the respondent as costs.

[58] Finally, I note that at the request of the respondent and in accordance with section 303 of the *Federal Courts Rules*, SOR/98-106, the style of cause is amended so that the Attorney General of Canada is designated as respondent.

JUDGMENT in T-1925-21

THIS COURT'S JUDGMENT as follows:

1. The application for judicial review is dismissed.
2. The parties have agreed to an amount of \$800 to be paid to the respondent as costs.
3. The style of cause is amended so that the Attorney General of Canada is designated as the respondent.

“Guy Régimbald”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-660-22

STYLE OF CAUSE: STÉPHANE DESAUTELS v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 28, 2022

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: DECEMBER 20, 2022

APPEARANCES:

Stéphane Desautels

FOR THE APPLICANT
(SELF-REPRESENTED)

Dominique Castagne

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT