

Federal Court



Cour fédérale

Date: 20221103

Docket: T-1725-21

Citation: 2022 FC 1503

[ENGLISH TRANSLATION]

Montréal, Quebec, November 3, 2022

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

JIANI HE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Jiani He, is seeking judicial review of a decision [Decision] dated October 14, 2021, pursuant to which an officer of the Canada Revenue Agency [CRA] concluded that Ms. He was ineligible for the Canada Emergency Response Benefit [CERB]. The CRA denied Ms. He's claim on the grounds that she had not demonstrated that she had earned at least

\$5,000 (before taxes) in employment or self-employment income in 2019 or in the 12 months preceding the day of her first claim. This was the second review of Ms. He's CERB claim.

[2] Ms. He claims that she had a total income of \$7,000 in the 12 months preceding the date of her first claim and that the CRA's Decision was erroneous. She is asking the Court to set aside the Decision and order the CRA to reassess her financial situation and all the facts in the record.

[3] The only issue in this case concerns the reasonableness of the CRA's Decision.

[4] For the reasons that follow, Ms. He's application for judicial review will be dismissed. After reviewing the CRA's reasons, the evidence on the record and the applicable law, I see no reason to overturn the CRA's Decision. Ms. He has simply not discharged her burden of proof as to the unreasonableness of the CRA's Decision.

II. Background

A. *Facts*

[5] The CERB was part of a package of measures taken by the federal government in 2020 in response to the COVID-19 pandemic. It was a targeted monetary payment intended to provide financial support to workers who suffered a loss of income due to the pandemic. The legislative framework for the CERB is set out in the *Canada Emergency Response Benefit Act* [CERB Act], namely section 8 of the *COVID-19 Emergency Response Act*, SC 2020, c 5. The CRA is the federal agency responsible for administering the CERB. To be eligible to receive CERB

payments, claimants have to demonstrate, among other things, that they received income of at least \$5,000 from employment or self-employment in 2019 or in the 12 months preceding their first claim. Claimants also have to have stopped working or been given reduced hours as a result of COVID-19.

[6] On April 14, 2020, Ms. He filed an initial CERB claim for periods 1 and 2 under the CERB Act. Each period corresponds to two calendar weeks, beginning on March 15, 2020. On October 20, 2020, Ms. He submitted a second CERB claim, this time for periods 5, 6 and 7. Finally, on December 1, 2020, she presented a third claim for periods 3 and 4.

[7] Ms. He reported self-employment income for her housekeeping services at the Motel Le Luxembourg in Quebec City. Ms. He's husband, Jie Xu, is a shareholder in the company that manages the motel. Ms. He reported \$3,000 in income for the months of October to December 2019, and \$4,000 for the months of January to March 2020. She contends that she was eligible for the CERB since the amounts received totalled \$7,000 for the 12-month period preceding her first claim, whereas the eligibility condition for the CERB requires only \$5,000.

[8] CRA accepted Ms. He's CERB claims for periods 1, 2, 5, 6 and 7. Ms. He received cheques for periods 5, 6 and 7. She argues, however, that she did not receive the payments for periods 1 and 2 because she had moved in the meantime and they had been sent to the wrong address.

[9] The CERB claims for periods 3 and 4 were not accepted by the CRA, since the review of Ms. He's case as to her eligibility for the CERB was already under way at the time these claims were filed.

[10] Ms. He speaks neither English nor French. It is therefore Mr. Xu, as her representative, who communicates with the CRA on her behalf. The record also contains the usual forms required by the CRA to represent a taxpayer.

[11] During a telephone call on December 1, 2020, Mr. Xu asked the CRA about the cheques that Ms. He had not received. At that time, CRA explained that additional documentation was required to validate Ms. He's earned income. On December 4, 2020, Mr. Xu, on behalf of Ms. He, sent the CRA three completely handwritten invoices. These covered the period from January to March 2020, bore the name Motel Le Luxembourg and indicated amounts totalling \$4,000.

[12] On January 20, 2021, the CRA's first review officer determined that Ms. He was not eligible to receive the CERB as a result of insufficient additional documentation provided.

[13] Mr. Xu contacted the CRA on February 5, 2021, to obtain information about the first review officer's decision. At the same time, he made a verbal request for a second review.

[14] On February 19, 2021, Ms. He sent a letter to the CRA stating that she had earned \$7,000 in the 12-month period preceding her first CERB claim.

[15] Mr. Xu contacted the CRA by telephone once again on March 4, 2021. A CRA officer explained that the invoices received for 2020 and Ms. He's T1 tax return for 2019 were not sufficient proof of Ms. He's self-employment income. The officer added that Ms. He would also have to submit evidence relating to the \$3,000 received in 2019.

[16] The next day, on March 5, 2021, Ms. He transmitted a letter to the CRA explaining her financial situation and three additional handwritten invoices for the period from October to December 2019. These totalled \$3,000.

[17] On October 8, 2021, CRA second review officer Bianca Pineault contacted Ms. He and Mr. Xu. She explained that the invoices provided were still insufficient, given that the income reported by Ms. He came from a company in which Mr. Xu—a person related to her—was a shareholder and that it had been earned as self-employment. Ms. Pineault added that she would need additional evidence, such as bank statements, to validate the amounts received by Ms. He.

[18] Mr. Xu explained to Ms. Pineault that the payments had been made in cash and had never been deposited in a bank account. Mr. Xu and Ms. He were therefore unable to provide any additional documentation.

[19] In the Decision, Ms. Pineault confirmed Ms. He's ineligibility, as she was unable to validate the veracity of the income Ms. He had reported and meet the first criterion of eligibility for the CERB, i.e., the demonstration of a sufficient level of past income. The Decision noted that Ms. He was entitled to submit an application for judicial review to this Court.

B. Standard of review

[20] The standard of review applicable in this case is reasonableness (*Aryan v Canada (Attorney General)*, 2022 FC 139 [*Aryan*] at paras 15-16). The parties do not dispute this.

[21] When 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 to assess whether the decision was 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 [*Vavilov*] at para 85). The reviewing court must therefore ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74). It is up to the party challenging an administrative decision to show that it is unreasonable.

[22] Review on a standard of reasonableness will involve a rigorous assessment of administrative decisions. However, as part of its inquiry into the reasonableness of a decision, the reviewing court must examine the reasons provided with “respectful attention” and seek to understand the line of reasoning followed by the decision-maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court will adopt a posture of restraint, intervening 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 show

respect for the distinct role that Parliament has chosen to confer on administrative decision-makers rather than on the courts (*Vavilov* at paras 13, 46, 75). A decision will not be overturned on the basis of merely superficial or peripheral errors. Rather, the impugned decision will have to contain sufficiently serious shortcomings, such as internally incoherent reasoning (*Vavilov* at paras 100–101).

III. Analysis

[23] Ms. He claims that the CRA’s Decision was unreasonable, as its conclusions with respect to her ineligibility for the CERB program erroneously disregarded the documents she submitted as proof of her \$7,000 income. Ms. He maintains that she met the eligibility criteria for the CERB at the time of her first claim. Her main argument is that she had a [TRANSLATION] “every” legal right to work for a company in which her husband is a shareholder and to agree to cash payments, and that she was under no obligation to deposit the sums received in a bank account. She maintains that the evidence submitted was amply sufficient to establish her eligibility and that the CRA [TRANSLATION] “unreasonably refuses to believe the veracity” of her statements.

[24] With respect, I do not share Ms. He’s view.

[25] The Canadian tax system—which, since the pandemic, includes the CERB among its components—is based on the principles of self-assessment and self-reporting. In particular, all taxpayers are responsible for reporting and proving their income. Under subsection 5(3) of the CERB Act, individuals applying for the CERB are responsible for providing any information required of them in respect of the application. Furthermore, section 10 of the CERB Act states

that the CRA may, “for any purpose related to verifying compliance or preventing non-compliance with this Act, . . . require that any person provide any information or document within the reasonable timeline that is stated in the notice”. There is therefore no doubt that the onus is on CERB applicants to establish that they meet, on a balance of probabilities, the criteria of the enabling legislation (*Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15; *Walker v Canada (Attorney General)*, 2022 FC 381 [*Walker*] at para 37).

[26] Ms. Pineault, on behalf of the CRA, was therefore authorized to request additional documents, as she was not satisfied with the authenticity of Ms. He’s reported income.

[27] Over the months, Mr. Xu communicated on a number of occasions with CRA officers, who explained that the documents provided were inadequate. Ms. He was therefore well aware of the deficiencies in her file and had multiple opportunities to submit additional documents to prove the authenticity of her statements. Subsection 5(3) of the CERB Act is quite clear: if information is required by the CRA, the claimant is obliged to provide it. This responsibility is reinforced by the principle of self-reporting, which requires that taxpayers be able to prove their income upon request for information (*Walker* at para 37).

[28] Admittedly, Ms. He has every legal right to work for a company in which her husband is a shareholder, and she also has the right to receive her remuneration in cash. No one disputes this. But, in return, Ms. Pineault, as the officer responsible for validating CERB claims, was entitled to request additional documents from Ms. He. Ms. Pineault exercised her judgment on the basis of the circumstances of Ms. He’s case, determining that the documents submitted were

not sufficient. In this sense, she followed the guidelines contained in the CRA's "Confirmation of Eligibility" document, which suggests that when a taxpayer submits self-employment income from entities or persons not dealing at arm's length with the taxpayer, additional documentation should be requested.

[29] In this context, I am of the view that it was not unreasonable for the CRA to conclude that the entirely handwritten invoices, made out in the name of Ms. He's husband's company, was not sufficient and adequate evidence to allow Ms. He to benefit from the support offered by the CERB. Ms. Pineault provided Ms. He with an opportunity to correct the deficiencies in her file by requesting that she submit bank statements, for example. However, Ms. He did not respond to these requests.

[30] The Decision also shows that the CRA considered all the relevant circumstances before determining that Ms. He was ineligible. Indeed, the report prepared by Ms. Pineault—which forms part of the reasons for the Decision (*Aryan* at para 22)—outlined the relevant documents and facts (*Santaguida v Canada (Attorney General)*, 2022 FC 523 at paras 30–31). It described the documents that were provided by Ms. He and noted the absence of a tax return prior to 2018, given that Ms. He only obtained permanent resident status in May 2019. The report demonstrates that the officer considered the documents provided by Ms. He, contains explanations as to their insufficiency, and addresses the reasons provided by Ms. He as to her inability to provide additional documents (*Aryan* at para 26). The report added that, in the absence of additional documents to confirm the veracity of the income reported, Ms. Pineault had no choice but to maintain Ms. He's ineligibility.

[31] I am satisfied that the reasons provided in the letter and report justify the Decision in a transparent and intelligible manner. They enable the Court to understand the basis for the Decision rendered by Ms. Pineault and confirm that no relevant facts have been omitted. Ms. Pineault's report is rigorous and coherent, demonstrating that the CRA carefully reviewed Ms. He's documents and provided her with the opportunity to respond and adduce evidence of her self-employment income. The report establishes that the CRA officer did not disregard the documents provided by Ms. He, but rather deemed them insufficient to support her claim. I would add that the case makes it clear that Ms. He had been properly notified about the missing information the CRA needed as evidence of the income she had reported. In short, Ms. He has failed to demonstrate that the Decision was tainted by serious shortcomings that make it unreasonable in light of the facts (*Vavilov* at para 100).

[32] At the hearing before the Court, Ms. He's counsel suggested that Ms. He was not able to express herself adequately before the CRA, suggesting a breach of the rules of procedural fairness. This claim has no merit. On the contrary, the case clearly demonstrates that Ms. He was able to make her submissions on more than one occasion and that the CRA duly took them into consideration. However, the evidence was incomplete and unsatisfactory. I would add that the problem with Ms. He's case was not one of credibility; rather, her file suffered from a lack of clear and convincing evidence to support her claim for benefits.

[33] Regrettable as the situation may be, Ms. He had a responsibility to prove her income adequately. Ms. Pineault could only base her Decision on the documents available to her (*Walker* at para 35; *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 20). Those documents were

clearly insufficient. Furthermore, it appears from the record that the CRA answered Mr. Xu and Ms. He's questions and explained the nature of the acceptable documents required. The CRA reviewed the invoices and discussed on numerous occasions with Ms. He and her husband the requirement for additional documentation in the context of verifying her claim.

[34] In the context of an application for judicial review, it is not the role of the reviewing court to reweigh the evidence on record (*Vavilov* at para 125). Ms. He has demonstrated nothing more than her disagreement with Ms. Pineault's conclusion and with the weight given to her supporting income documents, and this is not a reason for the Court to intervene. The officer's reasoning was based on the evidence before her and is justified in light of the applicable law. Her reasons illustrate an internal logic without shortcomings, and it is not for the Court to substitute a conclusion that might seem preferable.

[35] Ms. He also requested that the Court determine whether or not she meets the eligibility requirements for the CERB. However, in the context of a judicial review application where the standard of reasonableness applies, it is not for the reviewing court to determine what decision the administrative decision-maker should or could have made (*Vavilov* at para 83). Rather, it must concentrate on the decision made and determine whether it was reasonable in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). In this case, Ms. He has failed to show that the Decision was unreasonable and that intervention by this Court would be warranted.

IV. Conclusion

[36] For all these reasons, Ms. He's application for judicial review is dismissed. I find nothing irrational in the decision-making process followed by the CRA or in its conclusions. Rather, I find that the CRA's analysis possesses all the required qualities, justification, transparency and intelligibility, and that the Decision does not exhibit any reviewable errors. Under the standard of reasonableness, it is sufficient that the Decision be based on an internally coherent and rational chain of analysis, and be justified in relation to the facts and law that constraint the administrative decision-maker. That is clearly the case here.

[37] In view of all the circumstances, and following the submissions of counsel for the Attorney General of Canada in this regard, I agree that the respondent is entitled to costs following the dismissal of Ms. He's application, and that a lump sum of \$500 is reasonable and justified.

JUDGMENT in T-1725-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The applicant must pay the sum of \$500 in costs to the respondent.

“Denis Gascon”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1725-21

STYLE OF CAUSE: JIANI HE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: GASCON J.

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