

Federal Court



Cour fédérale

Date: 20230317

**Dockets: T-1374-22
T-1386-22**

Citation: 2023 FC 367

Toronto, Ontario, March 17, 2023

PRESENT: Madam Justice Go

Docket: T-1374-22

BETWEEN:

HONG KUN LAI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1386-22

AND BETWEEN:

HONG KUN LAI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Hong Kun Lai [Applicant] applied for the Canada Recovery Benefit [CRB] for the periods from September 27, 2020 to October 9, 2021. The Applicant also applied for the Canada Worker Lockdown Benefit [CWLB] for the periods from December 12 to 18, 2021 and January 2 to January 15, 2022. The Canada Revenue Agency [CRA] administers both the CRB and CWLB programs.

[2] The Applicant uploaded bank statements for the period of January 29, 2021 to May 31, 2021 after the CRA initiated a validation process. A CRA agent spoke with the Applicant by telephone between February 22 and 24, 2022, after which the Applicant provided updated bank statements for the period of April 30, 2021 to May 31, 2021 [Updated Bank Statements].

[3] The CRA found that the Applicant was not eligible for the CRB as the Applicant did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of the Applicant's first application for CRB. The CRA notified the Applicant of his ineligibility by letter dated March 10, 2022 [First CRB Decision].

[4] The CRA conducted a second review after the Applicant uploaded a copy of his Notice of Reassessment for the 2019 taxation year [2019 NOR]. By letter dated June 28, 2022, CRA notified the Applicant that he was not eligible for the CRB [Second CRB Decision].

[5] The CRA also found that the Applicant was not eligible for the CWLB by a letter dated March 10, 2022 [First CWLB Decision]. After reviewing the Applicant's 2019 NOR, the CRA conducted a second review and in a letter dated June 28, 2022, confirmed that the Applicant was not eligible for the CWLB [Second CWLB Decision].

[6] The Applicant seeks judicial review of the Second CRB Decision and Second CWLB Decision [together, the "Decisions"].

[7] For the reasons set out below, I dismiss the Applicant's judicial review applications.

II. Preliminary Issues

[8] As a preliminary point, the appropriate respondent is The Attorney General of Canada and not the CRA. The style of cause will be amended accordingly.

III. Analysis

Legislative Framework

[9] The enabling legislation of the CRB is the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*].

[10] Pursuant to section 3 of the *CRB Act*, to be eligible for CRB, the Applicant must have:

- in respect of a CRB application for a two-week period beginning in 2020, earned at least \$5,000 of income from employment or self-employment

income in 2019 or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(d) of the *CRB Act*; and

- in respect of a CRB application for a two week period beginning in 2021, earned at least \$5,000 of income from employment or self-employment in 2019, 2020, or in the 12-month period preceding the day on which the person applied for the CRB, per paragraph 3(1)(e) of the *CRB Act*.

[11] Further section 6 of the *CRB Act* requires an applicant to provide the Minister of Employment and Social Development [Minister] with any information that the Minister may require in respect of the application.

[12] The CWLB, on the other hand, is established pursuant to the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [*CWLB Act*]. Eligible residents of Canada could apply for the CWLB in respect of any one-week period for designated regions, falling within the period beginning on October 24, 2021 and ending on May 7, 2022: section 4 of the *CWLB Act*.

[13] Similar to the *CRB Act*, the *CWLB Act* contains an income eligibility condition that requires the applicant to have earned at least \$5,000 of income in prescribed periods from prescribed categories of income: paragraphs 4(1)(d) and 4(1)(e) of the *CWLB Act*.

[14] In addition, to qualify for CWLB, an applicant must also show that:

- (a) the applicant was unable to work for reasons related to a COVID-19 lockdown;
- (b) the region where the applicant lives, works, or provides a service was designated as a COVID-19 lockdown region; and

- (c) the applicant had to have had a 50% reduction in their average weekly income compared to the previous year due to COVID-19.

[15] Lockdown regions are defined under the *CWLB Act* as any region designated pursuant to an order made under subsection 3(1), by the Governor in Council, on the recommendation of the Minister.

[16] Like the *CRB Act*, section 7 of the *CWLB Act* puts the burden on an applicant to provide the Minister with any information that the Minister may require in respect of an application.

Additional Factual Context

[17] The CRA agent who conducted the second review submitted two affidavits to the Court with relevant documents, one dealing with the Second CRB Decision and another dealing with the Second CWLB Decision. Much of the information contained in the two affidavits is identical, including the case notes kept by the CRA with respect to the Applicant's interactions with its agents [Case Notes].

[18] According to the Case Notes, the Applicant advised CRA that he owns a seafood wholesale business that includes exporting live lobsters overseas. Due to the pandemic in 2020, the transportation was shut down, and the Applicant did not sell anything in 2021 and was not working before December 2021.

[19] During one of the conversations with the CRA agent in February 2022, the Applicant was advised to provide bank statements, invoices and email conversations with clients to prove that he had earned the minimum \$5,000 of income.

[20] The Applicant then submitted the Updated Bank Statements, which include a TD Bank statement from December 2019 showing \$14,962.50 deposited in the bank. On February 24, 2022, the CRA agent asked the Applicant if he had any other documents to verify the wire transfer for the \$14,962.50 amount, to which the Applicant indicated no. As the Applicant did not have documents to validate the \$14,962.50 bank statement, and as the Applicant indicated he was not working before the lockdown, the CRA agent found that the Applicant did not meet the \$5,000 income in 2019 and was thus not eligible for CRB.

[21] According to the Case Notes, the CRA called the Applicant on June 24, 2022 to follow up regarding the missing documents. The CRA agent asked the Applicant if he was working when he applied for the CWLB. The Applicant said no because there was no work. The CRA agent noted that there was no lockdown from December 12 to 18, 2021 in Ontario and asked what the Applicant's business is. The Applicant replied that he runs shipments of seafood from Prince Edward Island to Asia. Due to COVID, restaurants in Asia were closed and he was not receiving any orders.

[22] The Case Notes also indicate that the CRA agent asked the Applicant about the \$14,962.50 deposit in the December 2019 bank statement. The Applicant said it was a 60% down payment from a customer, which he indicated are usually completed through wire transfers.

When asked if there was an invoice for the amount, the Applicant responded no. The CRA agent then asked about the 2019 NOR the Applicant submitted after getting the denial letter in 2022, and the Applicant replied he had missed the \$14,962.50 deposit.

[23] The CRA determined that the Applicant was not eligible for the CRB. The CRA further determined that the Applicant was not eligible for CWLB because he was not working prior to applying for the CWLB and because he did not meet the \$5,000 minimum income threshold.

The Decisions are reasonable and there is no breach of procedural fairness

[24] The Applicant maintains that he met the eligibility of CRB and CWLB. The Applicant submits that the CRA failed to consider his explanation and ignored the 2019 NOR. As such, the CRA erred in law by exercising its discretion in a manner that contravened the *CRB Act* and the *CWLB Act*.

[25] At the hearing, the Applicant provided additional information about the deposit he received for a shipment he purportedly had to make in 2019, which he claims was postponed due to the pandemic. As I informed the Applicant, I will not consider any new information that was not before the decision-maker. In any event, the new information that the Applicant provided did not, in my view, speak to the reasonableness of the Decisions, nor the fairness of the procedure.

[26] Overall, I find the Applicant's submissions lack merit.

[27] The CRA notified the Applicant of the verification process and provided the Applicant an opportunity to provide submissions, which he did. Specifically, the CRA agent spoke with the Applicant on several occasions and advised him of their concerns regarding the lack of invoices and proof of the wire transfer for the \$14,962.50 amount. That the Applicant did not have any further documentation to provide did not render the procedure unfair.

[28] With respect to the substance of the Decisions, the applicable standard is one of reasonableness, as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], which is a deferential, but robust, standard of review: at paras 12-13. For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention.

[29] In this case, other than asserting that the CRA erred in law and in exercising its discretion, the Applicant has not pointed to any specific reviewable errors in the Decisions.

[30] Having reviewed the record, I agree with the Respondent that there is no indication that the decision-maker in question misapprehended or failed to account for the documents provided by the Applicant. The Applicant received the denial letters on March 10, 2022. He then reassessed his 2019 taxes with a \$14,963 adjustment going from the initial assessment of a negative income of \$9,051, to a net income of \$5,912, which put him just over the \$5,000 eligibility mark. The Applicant was asked, but unable to provide any verification for the said deposit in the Updated Bank Statements.

[31] As the Respondent submits, the Applicant bears the burden of showing that there are sufficiently serious shortcomings in the Decisions such that they cannot be said to exhibit the requisite degree of justification, transparency, and intelligibility: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 15.

[32] The Applicant's primary argument is that the CRA agent should have considered the 2019 NOR, without any supporting documents such as invoices, as evidence that he met the minimum income requirement. I agree with the Respondent the Decisions are reasonable in light of the information provided. The Applicant has not demonstrated any shortcomings in the Decisions to warrant the Court's intervention.

[33] In sum, I conclude that the Second CRB Decision finding that the Applicant did not meet the income eligibility requirement under the *CRB Act* was justified and intelligible. I further conclude that the Second CWLB Decision finding the Applicant failed to meet the requirements for CWLB was reasonable.

IV. Conclusion

[34] The applications for judicial review are dismissed.

[35] There is no order as to costs.

JUDGMENT in T-1374-22 and T-1386-22

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.
2. The Style of Cause shall be amended to reflect the Attorney General of Canada as the correct Respondent.
3. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1374-22

STYLE OF CAUSE: HONG KUN LAI v ATTORNEY GENERAL OF CANADA

AND DOCKET: T-1386-22

STYLE OF CAUSE: HONG KUN LAI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MARCH 2, 2023

JUDGMENT AND REASONS: GO J.

DATED: MARCH 17, 2023

APPEARANCES:

Hong Kun Lai

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Amin Nur

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Toronto, Ontario

FOR THE RESPONDENT