

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250516

Docket: A-286-24

Citation: 2025 FCA 97

**CORAM: LEBLANC J.A.
 ROUSSEL J.A.
 HECKMAN J.A.**

BETWEEN:

IRINA ELYKOVA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on May 15, 2025.

Judgment delivered at Ottawa, Ontario, on May 16, 2025.

REASONS FOR JUDGMENT BY:

HECKMAN J.A.

CONCURRED IN BY:

**LEBLANC J.A.
ROUSSEL J.A.**

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REASONS FOR JUDGMENT

HECKMAN J.A.

[1] Ms. Elykova appeals from a judgment of the Federal Court (*per* Whyte Nowak J.) dismissing her consolidated application for judicial review of two decisions (the Decisions) by the Canada Revenue Agency (the CRA): *Elykova v. Canada (Attorney General)*, 2024 FC 964. In one decision, the CRA found Ms. Elykova ineligible for the Canada Recovery Benefit. In the other, it found her ineligible for the Canada Worker Lockdown Benefit. In each case, following

reviews by two different CRA agents (the first and second reviewers), the CRA decided that she had not met the requisite income criteria to qualify for these benefits. Specifically, she had not demonstrated that she had earned the minimum \$ 5,000 of employment income or net self-employment income in 2019, 2020 or in the twelve months before her first application, as required by the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 3(1) and the *Canada Worker Lockdown Benefit Act*, S.C. 2001, c. 26, s. 4(1).

[2] Before the Federal Court, Ms. Elykova argued that the Decisions were unreasonable because they did not account for new evidence that postdated the Decisions. In particular, she claimed that the notices of reassessment for the 2019, 2020 and 2021 tax years (the corrected tax information), issued by the CRA after the Decisions were made and based on amended tax returns that she had filed, showed that she met the income criteria and qualified for the benefits. She argued that the CRA's refusal to hold a third review, taking into account the corrected tax information, was unreasonable and procedurally unfair. She also submitted that, given the language barriers created by her limited proficiency in English, the CRA's review process, which involved unannounced phone calls from CRA reviewers, had prevented her from knowing the case she had to meet.

[3] The Federal Court held that Ms. Elykova had failed to establish that the Decisions were unreasonable. It excluded the corrected tax information based on the well-known principle that a reviewing court is generally required to only consider the evidentiary record that was before the administrative decision maker when it made the decision under review: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency*, 2012 FCA 22,

428 F.T.R. 297 at para. 19 [*Access Copyright*]. It decided that, since the corrected tax information was not before the second reviewer when the Decisions were made, and either did not fall within any of the exceptions to the general principle or was of no assistance to the Court in determining the issues to be decided, it could not form the basis for a finding that it was unreasonable for the second reviewer not to have considered it. The Federal Court also rejected Ms. Elykova's submission that the CRA's review process was procedurally unfair. It was satisfied on the record before it that Ms. Elykova knew the case she had to meet and had been given an opportunity to meet it, and that it was not procedurally unfair for the CRA to have refused to hold a third review.

[4] The issue before this Court is whether Ms. Elykova has demonstrated that the Decisions are unreasonable or procedurally unfair. In considering this issue, this Court must "step into the shoes" of the Federal Court and determine whether the Federal Court correctly selected and applied the standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 46.

[5] After having carefully considered the parties' oral and written submissions and the record, I find that the Federal Court correctly identified and applied the reasonableness standard to review the merits of the Decisions: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 16 [*Vavilov*]. I find as well that it also correctly reviewed whether the Decisions were procedurally fair by asking whether Ms. Elykova knew the case to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121 at para. 56.

[6] In my view, Ms. Elykova has not met her burden of showing that the Decisions are unreasonable: *Vavilov* at para. 100. It was not unreasonable for the CRA to decide, based on the evidence that was before it when it made the Decisions, including the information it had on file, information gleaned from telephone conversations with Ms. Elykova, and the written submissions and documents that she had provided, that she was ineligible for the benefits. Indeed, Ms. Elykova conceded before this Court and before the Federal Court that the Decisions were reasonable unless the corrected tax information was considered. The Federal Court properly applied the *Access Copyright* principles to exclude this information, which was not before the CRA when it made the Decisions.

[7] Ms. Elykova has not persuaded me that the CRA's review process violated procedural fairness. The record shows that she knew the case to meet and that she was given, and took advantage of, a full and fair chance to respond. The CRA's decision letter following the first review informed her that she was ineligible on the basis that her income was insufficient and constituted clear written notice of the case to meet. When the reviewers asked her for additional evidence of self-employment income to support her application for the benefits, she responded by providing such evidence. The record also reveals that she was able to overcome her language barrier in several of her interactions with the CRA by securing the assistance of her accountant and another third party. In sum, the CRA afforded Ms. Elykova several opportunities to supply evidence of her income to qualify for the benefits. Procedural fairness did not require the CRA to provide her yet another review.

[8] Accordingly, I would dismiss the appeal. The respondent is seeking costs in the all-inclusive amount of \$ 2,000. Exercising the broad discretion of the Court under Rule 400 of the *Federal Courts Rules*, SOR/98-106, I would reduce the amount to \$ 500, which I find to be more appropriate in the circumstances of this case.

“Gerald Heckman”

J.A.

“I agree.

René LeBlanc J.A.”

“I agree.

Sylvie E. Roussel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-286-24
STYLE OF CAUSE:	IRINA ELYKOVA v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 15, 2025
REASONS FOR JUDGMENT BY:	HECKMAN J.A.
CONCURRED IN BY:	LEBLANC J.A. ROUSSEL J.A.
DATED:	MAY 16, 2025

APPEARANCES:

Irina Elykova	THE APPELLANT, ON HER OWN BEHALF
Jesse Epp-Fransen Niloofar Sharif	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT
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