

Federal Court



Cour fédérale

**Date: 20221122**

**Docket: T-89-22**

**Citation: 2022 FC 1596**

[ENGLISH TRANSLATION]

**Toronto, Ontario, November 22, 2022**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**TIMONIER MUDING NTUER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Timonier Muding Ntuer is seeking judicial review of decisions by the Canada Revenue Agency [CRA] rejecting his applications for the Canada Recovery Benefit [CRB] and the Canada Recovery Sickness Benefit [CRSB]. For the following reasons, the application for judicial review is dismissed.

I. Background and facts

[2] Mr. Ntuer alleges that he first contacted the CRA in January 2021 to apply for the CRB and CRSB. On February 5, 2021, Mr. Ntuer called the CRA to apply for additional benefits. An officer then informed Mr. Ntuer that his applications were being reviewed [first review] and asked him to provide additional information about his income in 2019–2020.

[3] On February 22, 2021, Mr. Ntuer faxed the first review officer his invoices and payment receipts from his clients in support of his claims for benefits.

[4] On April 30, 2021, June 2, 2021, and June 10, 2021, the first review officer attempted to contact Mr. Ntuer by telephone for clarification and left a voicemail message but never heard back from him. Mr. Ntuer disputed this fact and maintained that he had never received any calls between February and June 2021.

[5] On June 14, 2021, the first review officer made his decisions that Mr. Ntuer was ineligible for the CRB and CRSB. The letters sent to Mr. Ntuer informing him of the decisions indicated that [TRANSLATION] “We tried to reach you but were unsuccessful. As a result, we were unable to verify your eligibility criteria.”

[6] On July 14, 2021, Mr. Nuer submitted a written request for a second review of his applications for both the CRB and CRSB. He also provided the CRA with his Notice of

Assessment from Revenu Québec for the 2019 and 2020 taxation years, which he was unable to provide to the first review officer because his tax returns had not yet been processed.

[7] On December 8, 2021, the second review officer [Officer] contacted Mr. Ntuer by telephone for further information on his applications. The Officer's notes for this call indicate: [TRANSLATION] "Ct had a company (ocean freight) that sent containers at the request of clients in Africa. In 2020, he had no income. He said it was because of COVID."

## II. Impugned decisions

[8] On December 10, 2021, the Officer made his decisions that Mr. Ntuer was ineligible for the CRB and CRSB because he did not meet the eligibility criteria of the *Canada Recovery Benefits Act*, SC 2020, c. 12 [Act].

[9] The letter of refusal of the CRB indicated the reasons were as follows:

- Mr. Ntuer had not earned at least \$5,000 (before taxes) in employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of his first application.
- Mr. Ntuer did not work for reasons other than COVID-19.

[10] The letter of refusal of the CRSB indicated the reasons were as follows:

- Mr. Ntuer had not earned at least \$5,000 (before taxes) in employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of his first application.
- Mr. Ntuer's weekly working hours were not reduced by at least 50% because he was in isolation for reasons related to COVID-19.
- Mr. Ntuer was neither employed nor self-employed on the day before his first application period.

### III. Preliminary issue

[11] Mr. Ntuer is asking this Court to consider additional documents, including client payment receipts from 2020, which were not before the Officer during his analysis.

[12] As a general rule, only documents that were before the decision-maker can be admitted as evidence in a judicial review (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para. 19 [*Association of Universities*]). This Court recently applied this rule in applications for judicial review of decisions on eligibility for the CRB (*Kleiman v. Canada (Attorney General)*, 2022 FC 762 at paras. 25–26; *Sid Seghir v. Canada (Attorney General)*, 2022 FC 466 at paras. 10–11; *Aryan v. Canada (Attorney General)*, 2022 FC 139 at para. 42 [*Aryan*]; *Lussier v. Canada (Attorney General)*, 2022 FC 935 at para. 16).

[13] In this case, I find Mr. Ntuer's request to consider additional documents to be an attempt to have admitted to judicial review documents that Mr. Ntuer would have submitted to the Officer, but which he failed to do. The additional documents relate to the merits of the dispute and do not fall under an exception allowing them to be admitted as evidence, in accordance with the exceptions listed in para. 20 of *Association of Universities*. They are therefore inadmissible.

#### IV. Issues

[14] The issues are (i) whether procedural fairness was observed in the second review, and (ii) whether the Officer's decisions to reject Mr. Ntuer's applications for CRB and CRSB were reasonable.

[15] With respect to the issue of procedural fairness, the Court must ask "whether the procedure was fair having regard to all of the circumstances" and "whether the applicant 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 at paras. 54, 56, cited in *Maltais v. Canada (Attorney General)*, 2022 FC 817 at para. 19; *Fortier v. Canada (Attorney General)*, 2022 FC 374 at para. 15).

[16] The applicable standard for judicial review of both of the Officer's decisions is that of reasonableness (*Aryan* at paras. 15–16). A reasonable decision is "based on an internally coherent and rational chain of analysis and that 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 at paras. 16–17, 85 [*Vavilov*]).

V. Analysis

A. *Procedural fairness was observed in the second review.*

[17] Mr. Ntuer makes the main argument that procedural fairness was breached because he was unaware that his 2019 Notice of Assessment showed a loss of \$43,242 and that the Officer should have reported it to him in the second review. In addition, Mr. Ntuer denies having received the follow-up calls from the first review officer on April 30, June 2, and June 10, 2021, and maintains that he was unaware of the CRA's concerns about his file and therefore could not respond to them.

[18] First, I note that the missed calls of the first review officer were time-stamped and recorded in the call notes in Mr. Ntuer's file, but that they are not the subject of this case because the CRA granted Mr. Ntuer a second review, and he did not raise this argument in the second review, and neither did he specifically do so in the reasons in his letter dated July 14, 2021, nor during his call with the Officer on December 8, 2021.

[19] Second, Mr. Ntuer submits that because of his limited knowledge of taxation, he failed recognize the error in his Notices of Assessment when he sent them to the Officer. Mr. Ntuer states that he learned of this through the letters denying him his applications for both CRB and CRSB and that he has since hired an accountant to correct the error. While this error is unfortunate for Mr. Ntuer, it does not result in a breach of procedural fairness because Mr. Ntuer knew that the CRA had concerns about his 2019 income and had the opportunity to address those

concerns by submitting additional documents and speaking to the Officer during the second review.

[20] During the call on February 5, 2021, the first review officer told Mr. Ntuer that he [TRANSLATION] “is ineligible under the \$5,000 criteria in 2019–2020” and asked him to submit “proof of income for validation” (excerpts from call notes). In addition, the letters of refusal of the CRB and CRSB dated June 14, 2021, indicate that the CRA was unable to reach Mr. Ntuer to verify his eligibility criteria and that he could apply for a second review and include [TRANSLATION] “any new documents, facts or correspondence relevant to the matter.” Following the first review, Mr. Ntuer knew (i) that the CRA had concerns about his 2019 income and (ii) that those concerns had not been addressed because Mr. Ntuer could not be reached. Mr. Ntuer was also asked to respond to these concerns following the call on February 5, 2021, and following the letter dated June 14, 2021.

[21] Even though Mr. Ntuer was aware of the CRA’s concerns about his 2019 income, he stated at the hearing that he did not submit any additional documents for the second review, except for his 2019 and 2020 Notices of Assessment from Revenu Québec for the 2019 and 2020 taxation years. However, I note that his 2019 provincial Notice of Assessment indicated at line 275 a net income of 0.00 for both the amount reported and the amount established.

[22] Individuals who apply for the CRB or the CRSB are responsible for establishing with the CRA that they satisfy, on a balance of probabilities, the criteria of the *Act (Cantin v. Canada (Attorney General))*, 2022 FC 939 at para. 15, citing *Walker v. Canada (Attorney General)*,

2022 FC 381 at para. 55). It was Mr. Ntuer's responsibility to submit sufficient—and correct—evidence to establish his eligibility for the CRB and CRSB, which he did not do in this case.

[23] Third, Mr. Ntuer argues that the *Federal Courts Rules*, SOR/98-106 [Rules] were not followed because the recordings of the calls with the CRA were not provided to him. However, all of the existing transcripts of those calls were provided to Mr. Ntuer, and the Officer indicated, in his written cross-examination, that he did not have a recording of Mr. Ntuer's telephone calls with the CRA, in both the first and second reviews. I find that there has been no breach of the Rules in this case.

B. *The Officer's decisions to reject Mr. Ntuer's applications for the CRB and CRSB were reasonable.*

[24] The Officer's decisions to reject Mr. Ntuer's applications for the CRB and CRSB were reasonable. The eligibility criteria under section 3 of the Act are cumulative, that is., an applicant must meet all the criteria to be eligible to receive benefits under the CRB and/or CRSB. In this case, the Officer determined that Mr. Ntuer did not meet several eligibility criteria for the CRB (at para. 9 of these Reasons) and CRSB (at para. 10 of these Reasons). In my analysis, I will address only the criteria challenged by Mr. Ntuer in his application for judicial review.

[25] Mr. Ntuer alleges that the Officer's decisions were unreasonable because (i) he relied on an erroneous Notice of Assessment to conclude that Mr. Ntuer had not earned at least \$5,000 in net income; and (ii) he came to the groundless conclusion that Mr. Ntuer had not worked in 2020 for reasons other than COVID-19.



[26] First, the Officer's findings with respect to Mr. Ntuer's income were reasonable and justified in light of all the evidence in the record. As explained earlier, it was Mr. Ntuer's responsibility to establish that he met the eligibility criteria for the CRB and CRSB and to submit sufficient and correct evidence.

[27] In addition, a Notice of Assessment is insufficient to establish that an applicant earned a net income of at least \$5,000 (*Aryan* at para. 35). The Officer was required to assess not only the Notices of Assessment submitted by Mr. Ntuer but also the other evidence on file, including invoices and client payment receipts submitted by Mr. Ntuer, as well as the information available through the CRA's internal records, to verify that Mr. Ntuer had indeed earned a net income of at least \$5,000.

[28] The Officer indicated in his second review report that he had consulted all of these sources of information and found that the payment receipts could not justify a self-employment income of \$5,000 for 2019, because both the federal Notice of Assessment and Mr. Ntuer's provincial Notice of Assessment indicated a business loss of \$43,242. The Officer's reasoning was logical and justified in light of the evidence that was available to him (*Vavilov* at paras. 16–17, 85). Mr. Ntuer was responsible for providing adequate proof of his income (*He c. Canada (Procureur général)*, 2022 CF 1503 at para. 33).

[29] Second, Mr. Ntuer argued that it was unreasonable for the Officer to find that he had not worked in 2020 for reasons other than COVID-19 simply because he had no clients in 2020. Mr. Ntuer did not submit any evidence to support his claim that his loss of clients was due to the

pandemic. The Officer reasonably found that Mr. Ntuer's loss of clients had begun before the start of the pandemic in March 2020, because he had no customers in 2020, and the invoices submitted indicated that he usually had clients in January, February, and March.

C. *Costs*

[30] Rule 400 gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." Having considered the factors listed in subrule 400(3) of the Rules, as well as the calculation made by the respondent, and all other circumstances of this case, I find it appropriate to award an amount of \$250 in costs payable by Mr. Ntuer to the applicant.

VI. Conclusion

[31] I find, in the circumstances, that the Officer's decisions were reasonable and that there has been no breach of procedural fairness. The application for judicial review is dismissed with costs.

**JUDGMENT in T-89-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. The applicant shall pay the respondent costs in the amount of \$250.

“Alan S. Diner”

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Judge

Certified true translation  
Sebastian Desbarats

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-89-22

**STYLE OF CAUSE:** TIMONIER MUDING NTUER v. ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE IN MONTRÉAL

**DATE OF HEARING:** NOVEMBER 15, 2022

**JUDGMENT AND REASONS:** DINER J.

**DATED:** NOVEMBER 22, 2022

**APPEARANCES:**

Timonier Muding Ntuer

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Audrey Turcotte

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

None

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Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT