



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 203

Tribunal File Number: AD-16-820

BETWEEN:

M. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

LEAVE TO APPEAL DECISION BY: Janet Lew

HEARD ON: May 3, 2017

DATE OF DECISION: May 3, 2017

REASONS AND DECISION

IN ATTENDANCE

Appellant M. S.

K. C. (Appellant's daughter)

Respondent Hasan Junaid (counsel)

Stéphane Garnier (representative, Department of Employment and Social Development)

[1] I granted leave to appeal on January 6, 2017 in this matter. As I indicated in my leave decision, although the General Division member did not specifically refer to the *Canadian Charter of Rights and Freedoms*, ultimately he based his decision on subsection 15(1) of the *Charter*, when he found that *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65 was “entirely applicable.” I determined that, as the General Division member had failed to ensure compliance with section 20 of the *Social Security Tribunal Regulations*, and ensure that the Notice of Constitutional Question had been filed and served prior to a hearing and rendering a decision that was based on the *Charter*, this may have resulted in an error of law and a breach of the principles of natural justice.

[2] On April 13, 2017, the Respondent indicated that it was prepared to consent to the appeal being granted and the matter being returned to the General Division for a hearing on only the potential *Charter* challenge. The Respondent was also of the position that, as the General Division had already conducted a full hearing on the merits of the matter, re-sending the matter to the General Division would not involve a re-hearing on the same issues.

[3] In a pre-hearing conference conducted on May 3, 2017, the Appellant consented to this course of action, having confirmed that had the appeal proceeded to a hearing on July 13, 2017, short of any compelling arguments otherwise, I would have been unprepared to entertain an airing of any constitutional issues that should have been properly raised before the General Division.

[4] Given the parties' position in this matter, I am ordering that:

- (i) the appeal be granted and the matter returned to a different member of the General Division for a hearing on only the *Charter* issues;
- (ii) the General Division's decision of April 26, 2016 be removed from the hearing file;
- (iii) the Appellant shall comply with the notice requirements under section 20 of the *Social Security Tribunal Regulations*; and
- (iv) the hearing of the appeal before the Appeal Division, currently scheduled for July 13, 2017, be adjourned generally (i.e. cancelled).

[5] I am also giving directions to the General Division member that he or she shall issue any appropriate directions to the parties, such as ensuring that there is a "fulsome record," to facilitate the hearing of the appeal.

[6] Finally, insofar as I can determine, the Appellant's application requesting leave to appeal was based solely on *Charter* issues. Therefore, as this matter is now being returned to the General Division for a hearing on the *Charter* issues, I see no reason or any basis for this particular appeal (AD-16-820) to proceed in the future. In the future, any appeal or applications should be based on the decision that the General Division member renders in connection with the *Charter*.

Janet Lew
Member, Appeal Division