



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. G. v Canada Employment Insurance Commission*, 2016 SSTA DEI 255

Tribunal File Number: AD-15-100

BETWEEN:

Danielle Grenier

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF HEARING: May 10, 2016

DECISION DATE: May 11, 2016

Canada 

REASONS AND DECISION

DECISION

[1]The appeal is allowed and the matter is referred back to the General Division (Employment Insurance Section) for a hearing only on the issue regarding the *Canadian Charter of Rights and Freedoms* (Charter).

INTRODUCTION

[2]On February 9, 2015, the Tribunal's General Division found that:

- The Applicant's employment earnings should be considered in accordance with subsection 21(3) of the *Employment Insurance Act* (Act).

[3] On March 11, 2015, the Appellant filed an Application for leave to appeal before the Appeal Division. Leave to appeal was granted on June 10, 2015.

ISSUE

[4] The Tribunal must determine whether the General Division refused to exercise its jurisdiction by not deciding on the issue relating to the Charter.

THE LAW

[5] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

STANDARDS OF REVIEW

[6] The Tribunal notes that in *Canada (A.G.) v. Jean*, 2015 FCA 242, the Federal Court of Appeal states in paragraph 19 of its decision that when the Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court.

[7] The Federal Court of Appeal proceeds to note that not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of “federal boards”, for the Federal Court and the Federal Court of Appeal.

[8] The Federal Court of Appeal concludes by stating that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.

[9] The mandate of the Appeal Division of the Social Security Tribunal described in *Jean* was subsequently confirmed by the Federal Court of Appeal in *Maunder v. Canada (A.G.)*, 2015 FCA 274.

[10] Unless the General Division failed to observe a principle of natural justice or otherwise refused to exercise its jurisdiction, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

ANALYSIS

[11] The Appellant essentially pleads that the General Division refused to exercise its jurisdiction by not deciding on the issue relating to the Charter.

[12] She states that from the very beginning of the proceedings, she has pleaded that the manner in which the law applies in her case is unfair. Without explicitly raising the issue of the Charter before the General Division, she claims that the principles that she is defending are nonetheless the same reasoning behind the multiple challenges she has undertaken. She maintains that the Charter issues raise some complex questions of law, particularly for non-lawyers. She specifies that her request for appeal to the General Division underscores that [translation] "the *Employment Insurance Act* and its Regulations regarding sickness benefits create a negative prejudice for the claimant who must make a gradual return to work."

[13] During the appeal hearing, the Tribunal was informed that the Appellant presented to the General Division a decision by Umpire J. Dawson, CUB 62690, that specifically deals with recourse under the Charter and provisions relevant to the present case. However, the General Division's decision makes no mention of this case.

[14] Although the Appellant indeed did not specifically raise the Charter issue before the General Division, the Tribunal is of the opinion that she raised the issue in her own non-lawyer capacity. The Federal Court states that the general nature of the clients susceptible to appealing a decision before the Tribunal must be taken into account. Claimants often represent themselves and do not necessarily know how to proceed or the proper legal language --*Bossé v. Canada (A.G.)*, 2015 FC 1142.

[15] Given the circumstances of this case, the Respondent does not object to the file being referred back to the General Division.

[16] In light of the arguments supporting the Appellant's appeal regarding the General Division's refusal to exercise its jurisdiction, given the Respondent's position, and upon review of the file, the Tribunal agrees to allow the appeal.

CONCLUSION

[17] The Tribunal allows the appeal and refers the matter back to the General Division (Employment Insurance Section) for a new hearing by a member only on the issue relating to the Charter.

Pierre Lafontaine

Member, Appeal Division