



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 409

Tribunal File Number: AD-17-406

BETWEEN:

A. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: October 12, 2017

DATE OF DECISION: November 24, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed

INTRODUCTION

[2] On April 12, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) concluded that the Appellant's appeal was to be summarily dismissed since he had received the maximum of 15 weeks of benefits in a benefit period because of a prescribed illness, injury or quarantine, pursuant to paragraph 12(3)(c) of the *Employment Insurance Act* (Act).

[3] On May 18, 2017, the Appellant filed an appeal of the General Division's summary dismissal decision after receiving it on April 19, 2017.

TYPE OF HEARING

[4] The Tribunal held a teleconference hearing for the following reasons:

- The complexity of the issue(s) under appeal.
- The credibility of the parties was not anticipated being a prevailing issue.
- The information in the file, including the need for additional information.
- The requirement under the *Social Security Tribunal Regulations* (SST Regulations) to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant attended the hearing. The Respondent was represented by Marcus Dirnberger.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

- 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, whether or not the error appears on the face of the record; or
- c) The General Division 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.

ISSUES

[7] The Tribunal must decide the following issues:

- Did the Appellant have the opportunity to file a notice of constitutional challenge pursuant to paragraph 20(1)(a) of the SST Regulations?
- Did the Appellant have a right to be provided legal counsel by the Respondent or the Tribunal?
- Did the General Division fail to inform and to assist the Appellant in filing his notice in accordance with paragraph 20(1)(a) of the SST Regulations?
- Did the General Division commit a breach of procedural fairness or fail to follow the requirements of natural justice?
- Did the General Division err when it summarily dismissed the Appellant's appeal?

STANDARD OF REVIEW

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the DESD Act. The Appeal Division does not exercise a superintending power similar to that exercised by a higher court—*Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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

The Charter Challenge

[10] In support of his appeal to the General Division filed on August 29, 2016, the Appellant put forward that his Employment insurance benefits were decreased due to his disability in comparison with those of a healthy person. He submitted that he was denied 25 weeks of benefits due to his disability, contrary to section 15 of the *Canadian Charter of Rights and Freedoms* (Charter).

[11] A pre-hearing conference was held by the General Division on October 27, 2016, to explain the Charter Challenge Process to the Appellant. The General Division issued an Order the same day, stating that the Appellant had to file a notice in accordance with paragraph 20(1)(a) of the SST Regulations no later than December 28, 2016, a two-month delay.

[12] On December 5, 2016, the Appellant requested a 90-day extension of time to file his notice in accordance with paragraph 20(1)(a) of the SST Regulations, pending the outcome of numerous complaints he filed against the opposing counsel and party. He expressed his difficulties obtaining legal counsel and representing himself. He stated that he was out of a job and that pro bono lawyers were avoiding helping him.

[13] On January 25, 2017, the General Division granted the Appellant an extra month, until February 28, 2017, to file his notice. The General Division found that although the Appellant was responsible for the extended delay, as he was wasting his time filing accusations against the opposing party and counsel instead of concentrating on his appeal, it was in the best interest of justice to allow another extension of time to file notice.

[14] On March 2, 2017, the General Division ended the Appellant's Charter Challenge Process as the Appellant had failed to file a proper notice as per paragraph 20(1)(a) of the SST Regulations within the allowed time given to him.

Did the Appellant have the opportunity to file the notice in accordance with paragraph 20(1)(a) of the SST Regulations?

[15] The Appellant filed his appeal with the General Division on August 29, 2016. The General Division proceeded with a pre-hearing conference on October 27, 2016, to explain the Charter Challenge Process to the Appellant. He was granted an initial 60 days to file his notice and provided with a copy of the relevant provision of the SST Regulations. In the best interest of justice, another 30-day extension was granted to the Appellant by the General Division to file his notice.

[16] Although the Appellant was given until December 28, 2016, and then an extension until February 28, 2017, to file his notice in accordance with paragraph 20(1)(a) of the SST Regulations, he did not file or attempt to file any notice.

[17] The Tribunal finds that the Appellant, with a total delay of four months, if you do not take into consideration the period of time prior to the pre-conference hearing, was given more than a reasonable amount of time by the General Division to prepare his Charter challenge and to file his notice in accordance with paragraph 20(1)(a) of the SST Regulations.

Did the Appellant have a right to be provided legal counsel by the Respondent or the Tribunal?

[18] The Appellant expressed his difficulties representing himself and obtaining legal counsel, who were avoiding helping him. He requested that the Respondent or the Tribunal provide him with legal assistance.

[19] The Tribunal finds that the Respondent did not have an obligation to provide legal counsel to the Appellant.

[20] The attorneys on file represent the Respondent. Their client and mandate are clear. Contrary to the Appellant's position, he did not become "client" of the Respondent's attorneys just because he applied for Employment Insurance benefits. The fact that the Respondent's responsibilities include the obligation to advise claimants on the programs and services available to them does not include the right to be provided legal counsel by the Respondent in case of litigation. This could not be considered as a reasonable belief on the part of the Appellant.

[21] The Tribunal also finds that the General Division did not have an obligation to provide legal counsel to the Appellant.

[22] Although access to legal services is fundamentally important in any free and democratic society, the Supreme Court of Canada, in *B.C. v. Christie* [2007] 1 SCR 873, stated that the text of the Constitution, the jurisprudence and the historical understanding of the rule of law, did not support the conclusion that there is a general constitutional right to counsel in proceedings before courts and tribunals dealing with rights and obligations.

[23] Furthermore, the DESD Act and the SST Regulations do not mention an obligation for the Tribunal to provide legal assistance. Subsection 63(1) of the DESD Act provides only that a party who is required to attend a hearing may, if the chairperson in any particular case for special reasons considers it warranted, be reimbursed for their travel or living expenses or be paid an allowance, including compensation for lost remuneration.

[24] Therefore, as decided by the General Division, the Respondent did not have a duty to provide legal counsel to the Appellant, and the same applied to the Tribunal.

Did the General Division fail to inform and to assist the Appellant in filing his notice in accordance with paragraph 20(1)(a) of the SST Regulations?

[25] The Appellant puts forward that the General Division failed to inform him and to assist him in filing his notice in accordance with paragraph 20(1)(a) of the SST Regulations.

[26] The Tribunal finds that while it was appropriate for the General Division to explain the Charter Challenge Process to the Appellant and to inform him of the requirement to file a notice in accordance with paragraph 20(1)(a) of the SST Regulations, its duty did not extend so far as to require the General Division member to become surrogate counsel for the Appellant.

[27] Furthermore, the Tribunal noticed during the appeal hearing and in reading the voluminous file consisting mostly of representations made by the Appellant, that he is not an ordinary unrepresented litigant. He is very comfortable in researching and reading various legislation and case law. He presents his case clearly and fluently. He is obviously knowledgeable and used to an adversarial process. In other words, he is no stranger to legal litigation.

[28] The Tribunal agrees with the General Division's conclusions (interlocutory decision of January 25, 2017), that the Appellant, after being appropriately informed of his obligation to file a notice pursuant to paragraph 20(1)(a) of the SST Regulations, chose to dedicate his valuable time to filing accusations against the opposing party and counsel, accusations that were without any merits, instead on concentrating on filing his notice of constitutional challenge in the allowed period of time.

[29] The Tribunal also notes that the Respondent's interlocutory motions in the file were communicated to the Appellant and that he had the opportunity to reply to them.

Did the General Division commit a breach of procedural fairness or fail to follow the requirements of natural justice?

[30] For the above mentioned reasons, the Tribunal finds that the General Division did not commit a breach of procedural fairness or fail to follow the requirements of natural justice.

Did the General Division err when it summarily dismissed the Appellant's appeal?

[31] The Tribunal must decide whether the General Division erred when it summarily dismissed the Appellant's appeal.

[32] Subsection 53(1) of the DESD Act states that "the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success."

[33] The Tribunal's Appeal Division has determined that the correct test to be applied in cases of summary dismissal is the following:

-Is it plain and obvious on the face of the record that the appeal is bound to fail?

[34] To be clear, the true question is whether that failure is pre-ordained no matter what evidence or arguments might be presented at the hearing in support of the appeal.

[35] The General Division examined the evidence and determined that the Appellant was paid 15 weeks of sickness benefits.

[36] The General Division concluded that the Act placed a specific limit on the number of weeks of sickness benefits. Paragraph 12(3)(c) of the Act clearly indicates that the maximum number of weeks for which benefits may be paid in a benefit period because of a prescribed illness, injury or quarantine is 15.

[37] The General Division also noted that the Act does not allow for any discretion with respect to the duration of sickness benefits.

[38] For the above-mentioned reasons, the Tribunal agrees that the appeal before the General Division was bound to fail no matter what evidence or arguments might have been presented at the hearing. It was clear that the Appellant had received the maximum number of weeks for which sickness benefits could be paid in his benefit period.

[39] As such, the General Division's determination that the Appellant's appeal should be summarily dismissed was in accordance with the legislation and case law.

CONCLUSION

[40] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division