



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. L. v Canada Employment Insurance Commission*, 2020 SST 258

Tribunal File Number: AD-19-899

BETWEEN:

M. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: March 27, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, M. L. (Claimant), applied for Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) determined that the Claimant did not meet the conditions to receive benefits because he had not accumulated enough hours of insurable employment during his qualifying period. The Claimant asked the Commission to reconsider the decision. However, the Commission upheld its initial decision.

[3] The General Division determined that the payment of contributions does not automatically give entitlement to benefits. The Claimant must meet certain basic conditions to qualify. It also determined that there is no provision in the *Employment Insurance Act* (EI Act) that allows for the deferral of unclaimed benefits.

[4] The Claimant argues that the EI Act is unreasonable and discriminates against workers on sick leave who have worked all their lives and paid into the Employment Insurance system. He argues that the hours worked before the illness must be part of the calculation of hours for entitlement to Employment Insurance.

[5] The Tribunal must decide whether the General Division made an error by summarily dismissing the Claimant's appeal.

[6] The Tribunal dismisses the Claimant's appeal.

ISSUE

[7] Did the General Division make an error by summarily dismissing the Claimant's appeal?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has established that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, made an error 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.

Did the General Division make an error by summarily dismissing the Claimant's appeal?

[11] The Tribunal must determine whether the General Division made an error when it summarily dismissed the Claimant's appeal.

[12] The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.²

[13] The Appeal Division has established the test to be applied in the event of a summary dismissal:

- Is it obvious that the appeal is bound to fail, no matter what arguments or evidence might be presented at a hearing?

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

² DESD Act, s 53(1).

[14] The General Division found that the Commission extended the Claimant's qualifying period to the maximum permitted by the EI Act (104 weeks), given his inability to work due to health reasons.

[15] The General Division determined that the Claimant had no hours of insurable employment during his qualifying period, when he needed at least 700 to be entitled to benefits. It found that the Claimant's appeal had no chance of success, no matter what additional evidence and arguments would be presented at the hearing.

[16] As the General Division decided, the payment of contributions does not give automatic entitlement to benefits. The Claimant must meet certain basic conditions to qualify. Furthermore, there is no provision in the EI Act that allows for the deferral of unclaimed benefits.

[17] The Claimant argues that the EI Act is unreasonable and discriminates against workers on sick leave who have worked their whole life and paid into the Employment Insurance system. He argues that the hours accumulated before the illness must be part of the calculation of hours to be entitled to Employment Insurance.

[18] The Tribunal finds that the Claimant has not raised any argument under the *Canadian Charter of Rights and Freedoms* (Charter) before the General Division. The issue of discrimination does not appear in his notice of appeal and in his written submissions to the General Division.

[19] According to the general principle, constitutional questions cannot be raised for the first time before the Appeal Division because the General Division has the authority to decide on a constitutional question.³

³ *Erasmus v Canada (Attorney General)*, 2015 FCA 129.

[20] The Tribunal is of the view that there is no reason that would justify waiving the general principle in this file.⁴ Furthermore, the documentary evidence before the Appeal Division is simply not enough to make a decision about a question under the Charter.

[21] The Tribunal agrees that, on reading the file, it was clear and obvious that the appeal to the General Division was bound to fail. As a result, the Tribunal agrees with the General Division's decision to summarily dismiss the appeal.

[22] For the reasons mentioned above, it is therefore appropriate to dismiss the appeal.

CONCLUSION

[23] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 24, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M. L., Appellant

⁴ *Okwuobi v Lester B. Pearson School Board; Casimir v Québec (Attorney General); Zorrilla v Québec (Attorney General)*, [2005] 1 SCR 257, 2005 SCC 16.