



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MS v Canada Employment Insurance Commission*, 2020 SST 1131

Tribunal File Number: GE-19-3883

BETWEEN:

**M. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Teresa M. Day

DATE OF DECISION: March 30, 2020

## REASONS AND DECISION

### INTRODUCTION

[1] On June 4, 2019, the General Division of the Social Security Tribunal (Tribunal) dismissed the Appellant's appeal of the disqualification imposed on his claim for EI benefits from September 16, 2018 because he lost his employment due to his own misconduct. The Appellant appealed that decision to the Tribunal's Appeal Division (the AD).

[2] On November 12, 2019, the AD allowed the appeal and referred it back to the Tribunal – but ***only*** to allow the Appellant to present a challenge pursuant to the *Canadian Charter of Rights and Freedoms* (Charter).

[3] The Appellant was given until February 21, 2020 to complete the first step in the Tribunal's Charter process, namely to file the notice prescribed by section 20 of the Social Security Tribunal Regulations (the section 20 notice). He has failed to do so.

[4] This is the decision on the appeal referred by the AD.

### ISSUE

[5] The Tribunal must decide whether the appeal should be summarily dismissed.

### THE LAW

[6] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[7] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[8] Section 20(1) of the *Social Security Tribunal Regulations* provides that if the constitutional validity, applicability or operability of any provision of the *Employment Insurance Act* (EI Act) or the regulations made under either of this Act (and certain other related legislation

not necessarily relevant to this appeal) is to be put at issue before the Tribunal, the party raising the issue must:

(a) file a notice with the Tribunal that

(i) sets out the provision that is at issue, and

(ii) contains any submissions in support of the issue that is raised; and

(b) at least 10 days before the date set for the hearing of the appeal or application, serve notice of that issue on the persons referred to in subsection 57(1) of the *Federal Courts Act* and file a copy of the notice and proof of service with the Tribunal.

## **EVIDENCE**

[9] On November 12, 2019, the AD referred the Appellant's appeal back to the Tribunal to allow the Appellant to present a Charter challenge.

[10] A Charter challenge before the Tribunal occurs when an Appellant signals they intend to argue that the EI Act or the *Employment Insurance Regulations* (EI Regulations) breach or infringe rights that are guaranteed to them under the Charter.

[11] On January 8, 2020, I convened a pre-hearing case conference with the Appellant and discussed the steps involved in bringing a Charter challenge before the Tribunal. I provided a detailed explanation of what the Appellant had to do as the first step, namely the filing of the section 20 Notice. The Appellant participated in this pre-hearing case conference and confirmed his intention to make a Charter argument. He also agreed to the February 21, 2020 deadline to file his section 20 notice.

[12] On January 10, 2020, the Tribunal sent a letter to the Appellant confirming the February 21, 2020 deadline to file his section 20 notice, and provided him with a draft form to use for his section 20 notice and an information package about the Charter process.

[13] The Appellant failed to file his section 20 notice by February 21, 2020.

[14] On February 24, 2020, a Registry Officer from the Tribunal left a voicemail message for the Appellant asking him to contact the Tribunal regarding the status of his section 20 notice.

[15] The Appellant did not respond to this voicemail message.

[16] On February 27, 2020, the Tribunal sent a second letter to the Appellant. This letter advised the Appellant that his appeal would be summarily dismissed unless he filed detailed written submissions explaining why his appeal had a reasonable chance of success by March 29, 2020.

[17] The Appellant did not provide any submissions in response to the Tribunal's notice of intention to summarily dismiss his appeal.

## **ANALYSIS**

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

[19] This Tribunal cannot decide Charter issues without a proper understanding of the factual context which led to the alleged breach or infringement of the Appellant's rights, and a focus on the specific part of the legislation which caused it.<sup>1</sup>

[20] For this reason, claimants who intend to raise Charter issues in their appeals must file a notice with the Tribunal stating the section of the legislation at issue and brief submissions in support of the issue raised.<sup>2</sup> Only if the Tribunal is satisfied that a claimant has laid this foundation, will they be permitted to continue with the Charter process and move on to the next step, namely the filing of a more detailed document which includes the evidence, submissions, and authorities that they intend to rely on.

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<sup>1</sup> The Supreme Court of Canada explained this general principle in *Mackay v Manitoba*, [1989] 2 SCR 357. The law requires me to apply principles applied by the Courts when they interpret the *Employment Insurance Act* and other applicable legislation.

<sup>2</sup> Section 20(1)(a) of the *Social Security Tribunal Regulations* sets out this requirement.

[21] The Appellant's failure to file a section 20 notice means he has not satisfied the requirements of paragraph 20(1)(a) of the *Social Security Tribunal Regulations*. As a result, he cannot continue with the Charter process.

[22] Because the referral from the AD was expressly limited to allowing the Appellant an opportunity to present a Charter challenge in support of his claim for EI benefits, the failure to file a section 20 notice is the end of that opportunity. He cannot now bring forward a Charter argument and, therefore, the appeal referred by the AD must be dismissed.

[23] I find that the Appellant has not satisfied the requirements in paragraph 20(1)(a) of the Social Security Tribunal Regulations and, therefore, cannot make a Charter challenge to establish a claim for EI benefits. I have no jurisdiction to alter or vary these requirements. Therefore, the failure of the Appellant's appeal is pre-ordained no matter what evidence or arguments might be presented at a hearing, and must be summarily dismissed pursuant to subsection 53(1) of the DESD Act.

## **CONCLUSION**

[24] The Tribunal finds that the appeal referred by the AD has no reasonable chance of success; therefore the appeal is summarily dismissed.

**Teresa M. Day**

**Member, General Division - Employment Insurance Section**