



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. G. v Canada Employment Insurance Commission*, 2020 SST 424

Tribunal File Number: AD-20-600

BETWEEN:

**G. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 20, 2020

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed and the matter is referred back to the General Division only to allow the Claimant to present a *Canadian Charter of Rights and Freedoms* (Charter) challenge.

### OVERVIEW

[2] The Appellant, G. G. (Claimant), received his full entitlement to sickness benefits and asked to convert his claim to regular benefits. The Commission refused his claim on the basis that he was not looking or applying for work due to this health. The Claimant asked for reconsideration of the claim and the Commission again refused for the same reasons.

[3] The General Division found that the Claimant did not prove that he was capable of, available for employment, and unable to obtain suitable employment. Therefore the Claimant was disentitled from benefits per section 18(1) (a) of the *Employment Insurance Act* (EI Act).

[4] The Appeal Division granted the Claimant leave to appeal. He submits that he is entitled to equal protection under the law. He puts forward that the Commission is allowing that healthy people convert sickness benefits to regular benefits. In contrast, sick people are limited to only 15 weeks of benefits because they are incapable of looking for another job.

[5] The Tribunal must decide whether the General Division failed to observe a principle of natural justice.

[6] The Tribunal allows the appeal.

### ISSUE

[7] **Did the General Division fail to observe a principle of natural justice?**

## **ANALYSIS**

### **Appeal Division's mandate**

[8] The Federal Court of Appeal has determined 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.<sup>1</sup>

[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.<sup>2</sup>

[10] 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.

## **PRELIMINARY MATTERS**

[11] The present file is scheduled for a hearing on June 30, 2020. In view of the Commission's submissions, the Tribunal has decided to render a decision on the record because no further oral submissions are necessary.

### **Did the General Division fail to observe a principle of natural justice?**

[12] The General Division found that the Claimant did not prove that he was capable of, available for employment, and unable to obtain suitable employment. Therefore the Claimant was disentitled from benefits per section 18(1) (a) of the EI Act.

[13] As stated in the leave to appeal decision, the Tribunal cannot decide that the Claimant is entitled to regular benefits under the EI Act when his medical situation prevents him from being available for work as defined in section 18(1)(a) of the EI Act. It

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

<sup>2</sup> *Idem.*

is not within the power of the Tribunal to change directly or indirectly the provisions and terms of the EI Act.

[14] The Claimant submits that he is a victim of discrimination and entitled to equal protection under the Charter. He puts forward that the Commission is allowing that healthy people convert sickness benefits to regular benefits. In contrast, sick people are limited to only 15 weeks of benefits because they are incapable of looking for another job.

[15] In view of this argument, the Tribunal proceeded to listen to the recording of the General Division hearing to determine whether the Claimant is raising the Charter issue for the first time before the Appeal Division.

[16] During the General Division hearing, the Claimant put forward that he was entitled to equality under the Charter. The General Division Member stated he had taken notes of all the Claimant's arguments and closed the hearing. However, there is no mention of the Claimant's Charter argument in the General Division decision.

[17] The Commission is of the view that the General Division erred in not considering the Charter argument and that the matter should be remitted back to the General Division so that the Claimant's Charter argument may be considered pursuant to section 20(1) of the *Social Security Tribunal Regulations* (SST Regulations).

[18] In these circumstances, the Tribunal is of the view that the General Division failed to observe a principle of natural justice and will refer the matter back to the General Division only to allow the Claimant to present a Charter challenge.

## **CONCLUSION**

[19] The appeal is allowed and the matter is referred back to the General Division only to allow the Claimant to present a Charter challenge pursuant to section 20(1) of the SST Regulations.

Pierre Lafontaine  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	G. G., Appellant Tiffany Glover, Representative for the Respondent