



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *GG v Canada Employment Insurance Commission*, 2020 SST 1054

Tribunal File Number: GE-20-1500

BETWEEN:

G. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

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

DECISION BY: Candace R. Salmon

DATE OF INTERLOCUTORY DECISION: September 8, 2020

Issue

[1] Has the Appellant met requirements of paragraph 20(1)(a) of the *Social Security Tribunal Regulations*?

Background and Analysis

[2] The Appellant seeks to challenge the constitutionality of a section of the *Employment Insurance Act*, submitting that it is discriminatory.

[3] There are particular procedural requirements related to appeals before the Tribunal where constitutional arguments are being made. One of those requirements is at paragraph 20(1) of the *Social Security Tribunal Regulations*. It states, in part:

If the constitutional validity, applicability or operability of any provision of the... *Employment Insurance Act*...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.

[4] The Appellant filed a Notice of Appeal on February 10, 2020, disputing a Canada Employment Insurance Commission (Commission) decision dated January 15, 2020. The decision found he was disentitled from receiving regular EI benefits because he failed to prove he was available for work.

[5] The General Division of the Social Security Tribunal (Tribunal) heard the appeal on March 4, 2020. The Member dismissed the appeal, finding that the Appellant failed to show he was available for work.

[6] On April 7, 2020, the Appellant requested leave to appeal to the Tribunal's Appeal Division. While the Appeal Division upheld the General Division's finding on availability, it noted that the Appellant also made a constitutional argument that was not addressed. Leave to appeal was granted on April 16, 2020. On May 20, 2020, the Appeal Division issued a decision referring

the file back to the Tribunal's General Division on only the specific issue of the Appellant being allowed to present an argument under the *Canadian Charter of Rights and Freedoms* (Charter).

[7] I held a pre-hearing conference on July 7, 2020. The Appellant and three Commission representatives attended. I explained the constitutional process to the Appellant. He confirmed that he understood the process for constitutional hearings and wanted to proceed. I requested he produce representations by August 7, 2020, in response to the requirements of the *Social Security Tribunal Regulations*.

[8] Given the complexity of this process and the Appellant's status as self-represented, I prepared a follow-up letter on July 7, 2020, summarizing the requirements of a constitutional appeal as discussed at the pre-hearing conference.

[9] The Appellant submitted documentation on July 13, 2020. The documentation included a copy of the Appeal Division decisions dated April 16, 2020, and May 20, 2020, a copy of the Human Rights Tribunal of Ontario's decision in a separate case, and a copy of my July 7, 2020, letter.

[10] Given that the Appellant did not provide any relevant information to meet the *Social Security Tribunal Regulations*' notice requirements, and recognizing he is self-represented, I wrote a second letter to him on July 15, 2020. In this letter, I reiterated the requirements for documentation to satisfy the notice requirements of the *Social Security Tribunal Regulations*. I also acknowledged that while the Appellant is certainly permitted to proceed without representation, if he wanted to engage assistance in preparing his file there are a number of possible representation resources listed on the Tribunal's website. The specific page was hyperlinked in the letter.¹ I added that the Appellant still had until August 7, 2020, to submit further information.

[11] The Appellant submitted an email on July 29, 2020, showing he contacted an employment help centre on July 17, 2020, but received no response. The Appellant also contacted a local legal aid office, which responded on July 28, 2020, and declined to represent him. The Appellant attached a letter to this email, submitting he would try again to complete the notice but if he was

¹ The letter was sent in PDF format, with a hyperlink to the website

not successful, asking the Tribunal to do it for him. I note that the Tribunal cannot complete notice requirements for the Appellant.

[12] In the letter, the Appellant also submitted a copy of sections 18 and 27 of the *Employment Insurance Act*, as well as a copy of the Charter's section 15 Equality Rights provisions. He did not explain the link between these pieces of legislation, or provide a statement of facts with an explanation of how the facts support his allegation that the *Employment Insurance Act* infringes on his Charter rights.

[13] The Commission submitted a letter on August 14, 2020. It noted that the Appellant submitted information relating to a human rights complaint, with no explanation of why that information would be relevant to this proceeding. It also noted he did not outline a statement of facts or an explanation of how those facts support his allegation that the *Employment Insurance Act* infringed his Charter rights. In the absence of these details, the Commission submits the appeal should be dismissed.

[14] The Appellant responded to the Commission's submission on August 18, 2020. He acknowledged that he included information from his Ontario Human Rights Tribunal file with his documents before this Tribunal. He stated he was "trying to show how mental illness are very easy to dismiss and misunderstand in the currently Canadian System from the private to the public sector" (*sic*).

[15] On August 19, 2020, the Appellant submitted a document titled Statement of Facts, which is essentially a timeline of events. He stated that he received sickness benefits and sought to convert to regular benefits, but was not allowed to do so because he could not prove he was available for work. The Appellant admitted he remained ill after sickness benefits expired, and stated he wanted the Commission to "apply some actions" against his former employer because he felt the employer was not doing what it was supposed to do, and caused him to request EI benefits.

[16] The Commission provided submissions on August 31, 2020, arguing that the Appellant's materials do not meet the statutory criteria to constitute a sufficient *Social Security Tribunal Regulations* paragraph 20(1)(a) Notice. It submits the Appellant had the burden of identifying the

specific provisions of the *Employment Insurance Act* or *Employment Insurance Regulations* at issue, and filing submissions that are related to the identified provisions and are sufficiently specific to permit the Tribunal to see the Charter argument outlined. In this case, the Commission submits the Appellant's materials do not explain how the identified provisions infringe on his rights pursuant to the Charter. It writes:

Subsection 15(1) of the *Charter* requires a multifaceted assessment of various factors and the application of a 2-part legal test: 1) does the law create a distinction based on an enumerated or analogous ground, and 2) is the distinction discriminatory. While it is not necessary at this preliminary stage for the Appellant to prove his s.15(1) argument, he must at least identify some explanation concerning how the legislative provisions are engaged such that the Tribunal can see the outline of an argument that his *Charter* rights have been violated.

[17] On September 2, 2020, the Appellant again responded to the Commission's submissions.² This submission includes no new relevant information. It is also late. While I have been flexible with the Appellant because he is self represented, and allowed him to respond after the initial deadline, that cannot continue indefinitely. I find this document still fails to satisfy the onus on the Appellant to meet Notice requirements.

Decision

[18] I find the Appellant has identified some provisions at issue, as he referred to sections 18 and 27 of the *Employment Insurance Act*.³ He also identified the Charter provisions relating to Equality Rights.⁴ However, his materials do not explain how the identified provisions infringe his rights pursuant to the Charter. Specifically, the Appellant has not explained how the legislative provisions of the *Employment Insurance Act* relate to a Charter rights violation. I may infer that the Appellant believes it is unfair that he was not able to receive regular EI benefits while sick, but he has not provided the information necessary to support a Charter issue.⁵ Much of his submissions relate to process and how he perceives the Commission did not process his file correctly, but do not address the nexus between the *Employment Insurance Act* provisions at issue and the Charter.

² RGD19

³ Mentioned at RGD11-9 and RGD11-10

⁴ Mentioned at RGD11-10 and RGD11-11

⁵ This is a requirement of the *Social Security Tribunal Regulations*, at subparagraph 20(1)(a)(ii)

[19] On August 22, 2020, the Appellant submitted a further letter to the Tribunal referring to *Social Security Tribunal Regulations* 82(1)(2), which does not exist.⁶ The *Social Security Tribunal Regulations* end with section 50. The Appellant submits that his issue should be declared ultra vires the Tribunal's General Division and should be heard directly by the Federal Court of Canada. Based on this submission, I presume the Appellant intended to refer to the *Employment Insurance Regulations*, section 82, which address suspension of benefits pending an appeal. I find this section is not relevant to the Appellant's issue because whether the *Employment Insurance Regulations* are ultra vires is not a constitutional issue.

[20] Further, if the Appellant's intent is to submit that the Tribunal's General Division does not have authority to make a decision on this issue, which I presume is his meaning by referencing ultra vires, I find this submission is without merit. The Tribunal is specifically empowered by the *Social Security Tribunal Regulations* to address constitutional issues, with the specific process being explained at section 20 of the *Social Security Tribunal Regulations*.

[21] The Appellant submitted significant information relating to a provincial human rights tribunal file, which he believes is interconnected with this EI appeal process. I find that proceedings before the Tribunal are separate and distinct from proceedings before the Human Rights Tribunal of Ontario. Further, the Appellant did not explain the applicability of how these materials assist him in meeting the criteria for bringing a constitutional appeal pursuant to paragraph 20(1)(a) of the *Social Security Tribunal Regulations*. Therefore, I have not considered the documents.

[22] I also note that while the Appellant expressed interest in having representation and was not able to secure assistance, he was afforded the opportunity to pursue representation and was directed to possible options for an agent. The Tribunal also explained the constitutional process multiple times and accepted all of the Appellant's submissions, even after the deadline of August 7, 2020, in an effort to ensure he was heard and had every opportunity to make his case. I am satisfied that the process undertaken in this file has been procedurally fair.

⁶ RGD16

Conclusion

[23] I find this appeal **does not** raise a constitutional issue that meets the requirements of paragraph 20(1)(a) of the *Social Security Tribunal Regulations*. The appeal is dismissed and the file will be closed, as it was referred back to the General Division only on the issue of a constitutional argument.

Candace R. Salmon
Member, General Division – Employment Insurance

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