



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *GG v Canada Employment Insurance Commission*, 2021 SST 10

Tribunal File Number: AD-20-791

BETWEEN:

G. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 22, 2021

DECISION AND REASONS

DECISION

[1] The Tribunal allows the Claimant's appeal. The file returns to the General Division for reconsideration on the Charter challenge.

OVERVIEW

[2] The Appellant (Claimant) received his full entitlement to sickness benefits and asked to convert his claim to regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), refused his claim because he was not looking or applying for work due to his health. The Claimant asked for reconsideration of the claim but the Commission again refused for the same reasons. He then appealed to the General Division of the Tribunal.

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

[4] In support of his first application for leave to appeal, the Claimant submitted that the General Division refused to exercise its jurisdiction by not deciding the issues he had raised under the *Canadian Charter of Rights and Freedoms* (Charter).

[5] Ultimately, the Appeal Division allowed that appeal and referred the matter back to the General Division to decide the Claimant's Charter appeal.

[6] The General Division then found that the Claimant's appeal did not meet the requirements for bringing a Charter appeal under section 20(1) (a) of the *Social Security Tribunal Regulations* (SST Regulations). As a result, it dismissed the Claimant's Charter appeal.

[7] The Appeal Division granted the Claimant leave to appeal of the General Division's Charter decision. The Claimant submits that he did raise a constitutional issue

before the General Division that meets the requirements of section 20(1) (a) of the SST Regulations. He submits that the General Division erred when it dismissed his Charter appeal for that reason.

[8] I must decide whether the General Division erred in fact or in law in its interpretation of section 20(1) (a) of the SST Regulations.

[9] I am allowing the Claimant's appeal. The file returns to the General Division for reconsideration on the Charter challenge.

ISSUE

[10] Did the General Division make an error in fact or in law in its interpretation of section 20(1) (a) of the SST Regulations?

PRELIMINARY MATTERS

[11] By agreement between the parties, I am rendering a decision on the written record.

ANALYSIS

Appeal Division's mandate

[12] 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.¹

[13] 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.²

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

² *Idem*.

[14] 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, I must dismiss the appeal.

Did the General Division make an error in fact or in law in its interpretation of section 20(1) (a) of the SST Regulations?

[15] Section 20(1) (a) of the SST Regulations provides that if the constitutional validity, applicability, or operability of any provision of the EI Act is to be put at issue before the Tribunal, the party raising the issue must 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.

[16] The Claimant submits that he raised a constitutional issue before the General Division that meets the requirements of section 20(1) (a) of the SST Regulations. He submits that the General Division erred when it dismissed his Charter appeal for that reason.

[17] The Commission is of the opinion that the General Division did not make an error in law in applying the legal test of section 20(1) (a) of the SST Regulations. It submits that the Appeal Division cannot intervene regarding an error that is an application of the facts to the law, which is what the Claimant is asking the Tribunal to do.

[18] In its decision, the General Division agreed with the Commission that the Claimant had not complied with section 20(1) (a) of the SST Regulations. In doing so, the General Division committed what I see as an error of law. In my view, the Claimant did what was necessary to carry on with his Charter argument.

[19] The Claimant submitted before the General Division that he is a victim of discrimination and entitled to equal protection under the Charter.

[20] The Claimant argued that the Commission allows healthy claimants to convert from sickness benefits to regular benefits. In contrast, sick claimants are limited to 15 weeks of benefits because they are incapable of looking for another job.

[21] The Claimant alleged that the current employment insurance system has been violating the Charter for years by allowing only healthy claimants to do that conversion. He submitted that he should be entitled to receive 50 or more weeks of benefits, the same as healthy people do.

[22] Before the General Division, the Claimant relied on section 18 of the EI Act and section 15(1) of the Charter.

[23] I find that the thrust of the Claimant's submissions as a whole is that the applicability of the 15 weeks limitation results in a denial of his right to equal benefit under the EI Act and discriminates against him on grounds of mental or physical disability contrary to the Charter.³

[24] I note that the Appeal Division case law interpreting section 20(1) (a) of the SST Regulations does not impose a high burden on claimants who seek to challenge the constitutionality of some aspect of benefits-conferring legislation.⁴

[25] This interpretation of section 20(1) (a) of the SST Regulations follows the Federal Court instructions that the Tribunal must take into account the general nature of the clients that may appeal a decision before the Tribunal. Claimants often represent themselves and do not necessarily know the proper legal language.⁵

[26] I am of the view that the General Division made an error in its interpretation of section 20(1) (a) of the SST Regulations.

³ Sections 12(3) (c) and 18(1) (b) of the EI Act, section 15(1) of the Charter, RGD19-1 to RGD19-3.

⁴ *R. S. v Minister of Employment and Social Development*, 2017 CanLII 84970.

⁵ *Bossé v Canada (Attorney general)*, 2015 FC 1142.

[27] I find that the Claimant did in fact file a Charter argument in some fashion and, although it may have lacked sophistication, it was not the General Division's role at that point to assess its quality.⁶

[28] For the above-mentioned reasons, I will allow the Claimant's appeal and return the matter to the General Division for reconsideration on the Charter challenge.

CONCLUSION

[29] For the reasons discussed above, I am allowing this appeal on the ground that the General Division erred by barring the Claimant's Charter challenge, despite the Claimant having met the requirements of section 20(1) (a) of the SST Regulations. The file returns to the General Division for reconsideration on the Charter challenge.

Pierre Lafontaine
Member, Appeal Division

METHOD OF PROCEEDING:	By agreement, decision on the written record
APPEARANCES:	G. G., Appellant Tiffany Glover, Representative for the Respondent

⁶ *R. S. v Minister of Employment and Social Development*, 2017 CanLII 84970, par 22.