



Citation: *JL v Canada Employment Insurance Commission*, 2025 SST 151

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: J. L.
Representative: B. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (538377) dated August 22, 2022
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Decision date: February 18, 2025

File number: GE-24-547

Decision

[1] The appeal is dismissed. The Appellant has not met the requirements to make a constitutional challenge. His constitutional challenge will not proceed.

Overview

[2] The Canada Employment Insurance Commission (Commission) allocated the Appellant's Canada Pension Plan (CPP) pension to weeks when he was receiving Employment Insurance (EI) benefits. The pension money reduced the weekly benefits payable to the Appellant. This created an overpayment because the Appellant had already been paid benefits at a higher rate.¹

[3] The Appellant appealed that decision to the General Division of the Tribunal.² The General Division agreed with the Commission that the earnings had to be allocated but started the allocation on a later date.³

[4] The Appellant then appealed the General Division's decision to the Appeal Division of the Tribunal.⁴ The Appeal Division found that the General Division did not make an error allocating the CPP pension, but it found that the General Division had acted unfairly. It said that it was unfair for the General Division to summarily dismiss the Appellant's Charter concerns without giving him a chance to seek advice and bring forward a proper Charter challenge application.⁵

[5] The Appeal Division returned the matter to the General Division so the Appellant would have an opportunity to bring the Charter challenge. This is the only issue that was returned to the General Division. The Appeal Division confirmed that the challenge must be brought to the General Division in proper form.⁶

¹ See decision letters and notice of debt on pages GD3-22 to GD3-24, and GD3-31 to GD3-33.

² See GD2.

³ See General Division decision dated January 31, 2023, AD1A-1.

⁴ See AD1B-1.

⁵ See Appeal Division decision dated January 30, 2024, file number AD-23-199 (AD decision).

⁶ See AD decision, paragraphs 12 to 19 and 46 to 48.

Issue

[6] I must decide whether the Appellant's constitutional challenge meets the requirements of the law. In other words, has the Appellant brought a constitutional challenge in proper form?

Analysis

[7] For the Appellant's appeal to proceed as a constitutional challenge, he must file a notice that includes specific information as set out in section 1 of the *Social Security Tribunal Regulations, 2022* (SST Regulations). I call this the Charter Challenge Notice.

[8] The Appellant has not filed a Charter Challenge Notice. The information he filed does not meet the requirements set out in section 1 of the SST Regulations. This means that his appeal cannot proceed as a constitutional challenge. Since the constitutional issue is the only outstanding matter in his appeal, his appeal is dismissed.

[9] I explain my decision below, but first I will set out what has happened since the appeal was returned to the General Division.

What has happened

[10] The appeal was returned to the General Division on January 31, 2024.

[11] By letter dated February 26, 2024, the Tribunal member explained the filing requirements to make a constitutional challenge.⁷ Enclosed with the letter was a Charter Challenge Notice form and an information sheet on how to make a Charter challenge at the Tribunal. The Appellant was given until March 25, 2024, to file the Charter Challenge Notice.

[12] When no notice was received, the General Division scheduled case conferences for April 18, 2024, May 14, 2024, and June 26, 2024.⁸ There were difficulties getting the

⁷ See RGD2.

⁸ See RGD3, RGD4, RGD5, RGD6, RGD7, and RGD8.

case conference invitations delivered to the Appellant, and the Appellant's representative couldn't attend on short notice.

[13] When we couldn't connect by case conference, I sent the Appellant a letter. The letter dated June 27, 2024, set out what the Appellant had to provide for his appeal to move ahead as a Charter challenge.⁹ The letter stated that the Appellant had to file a Charter Challenge Notice no later than August 30, 2024.¹⁰

[14] I scheduled another case conference for August 12, 2024.¹¹ The Appellant's representative attended the case conference. We discussed the Charter Challenge Notice and next steps. At her request, I extended the deadline for the Charter Challenge Notice to October 4, 2024.¹²

[15] On October 1, 2024, the Appellant asked for a further extension.¹³ The Appellant explained that he was trying to meet with his Member of Parliament, so she could represent him in this matter.

[16] On October 3, 2024, I agreed to give the Appellant more time to file his Charter Challenge Notice. I extended the deadline to November 18, 2024.¹⁴

[17] On November 21, 2024, the Appellant's representative wrote that they were still trying to get a meeting with their Member of Parliament for help with the appeal.¹⁵

[18] On December 5, 2024, I agreed to give the Appellant another extension until February 5, 2025.¹⁶ I explained that if the Appellant missed this deadline his file could be closed without further notice.

⁹ See RGD11.

¹⁰ See page RGD11-5.

¹¹ See RGD13 and RGD15.

¹² See RGD16.

¹³ See RGD17.

¹⁴ See RGD18.

¹⁵ See RGD19. The letter is dated November 18, 2024, but it wasn't faxed to the Tribunal until November 21, 2024.

¹⁶ See RGD20.

[19] On December 9, 2024, the Appellant filed copies of letters dated February 6, 2024, and March 12, 2024.¹⁷ These letters include a write-off request due to financial hardship. The “received” stamp indicates that these letters were also filed with Service Canada. The Appellant also included letters that he sent to the Appeal Division dated March 13, 2024, and March 15, 2024.

[20] The February 5, 2025, deadline has now passed. The Appellant has not filed any documents since December 9, 2024. The Appellant has not filed a Charter Challenge Notice form.

What the law requires

[21] Section 1 of the SST Regulations says that a party who wants to challenge the constitutional validity, applicability or operability of a provision of the *Employment Insurance Act* (EI Act) or its rules or regulations, **must** file a notice with the Tribunal.

[22] The notice must set out these three things:

- The provision that will be challenged
- The material facts relied on to support the constitutional challenge
- A summary of the legal argument to be made in support of the constitutional challenge.¹⁸

[23] To help claimants who want to make a constitutional challenge, the Tribunal has prepared a form, which we call the Charter Challenge Notice. The notice doesn’t have to be in that form, but it usually is.

[24] To move on to the next steps of a constitutional challenge, the Appellant must file a notice that meets all three of the requirements.¹⁹

¹⁷ See RGD21.

¹⁸ See section 1 of the *Social Security Tribunal Regulations*.

¹⁹ The next step is filing a detailed Charter Record that includes all the evidence, submissions and authorities the claimant intends to rely on.

The Appellant hasn't met the requirements

[25] The Appellant has not filed a Charter Challenge Notice form. But since the notice doesn't have to be in a specific form, I will look at the other documents filed to see if the information in the appeal file is sufficient to meet the three requirements.

[26] The first requirement I will look for is whether the Appellant has identified which provision of law he wants to challenge.

– The provision that will be challenged

[27] The Appellant first mentioned a constitutional violation in post-hearing documents filed after the General Division hearing on the merits of his appeal.²⁰ After that, the Appeal Division found that the Appellant had not brought a Charter challenge in the proper form.²¹ So, I will focus on the documents filed after the Appeal Division's decision. These are the documents filed after the Appeal Division returned the file to the General Division. I set out the Appellant's earlier comments for context only.

[28] At the General Division, the Appellant wrote: "We feel our Charter Rights were violated by EI," and cited section 15(1) of the Canadian Charter of Rights and Freedoms.²² In that letter, the Appellant explained why he felt he had been denied access to justice.

[29] At the Appeal Division, the Appellant wrote, "Our Charter Rights and Freedoms have been violated we have not been treated fairly."²³ The Appellant argued that the onus is on the Commission and CPP to be fair and educate the public.

[30] Since then, the Appellant has repeated the same sentiments. He argues that his section 15 rights have been violated.²⁴ He states that he has been treated unfairly by EI

²⁰ See page GD5-4.

²¹ See AD decision, paragraphs 17 and 45.

²² See page GD5-4.

²³ See page AD1B-12.

²⁴ See RGD10-3 and RGD14-2.

and CPP because they did not inform him that his CPP pension could affect the amount he could receive in EI benefits.²⁵

– **Section 56 of the *Employment Insurance Regulations***

[31] When talking about the violation of his section 15 rights, the Appellant often mentions section 56(1)(f)(ii) of the *Employment Insurance Regulations* (EI Regulations).²⁶ So, I considered whether the Appellant has properly brought a constitutional challenge in relation to this section of law.

[32] The Tribunal's jurisdiction to consider constitutional challenges is limited to questions of law necessary for the disposition of the appeal.²⁷ Also, the Supreme Court of Canada states that administrative tribunals, like the Tribunal, have the "authority to resolve constitutional questions that are linked to matters properly before them."²⁸

[33] I do not have jurisdiction to make decisions about section 56 of the EI Regulations. This is why:

- Section 112.1 of the EI Act says that the Commission's decisions under the EI Regulations to write off any penalty owing, amount payable or related interest accrued is not subject to review under section 112 of the Act.
- Section 113 of the EI Act says that decisions made under section 112 can be appealed to the Tribunal. In other words, the Tribunal can only hear appeals of decisions made under section 112.
- Since a write-off decision cannot be reviewed under section 112 of the EI Act, write-off decisions cannot be appealed to the Tribunal. In other words, write-off requests and write-off decisions are not matters that can be properly brought to the Tribunal.

²⁵ For example, see page AD1-1.

²⁶ For example, see page RGD17-2.

²⁷ See section 64(1) of the *Department of Employment and Social Development Act*.

²⁸ See *R v Conway*, 2010 SCC 22 at paragraph 78.

[34] As explained above, the law says that I only have authority to consider a constitutional challenge that is necessary for the disposition of the appeal and linked to matters properly before me.

[35] I cannot consider the constitutionality of section 56 of the EI Regulations, because I don't have the authority to hear appeals relating to section 56. Simply put, constitutional challenges to section 56 of the EI Regulations cannot be brought to the Tribunal.

– The Appellant has not identified any other section of law

[36] The Appellant has not provided a notice form and has not stated what other section(s) of the law he believes violates his section 15 rights.²⁹

[37] I am not allowed to guess what section of the law the Appellant wants to challenge. The onus is on the Appellant to meet the requirements set out in section 1 of the SST Regulations.

[38] The Appellant has not met the first requirement – to set out the provision of law that will be challenged. The only section of law the Appellant has identified is section 56 of the EI Regulations, but this is not a section of law that can be challenged at the Tribunal.

[39] I do not have to consider if the Appellant has met the other two requirements under section 1 of the SST Regulations because he must meet all three requirements for his Charter challenge to proceed.

²⁹ I am referring to section 15 of the Canadian Charter of Rights and Freedoms.

Conclusion

[40] The Appellant has not identified a provision of the law that he can challenge under section 1 of the SST Regulations, so he hasn't met the requirements of that section of law.

[41] This means the appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section