



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. N. v. Minister of Employment and Social Development*, 2018 SST 83

Tribunal File Number: AD-17-853

BETWEEN:

M. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 29, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] Mr. M. N., the Appellant, applied for and began to receive an Old Age Security (OAS) pension. He was later incarcerated, and in 2011, his OAS payments were suspended while he was in jail, due to a change in legislation. He appealed the Minister of Employment and Social Development's decision to suspend his OAS pension to the Social Security Tribunal. The Tribunal's General Division summarily dismissed his appeal. The appeal to the Appeal Division is dismissed as the General Division observed the principles of natural justice and did not make an error when it dismissed his arguments made under the *Canadian Charter of Rights and Freedoms* (Charter).

PRELIMINARY MATTER: FORM OF HEARING

[3] This matter was decided on the basis of the written record after considering the following:

1. The *Social Security Tribunal Regulations* (Regulations) require that appeals be conducted as informally and quickly as the circumstances and the considerations of fairness and natural justice permit;
2. Credibility is not a significant issue in this appeal;
3. The legal issues to be decided are straightforward; and
4. The parties were given an opportunity to file written submissions on all issues, and did not object to the matter being decided on the basis of the written record.

ISSUES

[4] I must decide the following issues in this appeal:

1. Did the General Division fail to observe a principle of natural justice when it dismissed the Appellant's claim?
2. Did the General Division err when it dismissed the Appellant's Charter arguments?

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out the only grounds of appeal that the Appeal Division can consider, namely, whether the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹ The Appellant's arguments must be considered in this context.

Issue 1: Did the General Division fail to observe a principle of natural justice?

[6] The principles of natural justice are concerned with ensuring that parties to an appeal know the legal case that they have to meet, have an opportunity to present their case, and have a decision made by an impartial decision maker based on the facts and the law.

[7] In this case, it is clear that the parties knew and understood the case that they had to meet at the General Division. The Appellant did not argue that a principle of natural justice was breached because there was no oral hearing. An oral hearing is not required in every case.²

[8] The Appellant argues that the principles of natural justice were not observed because he was unhappy with the representation he received. He did not, however, detail any errors made by his representative. He did not suggest that his representative was negligent. The record does not demonstrate that the Appellant's representative failed to advance the Appellant's arguments or was incompetent.

¹ Section 58 of the DESD Act.

² See *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[9] It is not for the Tribunal to assist any party to an appeal by suggesting whom they might retain to represent them during the appeal process or at a hearing. It is for the parties to an appeal to choose whom they wish to represent them, or to represent themselves. Each party must also choose what evidence and legal arguments they will present. The Appellant's argument that his representative did not advance arguments in his favour does not point to any error made by the General Division, so it must fail.

Issue 2: Did the General Division err when it dismissed the Appellant's Charter arguments?

[10] This tribunal has legal authority to consider arguments based on the Charter. Because Charter arguments are legally complex, a proper legal and factual basis must be made out. The Regulations provide that specific requirements be met in these cases³ so that this is accomplished. The General Division clearly set out what these requirements were and gave the Appellant a reasonable opportunity to meet them. It also stated that if the requirements were not met, the Appellant would be precluded from raising Charter arguments.⁴ The Appellant did not meet these requirements. Consequently, the General Division dismissed his Charter claim. This was not unreasonable. The reasons for doing so are set out intelligibly and logically in the decision. I am satisfied that the General Division made no error when it dismissed the Appellant's Charter claim.

[11] Further, the General Division considered whether the Appellant's claim that his OAS pension should not have been suspended during his incarceration could proceed on its merits without the Charter arguments. The General Division reviewed the relevant legislation⁵ and determined that the claim did not have a reasonable chance of success on its merits. The General Division decision logically and intelligibly explains why the Appellant's claim had no reasonable chance of success. The DESD Act states that the General Division must summarily dismiss an appeal that has no reasonable chance of success⁶. The General Division did not err when it did so. The appeal must also fail on this basis.

³ Section 20 of the *Social Security Tribunal Regulations*.

⁴ Paragraphs 3 and 11 of the General Division decision.

⁵ Section 5 of the *Old Age Security Act*.

⁶ Section 53 of the DESD Act.

CONCLUSION

[12] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the written record
APPEARANCES:	M. N., Appellant Matthew Vens, Counsel for the Respondent