



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *JN v Minister of Employment and Social Development*, 2020 SST 860

Tribunal File Number: AD-20-715

BETWEEN:

J. N.

Appellant
(Applicant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: October 8, 2020

DECISION AND REASONS

DECISION

[1] I allow this appeal, and I return the matter to the General Division for reconsideration, in accordance with the directions below.

OVERVIEW

[2] The Applicant, J. N., applied for an Old Age Security (OAS) pension in August 2015. The Minister of Employment and Social Development approved his application as of June 2016. However, it suspended payment of the pension, even before the Applicant received his first payment.

[3] The Minister's decision is based on section 5(3) of the *Old Age Security Act* (OAS Act). This section states that a person who is incarcerated by virtue of any Act of Parliament is not eligible for an OAS pension during their incarceration period.

[4] The Applicant has been trying to dispute the Minister's decision since it was made in 2016. Unfortunately, it is a dispute made difficult by several visits to the General Division, to the Appeal Division, and even to the Federal Court.

[5] On January 15, 2019, the General Division made a decision dismissing the Applicant's notice of constitutional question. Specifically, the General Division found that the Applicant had not satisfied all the conditions stated in section 20(1)(a) of the *Social Security Tribunal Regulations* (SST Regulations). However, the General Division did not specify which conditions were not satisfied.

[6] After that decision, the General Division applied section 5(3) of the OAS Act and dismissed the Applicant's appeal. In doing so, the General Division did not consider the Applicant's arguments about whether section 5(3) of the OAS Act infringed his rights guaranteed under the *Canadian Charter of Rights and Freedoms*.

[7] The Minister acknowledges that the General Division made an error justifying the Appeal Division's intervention. It proposes that the matter be returned to the General Division.

[8] I agree that the matter must be returned to the General Division for reconsideration. However, I am adding some directions to make sure the process is fair. These are the reasons for my decision.

METHOD OF PROCEEDING

[9] I decided this appeal based on the documents already on file for the following reasons:

- a) The relevant facts are clear.
- b) The legal issues the appeal raises are not complex.
- c) The Minister acknowledges that I must allow the appeal.¹
- d) I have to make sure that appeals before the Tribunal proceed as informally and as quickly as circumstances, fairness, and natural justice permit.²

ISSUE

[10] There are only certain types of errors that I can consider. They are called “relevant errors.”³ Generally, I cannot intervene in this case unless the General Division:

- a) acted in an unfair manner;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) misapplied the law;
- d) based its decision on an important error regarding the facts in the file.

¹ The Minister’s submissions are numbered at ADNN3.

² Section 3(1)(a) of the *Social Security Tribunal Regulations* sets out this principle.

³ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the relevant errors (or grounds of appeal) that I can consider.

[11] As part of this decision, I considered the following question: Did the General Division make a relevant error by dismissing the Applicant's notice of constitutional question without specifying the reasons for its decision?

ANALYSIS

[12] Yes, the General Division made a relevant error by failing to specify the conditions stated at section 20(1)(a) of the SST Regulations that the Applicant had not satisfied.

[13] On September 28, 2018, the Tribunal noted that the Applicant had referred to the Charter in documents that he had filed as part of his appeal. The Tribunal therefore informed him that, if he wanted to raise a constitutional challenge, he had to file a notice of constitutional question under section 20(1)(a) of the SST Regulations. A copy of this provision can be found at the end of the Tribunal's letter.

[14] The Applicant filed his notice on October 26, 2018.⁴

[15] Regarding notices of constitutional question, the Appeal Division has already found that the requirements imposed by section 20(1) of the SST Regulations are not demanding.⁵ As part of this appeal, the Appeal Division also recommended to the General Division to clearly state the reasons why the Applicant's notice may be insufficient and give him the opportunity to correct these insufficiencies.⁶

[16] The General Division did not follow these recommendations. Instead, it dismissed the Applicant's notice without giving him explanations and without giving him the opportunity to make the necessary corrections.

[17] In this situation, I agree with the Minister's arguments: The General Division made a relevant error under section 58(1)(a) of the *Department of Employment and Social Development Act*. Therefore, I allow the Applicant's appeal.

⁴ The Applicant's notice is numbered at IS4.

⁵ This proposal was stated by the Appeal Division in *RS v Minister of Employment and Social Development*, 2017 CanLII 84970 at para 22.

⁶ See the Appeal Division decision, dated May 30, 2019, at para 26.

[18] I also agree with the remedy the Minister proposed: The matter is returned to the General Division for reconsideration.⁷ However, I am adding certain directions in the context of this very particular appeal.

[19] Unfortunately, this appeal has been ongoing for so long that the Applicant's arguments seem to be scattered throughout many documents. First, the Applicant argues that he was subject to:

- a) different treatment because of his age and marital status;
- b) a sentence beyond that provided by the law of which he was found guilty.⁸

[20] Furthermore, the Applicant has invoked sections 1, 7, 12, 15, 24, 26, 31, and 52 of the Charter.

[21] More recently, the Applicant emphasized the Minister's supposed obligation to communicate certain documents and to establish the constitutional validity of a provision that was found to violate rights guaranteed under the Charter.

[22] Since the Applicant appealed several years ago, the Tribunal has been preparing an information sheet and a form that can guide appellants who raise constitutional questions. The Applicant and the Tribunal would benefit from using these tools.

[23] As a result, I am returning this matter to the General Division with certain exceptional directions in a very particular case. These directions are intended to promote procedural fairness and are designed to assist the General Division when it resumes its assessment of the Applicant's notice of constitutional question.

- a) The General Division will provide the Applicant with the information sheet on the presentation of a constitutional appeal as well as the notice of appeal form involving the Charter.

⁷ The remedies possible are those set out in section 59(1) of the DESD Act.

⁸ See, for example, documents GD1, GD7, GD13, AD2, IS2, and IS3.

- b) The General Division will give the Applicant a reasonable period of time to submit this form or another form of notice under section 20(1)(a) of the SST Regulations. If he wishes, the Applicant can also inform the Tribunal that he continues to rely on an earlier notice of constitutional question.
- c) If the General Division finds that the Applicant still has not satisfied the conditions stated in section 20(1)(a) of the SST Regulations, the General Division will clearly state its concerns and give the Applicant the opportunity to make the necessary corrections before dismissing his notice of constitutional question again.⁹
- d) I note that the same member of the General Division has already dismissed the Applicant's appeal twice. To avoid any possibility of an apprehension of bias, the appeal will be assigned to another General Division member.

CONCLUSION

[24] In short, the General Division made a relevant error by failing to provide adequate reasons to justify its dismissal of the Applicant's notice of constitutional question. I therefore allow the appeal, and I return the matter to the General Division for reconsideration by a different General Division member. Furthermore, the General Division must follow the exceptional directions stated above.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVE:	J. N., Appellant

⁹ The Appeal Division provided a similar remedy in *LR v Minister of Employment and Social Development*, 2020 SST 2013, a very similar case to this one.