



Citation: *SG v Canada Employment Insurance Commission*, 2022 SST 1148

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: S. G.

Respondent: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Decision under appeal: General Division decision dated August 18, 2022
(GE-22-1923)

Tribunal member: Janet Lew

Type of hearing: On the Record

Decision date: November 2, 2022

File number: AD-22-595

Decision

[1] The appeal is allowed in part. The General Division should not have used the summary dismissal procedure to dismiss the Claimant's appeal. However, the outcome remains the same.

Overview

[2] This is an appeal of the General Division decision. The General Division summarily dismissed the appeal of the Appellant, S. G. (Claimant).

[3] The Claimant asked to change her election of extended to standard parental benefits because she made a mistake on her application form. She found out about her mistake once she was paid parental benefits. But, the General Division found that, once parental benefits are paid, a claimant is unable to change their choice of parental benefit type. So, it concluded that the Claimant could not change her election.

[4] The General Division did not hold a hearing. It found that the appeal did not have a reasonable chance of success. It found that it was plain and obvious on the record that the appeal was bound to fail, no matter what evidence or arguments the Claimant might have made at a hearing.

[5] The Claimant has not directly addressed the summary dismissal issue in her appeal. However, she argues that the General Division failed to consider two facts. She also argues that there has been no justice. She argues that she is entitled to the benefits and that they should not be reduced because of a "small error".¹

[6] The Respondent, the Canada Employment Insurance Commission (Commission), argues that the appeal to the General Division was bound to fail no matter what are evidence or arguments the Claimant might have presented at the hearing. The Commission argues that the General Division did not make any error in

¹ See Claimant's Application to the Appeal Division--Employment Insurance, filed August 22, 2022, at AD1-10.

summarily dismissing the appeal, as the appeal did not have a reasonable chance of success. The Commission asks the Appeal Division to dismiss the appeal.

Issues

[7] The issue in this appeal is: Did the General Division make an error by summarily dismissing the Claimant's appeal?

Analysis

[8] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.

Did the General Division make an error by summarily dismissing the Claimant's appeal?

[9] Under section 53(1) of the *Department of Employment and Social Development Act*, the General Division is required to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[10] The General Division found that it was clear from the record that the Claimant's appeal did not have any reasonable chance of success and that her appeal was bound to fail. For that reason, it summarily dismissed the Claimant's appeal.

[11] The Federal Court of Appeal has held that an appeal should only be summarily dismissed when it is obvious that the appeal is bound to fail no matter what evidence or arguments might be presented at a hearing.²

[12] Cases where a claimant does not meet the qualifying conditions, has insufficient insurable hours, or where they have reached the maximum number of weeks paid for sickness benefits, are good examples of appeals that are clearly bound to fail.

² See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

[13] It is questionable whether appeals involving the election of parental benefits falls into the same class or category. Sometimes additional evidence or arguments at a hearing could alter the outcome of an appeal.

[14] For instance, if there was evidence that the Commission had misled or misinformed a claimant about the parental benefits scheme, possibly the appeal would have a reasonable chance of success. For that reason, the General Division should have given the Claimant a chance to fully present her case. In other words, the General Division should not have relied on the summary dismissal procedure to dismiss the Claimant's appeal.

Fixing the error

[15] How can I fix the General Division's error? In cases where the General Division summarily dismisses an appeal, usually sending the matter back for a reconsideration would be appropriate, but I find that I have all the evidence before me, even if, as the Claimant says, the General Division overlooked some of it. More importantly, I find that the law and the facts are unforgiving. So, I will also substitute my own decision.

– The Claimant's arguments

[16] The Claimant argues that the General Division made two factual errors. She says that it overlooked the following:

- a. that the application form did not state that she would not be able to change her choice once the first payment was made, and
- b. Service Canada did not send her a letter or email to let her know that payments would be reduced for extended parental benefits. She says that if Service Canada sent her such a letter or email, she would have known to change her choice.

[17] The Claimant argues that it is unfair that she and her family are now facing financial hardship because of a small error that she made.

○ **The application form**

[18] The Claimant argues that the application form was deficient. In particular, she says that it did not state that she would not be able to change her choice of parental benefit type once the Commission paid her parental benefits.

[19] It is unclear how this information would have affected the Claimant's choice.

[20] But, the application very clearly stated, "You cannot change options (standard or extended) once any parent has received parental benefits" under the heading "Parental Benefits Information."³

[21] The application form reminded claimants of this later in the application form, under the heading "Type of parental benefits." The reminder reads, "You can't change your selection (standard or extended) once you've started receiving parental benefits".⁴

○ **Getting more information from Service Canada**

[22] The Claimant says Service Canada should have done a better job in letting claimants know that extended parental benefits would lead to reduced payments. She says it should have sent a letter or email to let her know this.

[23] A letter or email may have been helpful. However, this very information was clearly set out in the application form. Under the heading "Parental Benefits Information," the application form explained the differences between the two parental benefit types. The application form read:

Standard option

- The benefit rate is 55% of your weekly insurable earnings up to a maximum amount.
- One parent can receive up to 35 weeks of benefits.
- If parents share the parental benefits, they can receive up to a combined total of 40 weeks.

³ See Claimant's application for Employment Insurance benefits, at GD3-10.

⁴ See Claimant's application for Employment Insurance benefits, at GD3-11.

Extended option

- The benefit rate is 33% of an applicant's weekly insurable earnings up to a maximum amount.
- One parent can receive up to 61 weeks of benefits.
- If parents share the parental benefits, they can receive up to a combined total of 69 weeks.

[24] Then, under the heading "Validation of maternity/parental benefits information," the form stated:

Review the information you provided. If the information is correct, click "Continue". If you want to make any changes, click "previous".

...

Maternity

Maximum weeks of maternity benefits

Up to 15 weeks paid at a rate of 55% for your weekly insurable earnings

...

Type of parental benefits

Extended benefit: You've chosen to receive benefits at a reduced rate of 33% of your weekly insurable earnings (up to a maximum amount) each week for 53 weeks

...

Number of parental weeks selected

53 weeks paid at a reduced rate of 33% of your weekly insurable earnings

Maternity and parental weeks

Up to 15 weeks of maternity benefits paid at a rate of 55% of your weekly insurable earnings, followed by 53 weeks of parental benefits paid at a reduced rate of 33% of your weekly insurable earnings.

[25] The application form let the Claimant know that she would get a reduced rate of payment for the extended type. The Claimant had the option to change her choice.

[26] This appears to be a case where the Claimant simply did not carefully read the application form.

[27] As the Federal Court stated in a case called *Karval*, “Fundamentally it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options ...”⁵ In that case, the Court found that Ms. Karval deliberately selected the extended benefit option and, had she read the application, she would have understood that the parental payments would be reduced. She would also have appreciated that once parental benefits were paid, she could not change her election.

[28] Similarly, if the Claimant had carefully read the application form, she would have realized that she would be getting a reduced rate.

○ **Evidence that the Claimant would be returning to work in a year**

[29] The Claimant says that it is unfair that she cannot change her election because it should have been apparent that she wanted standard parental benefits. After all, she had indicated on her application form that she would be returning to work within a year. A Record of Employment also confirmed her intention to return to work in a year’s time.⁶

[30] In another case, called *Hull*,⁷ the claimant also intended to return to work in a year. Much like the Claimant, she chose extended rather than standard parental benefits. The General Division accepted that Ms. Hull’s intentions represented which parental benefit type she actually elected. Based on what she meant to choose, the General Division concluded that she chose standard parental benefits.

[31] The Federal Court of Appeal determined that the General Division had made a legal error. The Court of Appeal said that there is only one definition of an election for

⁵ See *Karval v Canada (Attorney General)*, 2021 FC 395 at para 14.

⁶ See Record of Employment, dated December 20, 2021, at GD3-21.

⁷ See *Canada (Attorney General) v Hull*, 2022 FCA 82.

the purposes of choosing a parental benefit type: “The election is the choice of the parental benefit on the form”.⁸

[32] The Court of Appeal also determined that, under subsection 23(1.2) of the *Employment Insurance Act*, once a claimant has chosen the parental benefit type and the number of weeks they wish to claim, and once payments of those benefits have started, it is impossible to revoke, alter or change the election.⁹

[33] In other words, any background context, such as when the Claimant was going to be returning to work, cannot be considered when examining a claimant’s election of parental benefit type.

- **Fairness**

[34] The Claimant says it is unfair that she cannot change her choice of parental benefit type because she and her family are facing financial hardship.

[35] The Courts have recognized that decisions such as these can be financially harsh. In *Variola*, the Court said:

However, as Justice Rivoalen recently held in *Hull*, “the outcome of this judicial review may be financially harsh for the respondent [Hull]” (para 25), but as previously noted by Justice Montigny of the same Court in *Wilson v Canada (Attorney General)*, 2019 FCA 49 at para 14, “the law as it stands must be applied ...”¹⁰

[36] Apart from the fact that the law has to be applied, I do not have any authority to change the law or the Claimant’s election.

⁸ See *Hull*, at paras 62 to 64.

⁹ See *Hull*, at paras 62 to 64.

¹⁰ See *Canada (Attorney General) v Variola*, 2022 FC 1402 at para 24.

Conclusion

[37] The appeal is allowed in part. It was inappropriate for the General Division to rely on the summary dismissal procedure to dismiss the appeal.

[38] Despite the General Division's error, this does not change the outcome. The Claimant's election is what she chose on the application form, and it cannot be changed. Had the Claimant carefully read the application form, she would have realized that she would be getting a reduced rate.

Janet Lew
Member, Appeal Division