



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 13

Date: January 27, 2016

File number: GE-15-2362

GENERAL DIVISION - Employment Insurance Section

Between:

A. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Takis Pappas, Member, General Division – Employment Insurance Section

Heard by: Teleconference on December 14, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE: The Appellant did not attend the teleconference hearing on December 14, 2015. The Tribunal waited 15 minutes past the appointed time and then proceeded to conclude the hearing. The Tribunal notes that the Notice of Hearing was mailed to the Appellant on September 16, 2015. Evidence on file indicates that the Appellant received and signed for the Notice of Hearing on September 28, 2015. Section 12(1) of the *Social Security Tribunal Regulations* provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing. The Tribunal is satisfied that the Appellant received his notice of hearing.

INTRODUCTION

[1] The Appellant applied for benefits for parents of critically ill children as of July 12, 2015 to care for his infant son.

[2] On July 13, 2015, the Respondent advised the Appellant that benefits could not be paid because his child did not meet the definition of a critically ill or injured child as defined in the *Employment Insurance Regulations* (the Regulations).

[3] On July 14, 2015, the Appellant requested that the Respondent reconsider its decision and on July 17, 2015, the Respondent maintained its decision. On August 11, 2015, the Appellant appealed to the General Division of the Social Security Tribunal.

[4] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility is not anticipated to be a prevailing issue.
- c) The fact that the appellant will be the only party in attendance.

- d) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[5] Whether the Appellant is the parent of a critically ill child within the meaning of subsection 23.2 of the *Employment Insurance Act* (the Act) and sections 41.4 and 41.5 of the Regulations.

THE LAW

[6] Subsection 23.2(1) of the Act stipulates that, despite section 18, but subject to this section, benefits are payable to a major attachment claimant, who is the parent of a critically ill child, in order to care for or support that child if a specialist medical doctor has issued a certificate that

- a) states that the child is a critically ill child and requires the care or support of one or more of their parents; and
- b) sets out the period during which the child requires that care or support.

[7] Subsection 23.2(2) of the Act stipulates that in the circumstances set out in the regulations, the certificate referred to in subsection (1) may be issued by a member of a prescribed class of medical practitioners.

[8] Subsection 41.4(1) of the Regulations stipulates that a “critically ill child” is a person who is under 18 years of age on the day on which the period referred to in subsection 23.2(3) or (4) or 152.061(3) or (4) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

[9] Subsection 41.4(2) of the Regulations stipulates that for the purposes of subsections 23.2(1) and 152.061(1) of the Act,

- a) a “parent” is a person who, in law, is a parent (including an adoptive parent) of a critically ill child, has the custody of or, in Quebec, parental authority over the child, or is the guardian of the child or, in Quebec, the tutor to the person of the child, or a person with whom the child is placed for the purposes of adoption under the laws governing adoption in the province in which the person resides; and
- b) a “specialist medical doctor” is a medical doctor who is licensed to practice medicine in Canada as a specialist.

[10] Subsection 41.5(1) of the Regulations stipulates that “care” is all care that is required because of a critically ill child's state of health, other than the care provided by a health care professional.

[11] Subsection 41.5(2) of the Regulations stipulates that “support” is all psychological or emotional support that is required because of a critically ill child's state of health.

EVIDENCE

[12] The Appellant applied for benefits for parents of critically ill children as of July 12, 2015 to care for his infant son.

[13] The Appellant provided a medical note signed by specialist licensed to practice medicine. The medical certificate indicated that the patient’s life was not at risk as a result of an illness or injury and that there was no change in the baseline state of health of the patient. It did however state that the patient required care and support from his parents until March 30, 2016.

[14] The specialist included a supplementary note indicating that the Appellant’s child was born premature with a major deformity of both lower legs. Surgery would be required when the child would reach the age of one year and would result in the child requiring prolonged post-surgical care and support at home.

[15] On July 13, 2015, the Respondent advised the Appellant that benefits could not be paid because his child did not meet the definition of a critically ill or injured child as defined in the Regulations.

[16] In his request for reconsideration, the Appellant wrote that his son's lower limbs will be amputated and as a result he will require intensive post-surgical care.

SUBMISSIONS

[17] The Appellant submitted that:

- a) his son's lower limbs will be amputated and as a result, he will require intensive post-surgical care.

[18] The Respondent submitted that:

- a) the Appellant has not proven his entitlement to benefits for parents of critically ill children because the Appellant's child did not meet the definition of a critically ill child according to section 23.2 of the Act and 41.4 and 41.5 of the Regulations.

ANALYSIS

[19] The Act provides for a new employment insurance benefit that supplies temporary income support to parents of critically ill children who take leave from work in order to provide care or support to their critically ill or injured child.

[20] Section 23.2 of the Act is clear and stipulates that claimants requesting such benefits must provide a medical certificate from a specialist medical doctor who attests that the child is critically ill or injured and requires the care or support of his/her parents and indicates how long the care or support is required.

[21] Furthermore, subsection 41.4(1) of the Regulations defines a "critically ill child" as a person who is under 18 years of age whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. The Regulations also define what is meant by a "parent", "specialist medical doctor", "care" and "support" in subsection 41.4(2) and section 41.5 respectively.

[22] The Tribunal notes that as with other employment insurance benefits, the onus is on the Appellant to prove his entitlement to these benefits. In this case, the Appellant provided medical

documentation and testimony that attest to the seriousness of his son's condition. It is undisputed evidence that the Appellant's son will require his full attention, care and support. The Tribunal acknowledges and understands the necessity of the Appellant having to take leave from his employment in order to provide that support to his son.

[23] In order to qualify for these benefits however, the Appellant must also prove that his son is a “critically ill child” according to subsection 41.4(1) of the Regulations. In this case, the Tribunal finds that the Appellant did not prove his entitlement to benefits for parents of critically ill children because the medical certificate provided indicated that the child’s life was not at risk due to illness or injury, and that the baseline of health had not changed.

[24] Although the Tribunal sympathizes with the Appellant’s situation and the challenges his son and the rest of the family are facing, the Tribunal finds that it is not within its jurisdiction or discretion to ignore or change the legislation as it is presently written. The requirements of section 23.2 of the Act and sections 41.4 and 41.5 of the Regulations are clear. The Tribunal is supported by the Supreme Court of Canada's consistent ruling, which stands for the principle that "a judge is bound by the law. He cannot refuse to apply it, even on grounds of equity" (*Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141, paragraph 9).

[25] The Tribunal finds that the Appellant is not entitled to benefits for parents of critically ill children according to section 23.2 of the Act and sections 41.4 and 41.5 of the Regulations.

CONCLUSION

[26] The appeal is dismissed.

Takis Pappas

Member, General Division - Employment Insurance Section