Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. R. v Canada Employment Insurance Commission*, 2019 SST 3

Tribunal File Number: AD-18-780

BETWEEN:

A. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: January 3, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] A. R. (Claimant) applied for 35 weeks of parental benefits under the *Employment Insurance Act* (EI Act) following the birth of his child on X. For personal reasons, however, the Claimant only stopped working in April 2018, which is when he filed his initial application for benefits. He then planned to return to work in early 2019.

[3] However, the Canada Employment Insurance Commission (Commission) ended the Claimant's parental benefits after 17 weeks, around the time of his child's first birthday. At the General Division, the Claimant argued that the information the Government of Canada provides about parental benefits is unclear.

[4] The General Division recognized that the government could provide clearer information to Canadians, but it concluded that the EI Act was applied correctly in this case and dismissed the Claimant's appeal. The Claimant now argues that the General Division failed to exercise its jurisdiction because it recognized that the information the government publishes contains ambiguities, but then did nothing about it.

[5] Unfortunately for the Claimant, I have concluded that his appeal has no reasonable chance of success and that leave to appeal must therefore be refused.

ISSUES

[6] In reaching this decision, I focused on the following questions:

a) Is there an arguable case that the General Division committed a jurisdictional error by failing to remedy the problem that it recognized in this case?

b) Did the General Division arguably overlook or misconstrue relevant evidence?

ANALYSIS

The Appeal Division's Legal Framework

[7] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[8] Generally speaking, therefore, the Appeal Division can only intervene in a case if the General Division failed to observe a principle of natural justice, made an error relating to its jurisdiction, or misinterpreted the relevant law. In addition, the Appeal Division can intervene if the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner.

[9] There are also procedural differences between the Tribunal's two divisions. Most cases before the Appeal Division follow a two-step process: the leave to appeal stage and the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to move forward. This is a preliminary hurdle aimed at filtering out cases that have no reasonable chance of success.[1] The legal test that applicants need to meet at this stage is a low one: Is there any arguable ground on which the appeal might succeed?[2]

Issue 1: Is there an arguable case that the General Division committed a jurisdictional error by failing to remedy the problem that it recognized in this case?

[10] The remedy that the Claimant seems to be seeking is outside of the Tribunal's jurisdiction. As a result, the Claimant's arguments do not amount to an arguable case on which the appeal might succeed.

[11] When researching parental benefits, the Claimant found this information on the government's website: "**Standard parental benefits** can be paid for a maximum of **35** weeks and must be claimed within a 52 week period (12 months) after the week the child was born or

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[1] DESD Act, s 58(2).
[2] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

placed for the purpose of adoption. [Bold in original]"[3] The Claimant understood this to mean that he could be paid 35 weeks of parental benefits as long as he filed his initial claim within 52 weeks of when his child was born.

[12] The Claimant's online Service Canada profile also confirmed that December 31, 2018, was his "return to work" date, which was defined as the date when his benefits would stop.[4]

[13] In paragraph 12 of its decision, the General Division acknowledged that the information highlighted by the Claimant could have been expressed more clearly, but it concluded that it had no option but to apply the provisions of the EI Act as they are written.

[14] In this respect, section 23(2) of the EI Act states quite clearly that parental benefits were only **payable** to the Claimant within a window that began the week in which his child was born and ended 52 weeks later.

[15] The General Division's conclusions are well supported by the EI Act and by binding authorities from the Federal Court of Appeal.[5] Indeed, the Claimant seems to accept that the EI Act was properly applied to the facts of his case.[6]

[16] Instead, the Claimant's leave to appeal materials suggest that the General Division should have ordered the Commission to change the information on the Government of Canada's website, but that is not something that it had the power to do.[7] I cannot fault the General Division for not making an order that it had no jurisdiction to make.

[17] As mentioned above, the Appeal Division's role is limited to determining if the General Division committed any of the three errors set out in section 58(1) of the DESD Act. In this case, I do not see the Claimant's arguments as amounting to an arguable case that the General Division committed an error relating to its jurisdiction. As a result, I have no power to intervene.

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[3] GD2-5.
[4] GD2-3 to 4.
[5] *Granger v Canada Employment and Immigration Commission*, 1986 CanLII 3962 (FCA); *Canada (Attorney General) v Shaw*, 2002 FCA 325 at para 1.
[6] GD3-20.
[7] DESD Act, s 54(1).

Issue 2: Did the General Division arguably overlook or misinterpret relevant evidence?

[18] Regardless of the conclusion above, I am mindful of Federal Court decisions in which the Appeal Division has been instructed to go beyond the four corners of the written materials and assess whether the General Division might have misinterpreted or failed to properly consider any of the evidence.[8] If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[19] After reviewing the documentary record, listening to the audio recording of the General Division hearing, and examining the decision under appeal, I am satisfied that the General Division neither overlooked nor misinterpreted relevant evidence.

CONCLUSION

[20] While I have great sympathy for the Claimant's position, I too can only encourage the Commission and the Government of Canada to provide the clearest possible information to Canadians. Having concluded that the Claimant's appeal has no reasonable chance of success, however, I must refuse his application for leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	A. R., self-represented

[8] *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.