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

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v E. O.*, 2019 SST 358

Tribunal File Number: AD-18-767

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

E. O.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 16, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal.

OVERVIEW

[2] The Respondent, E. O., went on paternity leave on September 17, 2017, and received five weeks of Québec Parental Insurance Plan (QPIP) benefits. He then returned to work but was laid off by his two employers shortly after he returned. As a result, he filed a claim for regular benefits on December 6, 2017, and began receiving benefits as of December 3, 2017.

[3] After carrying out checks, the Appellant, the Employment Insurance Commission (Commission), decided that the Claimant's benefit period should have been established on September 17, 2017, because the Claimant received QPIP benefits as of that date. It therefore amended the start date of the benefit period and changed it to September 17, 2017. This change meant that the Claimant no longer had enough hours of insurable employment to qualify for benefits, and it created an overpayment.

[4] The Claimant requested a reconsideration of that decision. However, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[5] The General Division determined that QPIP paternity benefits were not comparable to Employment Insurance parental benefits. It found that section 76.19 of the *Employment Insurance Regulations* (EI Regulations) did not apply and that the Commission did not have just cause for changing the date of the Claimant's benefit period. It also found that the Claimant had accumulated enough hours to be entitled to benefits.

[6] The Tribunal granted leave to appeal. The Commission submits that the General Division erred in law in its interpretation of section 76.19 of the EI Regulations.

[7] The Tribunal must decide whether the General Division erred in law in its interpretation of section 76.19 of the EI Regulations.

[8] The Tribunal allows the Commission's appeal.

ISSUES

[9] Did the General Division err in law in its interpretation of section 76.19 of the EI Regulations?

ANALYSIS

Appeal Division's Mandate

[10] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[11] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[12] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division err in law in its interpretation of section 76.19 of the EI Regulations?

[13] The appeal is allowed.

[14] The Commission submits that the General Division erred in law in its interpretation of section 76.19 of the EI Regulations.

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[15] The Commission argues that the regulatory amendments of section 76.19 of the EI Regulations state that an EI benefit period is deemed to be established when a benefit period was established under a provincial law. It is deemed to have begun the same week as the period established under the provincial law if the salaried person or self-employed person would have been entitled to the corresponding types of benefits under the *Employment Insurance Act* (EI Act) in respect of the same period.

[16] The Commission submits that the Claimant's benefit period should have been established on September 17, 2017, because the Claimant received QPIP benefits as of that date.

[17] The Claimant in turn submits that section 76.19 of the EI Regulations does not apply in his case because the benefits he received are paternity benefits and that that type of benefit was not part of the Employment Insurance program during the period in question. The paternity benefits should therefore not be considered a corresponding type of benefit within the meaning of section 76.19 of the EI Regulations.

[18] As the General Division pointed out, in terms of benefits for a family that has had a child, the federal Employment Insurance program offers two types of benefits: maternity benefits, which only the birth mother of a newborn can receive, and parental benefits, which are available to the two parents with the flexibility of splitting the benefits as they see fit.

[19] As for the QPIP, the provincial plan also allows a family that has had a child to take advantage of maternity and parental benefits similar to their federal equivalent. However, the provincial plan also offers a third type of benefit—paternity benefits. These benefits are exclusively for fathers and for a total of three or five weeks following the child's birth.

[20] The General Division determined that QPIP paternity benefits are not comparable to Employment Insurance parental benefits. As a result, section 76.19 of the EI Regulations does not apply, and the Commission did not have just cause for changing

the date of the Claimant's benefit period. Therefore, the Claimant had accumulated enough hours to be entitled to benefits.

[21] The General Division rightly noted that no federal court has ruled specifically on this type of issue to date and that the EI Act does not offer any definition on the notion of corresponding types of benefits. Therefore, there is no legal reference to rely on to answer the question of whether the paternity benefits the Claimant received correspond to Employment Insurance benefits.

[22] Since a question of legislative interpretation is central to this issue, the words of the EI Act must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament.[2]

[23] Even though the General Division carefully reviewed the two programs, the Tribunal respectfully considers that the General Division did not properly consider the context of the words in question and that it did not give enough weight to the scheme and the object of the EI Act or to the intention of Parliament.

[24] Section 76.19(1) of the EI Regulations reads as follows:

> **76.19 (1)** Subject to subsection (2), the provincial benefits paid to a claimant in respect of a week in a benefit period are considered to be benefits paid in respect of a week under the Act if the claimant would have been entitled to the corresponding types of benefits under the Act, and any week in respect of which the claimant receives provincial benefits counts as a week for the purpose of calculating
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> > **(a)** the overall maximum number of weeks for which benefits may be paid in a benefit period under paragraphs 12(3)(a) and (b) of the Act taken together; and
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> > **(b)** the maximum number of weeks for which benefits may be paid under subsection 12(4) of the Act.
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> **(1.1)** A benefit period is deemed to be established when a benefit period was established under a provincial law, and it is deemed to have begun the

[2] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC).

> same week as the period established under the provincial law if the claimant would have been entitled to the corresponding types of benefits under the Act in respect of the same period.

[25] The grammatical and ordinary sense of the words “du même genre” [“corresponding types”] that are in section 76.19 of the EI Regulations means [translation] “having common traits” or [translation] “conveying resemblance.”[3]

[26] Therefore, for section 76.19 of the EI Regulations to apply, the Claimant does not need to be entitled to identical benefits at the provincial and federal levels. The benefits received at the provincial level need only share traits with or resemble the benefits under the Employment Insurance program.

[27] Maternity and parental benefits are offered to parents who are caring for a newborn or newly adopted child or children. The QPIP, which provides for the payment of benefits to all eligible workers, whether salaried or self-employed, who are taking maternity leave, paternity leave, parental leave, or adoption leave, is also designed to offer financial support to new parents who want to devote more time to their children in their first months.

[28] The Tribunal is of the view that examining the words “du même genre” [“corresponding types”] in their entire context, while considering the scheme and object of the EI Act, supports the conclusion that the QPIP paternity benefits correspond to the Employment Insurance benefits within the meaning of section 76.19 of the EI Regulations.

[29] It is clear that Parliament wanted to avoid having Claimants receive Employment Insurance benefits at the same time and for the same purposes as those provided under the provincial plan.

[30] The Tribunal is therefore of the view that the General Division erred in its interpretation of section 76.19 of the EI Act [*sic*]. The Claimant’s benefit period must be

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[3] Encyclopédie en ligne, Thesaurus, dictionnaire de définitions et plus; L’internaute, Dictionnaire français.

established on September 17, 2017, because the Claimant received QPIP benefits as of that date.

[31] The Tribunal allows the appeal for the reasons stated above.

CONCLUSION

[32] The Tribunal allows the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Julie Meilleur, Representative for the Appellant Denis Poudrier, Representative for the Respondent Roxanne Bisson, Representative for the Respondent