



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v Canada Employment Insurance Commission*, 2019 SST 510

Tribunal File Number: AD-19-326

BETWEEN:

J. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: May 24, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. C., applied for Employment Insurance (EI) maternity benefits in May 2018. She selected the option for extended parental benefits requesting 40 weeks. She selected extended benefits in error and wanted to change her selection to standard parental benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant had made the selection for extended parental benefits and that parental benefits had been paid to her. Therefore, the Commission could not change the benefits from extended to standard parental benefits, because, by law, the selection was irrevocable.

[4] Following the Applicant's request for reconsideration, the Commission first notified the Applicant that it did not have the authority to reconsider the decision. Subsequently, their policy changed to allow for the decision to be reconsidered. However, the Commission maintained the decision that the selection of extended parental benefits could not be changed.

[5] The Applicant appealed the Commission's decision to the General Division of the Social Security Tribunal of Canada. The General Division found that the selection made by the Applicant was irrevocable once benefits were paid and dismissed the appeal.

[6] The Applicant seeks leave to appeal the General Division decision on the basis that the General Division refused to exercise its jurisdiction. She maintains that the Commission issued a reconsideration decision and invited her to appeal to the General Division. As such, her error in selection is appealable but the General Division decided that it was not.

[7] The appeal does not have a reasonable chance of success because the Applicant simply repeats arguments that she made to the General Division and does not raise any reviewable errors.

ISSUE

[8] Is there an arguable case that the General Division refused to exercise its jurisdiction by concluding that the Applicant's selection was irrevocable?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground on which the proposed appeal might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; 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.

[12] The Applicant submits that the General Division refused to exercise its jurisdiction, because it refused to consider her appeal on its merits.

Is there an arguable case that the General Division refused to exercise its jurisdiction by concluding that the Applicant's selection was irrevocable?

[13] I find that there is no arguable case that the General Division refused to exercise its jurisdiction.

¹ *Department of Employment and Social Development Act* (DESD Act), ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

³ DESD Act, s 58(2).

⁴ *Ibid.* s 58(1).

[14] While the Applicant relies on the Commission's policy change allowing reconsideration of this kind of decision and the reconsideration letter stating that an appeal could be filed with the General Division, these facts do not automatically mean that the General Division has the ability, the authority or the jurisdiction to grant the Applicant's request.

[15] The Applicant made a selection of extended parental benefits. These benefits were paid to her from May to September 2018. In September 2018, she became aware of her error in selection and made a request to the Commission to change her benefits to standard parental benefits. This request was denied. The Applicant was paid the extended parental benefits to which she was entitled. None of these facts is in dispute.

[16] What is in dispute is whether the Applicant could change her selection of parental benefits from extended to standard after the benefits were paid to her.

[17] The General Division concluded that the *Employment Insurance Act* states that the selection is irrevocable once benefits were paid⁵ and that there is no legislative flexibility or discretion to revoke a previous selection.⁶ This was a correct statement of the applicable law.

[18] The General Division did not refuse to exercise its discretion by concluding that the Applicant's selection was irrevocable. It applied the applicable legislative provision, which it is obligated to do. It also correctly noted that the Tribunal cannot re-write the legislation, nor interpret it in a manner that is contrary to its plain meaning.⁷

[19] The legislative provision states that the election is irrevocable once benefits are paid. Irrevocable means "not able to be changed, reversed or recovered."⁸ The Applicant's previous selection could not be changed regardless of the circumstances.

[20] The appeal has no reasonable chance of success based on this ground.

[21] The General Division correctly stated its jurisdiction and applied the relevant legislative provisions. Having read and considered the General Division decision and the documentary

⁵ *Employment Insurance Act* at s 23(1.2).

⁶ General Division decision at para. 9.

⁷ *Ibid.*

⁸ *Oxford English Dictionary*, definition of "irrevocable".

record, I find that the General Division did not overlook or misconstrue any important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or that it erred in law in coming to its decision.

[22] The appeal has no reasonable chance of success based on any reviewable error.

CONCLUSION

[23] I am satisfied that the appeal has no reasonable chance of success, so the application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	J. C., self-represented
-----------------	-------------------------