



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v Canada Employment Insurance Commission*, 2019 SST 626

Tribunal File Number: AD-19-429

BETWEEN:

M. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: July 5, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. H. (Claimant), was laid off from her employment on June 28, 2018. She applied for and received Employment Insurance regular benefits for several weeks until she returned to the workforce at the end of August 2018. She continued working until November 30, 2018, when she went on maternity leave. She gave birth on December 7, 2018. She renewed her application for Employment Insurance benefits—this time for maternity and parental benefits. The Respondent, the Canada Employment Insurance Commission (Commission), paid her maternity and parental benefits. The parental benefits, which began on March 17, 2019, ended on June 29, 2019.

[3] The Commission explained to her that it could not pay her the maximum 35 weeks of parental benefits because her benefit period ended on June 29, 2019.¹ Generally, there is a 52-week maximum entitlement to benefits. In this case, the Claimant's benefit period started on July 1, 2018, and ended on June 29, 2019. The Commission did not change its decision on reconsideration.²

[4] The Claimant wrote that it could not end the Claimant's benefit period that started on July 1, 2018 because she did not accumulate enough hours to start a new claim for maternity or parental benefits. The Claimant appealed to the General Division, which also dismissed her appeal.

[5] The Claimant is now seeking leave to appeal the General Division's decision. This means that she has to get permission from the Appeal Division before she can move on to the next stage of her appeal. The Claimant argues that there has been an injustice. I have to decide whether the appeal has a reasonable chance of success. For the reasons that follow, I am not satisfied that the

¹ See Commissions' letter dated January 30, 2019, at GD3-30.

² See Commission's reconsideration decision dated March 4, 2019, at GD3-37 to GD3-38.

appeal has a reasonable chance of success and I am therefore refusing the application for leave to appeal.

ISSUE

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice?

ANALYSIS

[7] Before the Claimant can move on to the next stage of her appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the three grounds of appeal that are listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The appeal also has to have a reasonable chance of success.

[8] The only three grounds of appeal under subsection 58(1) of the DESDA are:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

[9] A reasonable chance of success is the same thing as an arguable case at law.³ This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher. The courts have said that the Appeal Division should follow this approach when deciding applications for leave to appeal.⁴

³ This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

⁴ This is what the Federal Court said in *Joseph v. Canada (Attorney General)*, 2017 FC 391.

[10] The Claimant asserts that there is a reasonable chance of success because there has been a miscarriage of justice. She argues that it is unfair that she has not received the maximum number of weeks of parental benefits simply because she had applied for and received Employment Insurance benefits several months before that. No one told her that by applying for benefits in June 2018, her benefit period would start running and affect any future claims for benefits. Had she been aware of this, she would not have made a claim for regular benefits in June 2018.

[11] The 52-week limitation of the benefit period has had a detrimental impact on her and family and she has even had to pull her son from his school to save money.⁵ The Claimant offered to repay any benefits that she received during the summer, if this would allow her to continue to receive benefits until the end of November 2019, or alternatively, until the end of September 2019, without any repayment.⁶

[12] The Claimant does not question the General Division's interpretation of the provisions of the *Employment Insurance Act* that deal with benefit periods or with special benefits, such as parental benefits, but she argues that there should be exceptions for cases such as hers where the Act has had such a detrimental impact. This would involve either cancelling the benefit period that began on July 1, 2018, or extending the benefit period after June 29, 2019.

[13] Regrettably, despite the unfortunate impact of the 52-week limitation on the Claimant and her family, these options are not available in the Claimant's circumstances and, as the General Division member pointed out, members of the Social Security Tribunal do not have any discretionary authority to cancel or extend the benefit period.

[14] The Claimant argues that there has been a miscarriage of natural justice, but this is not a ground of appeal under subsection 58(1) of the DESDA. The principle of natural justice referred to in the subsection refers to the fundamental rules of procedure that apply in judicial or quasi-judicial settings. The principle exists to ensure that all parties are treated fairly, in the sense that they receive adequate notice of any proceedings, that they have a full opportunity to present their case, and that proceedings are fair and free of bias or the reasonable apprehension of bias. It

⁵ See letter dated March 29, 2019, attached to Notice of Appeal filed with the General Division, at GD2-7.

⁶ Claimant's request for reconsideration and letter dated January 30, 2019, at GD3-31 to GD3-33 and GD2-6, and Supplementary Record of Claim, dated March 1, 2019, at GD3-36.

relates to issues of procedural fairness, rather than on the impact a decision might have on a party.

[15] Here, the Claimant has not pointed to any evidence nor suggested that the General Division member failed to provide her with adequate notice, that it might have deprived her of an opportunity to fully present her case, or that it might have exhibited or appeared to exhibit any bias against her. For this reason, I am not satisfied that there is an arguable case that the General Division failed to observe a principle of natural justice.

[16] I have also reviewed the underlying record, to ensure that the General Division neither erred in law nor overlooked or misconstrue any important evidence or arguments. The General Division member's summary of the facts is consistent with the evidentiary record and her analysis is sound and comprehensive. As such, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Janet Lew
Member, Appeal Division

APPLICANT:	M. H., Self-represented
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