



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. B. v Canada Employment Insurance Commission*, 2019 SST 766

Tribunal File Number: AD-19-320

BETWEEN:

E. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: August 16, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal in part.

OVERVIEW

[2] The Appellant, E. B. (Claimant), became a father in August 2017. In the beginning, the mother made a claim for parental benefits. In October 2017, the Claimant informed the mother of the child that he wanted parental benefits as of February 2018. The Claimant made a claim for parental benefits on February 19, 2018. The Canada Employment Insurance Commission (Commission) declared that the Claimant was not entitled to receive parental benefits because he was not caring for his child within the meaning of the *Employment Insurance Act* (EI Act). It upheld its decision on reconsideration. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant was not caring for the child within the meaning of the EI Act and the *Employment Insurance Regulations* (EI Regulations) because the child was living mainly with the mother and he did not have access rights to the child. Furthermore, he had not had an interruption of earnings. The General Division found that the Claimant had not been eligible for parental benefits.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division made an error of law in its interpretation of section 23 of the EI Act and that the General Division made an error in its interpretation of the family court judgement. He also asked for compensation following the Commission's refusal to grant him parental benefits as of his application in February 2018.

[5] The Tribunal allows the Claimant's appeal in part.

ISSUES

[6] Did the General Division make an error of law in its interpretation of section 23 of the EI Act by finding that the Claimant was not entitled to receive parental benefits because the child lived mainly with the mother and he did not have access rights to the child?

[7] Does the Tribunal have jurisdiction to grant the Claimant damages following the Commission's initial refusal to grant him parental benefits?

ANALYSIS

Appeal Division's Mandate

[8] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the DESD Act.¹

[9] 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.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, made an error of 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 1: Did the General Division make an error of law in its interpretation of section 23 of the EI Act by finding that the Claimant was not entitled to receive parental benefits because the child lived mainly with the mother and he did not have access rights to the child?

[11] The Claimant argues that the General Division made an error of law in its interpretation of section 23 of the EI Act. In particular, the Claimant argues that the

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

General Division made an error of law by finding that he was not entitled to receive benefits because he did not have access rights to the child.

[12] Before the General Division, the Commission argued that the Claimant was not eligible for parental benefits because the child lived mainly with the mother, who was caring for the child full-time.

[13] The Commission is now of the view that the General Division made an error of law by finding that the Claimant could not care for his child within the meaning of the EI Act because he was meeting the child's needs only temporarily. It submits that the General Division erred by requiring an eligibility condition that does not exist in the EI Act.

[14] To be eligible for parental benefits, a claimant must

- have at least 600 insurable hours in their qualifying period;
- be a parent caring for one or more new-born children of the claimant or one or more children placed for adoption; and
- have a reduction of more than 40% of their normal weekly earnings because of caring for one or more new-born children of the claimant or one or more children placed for adoption.²

[15] Those are the only eligibility requirements. There is nothing in the EI Act or the EI Regulations that supports the interpretation that a claimant is not eligible for parental benefits because they are caring for their child only temporarily.

[16] The facts in the record show that the Claimant meets the requirements of the EI Act and is eligible for parental benefits. In fact, the Claimant met all the eligibility requirements in February 2018, when he filed his claim for parental benefits.

² EI Act, ss 6(1), 7(1), 7(2)(a), and 23(1); EI Regulations, s 14(2).

[17] However, since the parents do not agree on the division of the weeks of parental leave, it must be done according to section 41.6(b) of the EI Regulations, which states that, in the event of a disagreement, if the number of weeks of unpaid benefits is more than the number of claimants, a week of benefits will be paid to claimants in turn starting with the first claimant to make a claim until all the weeks have been exhausted.

[18] After reviewing the file, the General Division decision, and the positions of the parties on appeal, the Tribunal agrees that this ground of appeal of the Claimant should be allowed.

Issue 2: Does the Tribunal have jurisdiction to grant the Claimant damages following the Commission's initial refusal to grant him parental benefits?

[19] The Claimant argues that he has suffered considerable damages following the Commission's unjustified refusal to grant him parental benefits as of February 2018. He is asking the Tribunal for compensation for the prejudice he suffered.

[20] Unfortunately for the Claimant, the Tribunal does not have the required jurisdiction to order compensation for the damages he claims he suffered following the Commission's refusal to grant him parental benefits as of the filing of his claim in February 2018. As stressed at the appeal hearing, it is an issue that must be debated in another forum.³

[21] This ground of appeal is therefore dismissed.

CONCLUSION

[22] For the reasons mentioned above, the Tribunal allows the appeal in part.

[23] The Claimant is eligible for parental benefits for the weeks in which he had a reduction of earnings of more than 40% of his normal weekly earnings.

³ *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.

[24] The Claimant's claim for damages is dismissed for lack of jurisdiction.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	August 13, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. B., Appellant Stéphanie Yung-Hing (counsel), Representative for the Respondent