



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. K. v Canada Employment Insurance Commission*, 2019 SST 793

Tribunal File Number: AD-19-406

BETWEEN:

M. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: August 23, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] M. K. (Claimant) applied for Employment Insurance maternity benefits and parental benefits. In the application she selected the extended parental benefits – up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings up to a maximum amount. The Canada Employment Insurance Commission approved the application. After the Claimant began to receive the parental benefits, she stated that she had chosen the extended benefits in error. The Commission refused her request to change the benefits to the standard option.

[3] The Claimant appealed the Commission's decision to refuse to change her parental benefits to the standard option to the Tribunal. The Tribunal's General Division dismissed the appeal on the basis that the *Employment Insurance Act* states that once parental benefits are being paid to a claimant, they cannot change a previous election from the extended option to the standard option. Leave to appeal this decision to the Tribunal's Appeal Division is refused because there are no grounds of appeal on which the appeal has a reasonable chance of success.

PRELIMINARY MATTERS

[4] The Appeal Division scheduled a Pre-hearing teleconference before making this decision. The Claimant did not attend the teleconference, so it did not proceed.

[5] The Appeal Division then wrote to the Claimant and explained what grounds of appeal can be considered by the Tribunal, and asked that the Claimant provide grounds of appeal that could be considered. The Claimant did not respond to this letter.

ISSUE

[6] Has the Claimant presented a ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) on which the appeal has a reasonable chance of success?

ANALYSIS

[7] The DESD Act governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. They are that the General Division failed to observe a principle of natural justice, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹ In addition, leave to appeal must be refused if the appeal has no reasonable chance of success.²

[8] In the application to the Appeal Division the Claimant requested leave to appeal because she made a mistake when she chose the extended parental benefits option, and if a mistake is made, claimants should be given a chance to correct it.³ However, asking for a correction of a mistake by a claimant is not a ground of appeal under the DESD Act. This argument does not point to the General Division having based its decision on an erroneous finding of fact, having made an error in law, or failing to observe a principle of natural justice. That the Claimant made a legally irrevocable error when completing her application for Employment Insurance is not a ground of appeal that can be considered.

[9] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. It stated the law correctly – that once an election is made and paternity benefits begin to be paid, the election cannot be changed⁴. There is no suggestion that the General Division failed to observe a principle of natural justice.

[10] Therefore, there are no grounds of appeal upon which the appeal has a reasonable chance

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ AD1-3

⁴ *Employment Insurance Act* s. 23(1.1) & 23(1.2)

of success.

CONCLUSION

[11] Leave to appeal must be refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	M. K., Self-represented
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