



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. S. v Canada Employment Insurance Commission*, 2019 SST 915

Tribunal File Number: AD-19-420

BETWEEN:

J. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shirley Netten

Date of Decision: August 30, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] J. S. (the Claimant) applied for standard parental benefits of 35 weeks, claiming two weeks for himself and 33 weeks for the other parent. In his application, he said that his last day worked was January 26, 2018 (a Friday), and that he would return to work on February 14, 2018 (a Wednesday). A few days later, he submitted his Record of Employment which said that he had worked until January 30, 2018 (a Tuesday). The Canada Employment Insurance Commission (the Commission) paid the Claimant benefits of \$547 per week, for the week of February 4, 2018 and the week of February 11, 2018.

[3] In March 2018, the Commission received another Record of Employment which showed that the Claimant had returned to work on February 14, 2018, after his parental leave. The employer told the Commission that the Claimant had earned \$873 during that week. As a result, the Commission reduced the Claimant's parental benefits for the week of February 11, 2018, from \$547 to \$110. This led to an overpayment of \$437.

[4] The Claimant disputed the overpayment, because he had taken two weeks of parental leave (January 31, 2018 to February 13, 2018) and received two weeks of benefits. His appeal to the Tribunal's General Division was dismissed. The General Division found that the Commission had correctly allocated employment income during the second week of parental benefits, resulting in the overpayment.

[5] The Claimant now asks for leave to appeal the General Division decision to the Tribunal's Appeal Division. He says that no one has been able to explain why his first three days off (January 31 to February 2, 2018) were not included in his benefit payment period. He points out that the application form does not say that leave must start on a Sunday in order to get full entitlement. He further points out that his wife has not been given the extra three days in her

paternal benefits. I am refusing leave to appeal because there is no reasonable chance of success on appeal.

ISSUE

[6] Is there an arguable case that the General Division made a reviewable error when it confirmed the allocation of employment earnings against the Claimant's parental benefits?

ANALYSIS

[7] I have to decide whether to grant the Claimant leave (permission) to appeal. The Appeal Division grants leave to appeal unless the appeal "has no reasonable chance of success."¹ A reasonable chance of success means having some arguable ground upon which the proposed appeal may succeed.²

[8] The grounds of appeal to the Appeal Division are limited. The General Division must have breached a principle of natural justice, acted beyond or refused to exercise its jurisdiction, made a significant mistake of fact, or erred in law.³

[9] The principles of natural justice are about procedural fairness. The parties must have a fair opportunity to present their case, and the decision-maker must be impartial. The Claimant participated in a teleconference hearing held by a member of the General Division. There is no evidence, nor any argument, that the General Division failed to observe a principle of natural justice. There is also no suggestion that the General Division acted beyond its jurisdiction in dismissing the appeal, or refused to exercise its jurisdiction.

[10] The Claimant agrees with the basic facts in this case: he took two weeks off work, starting on Wednesday January 31, 2018 and ending on Tuesday February 13, 2018. He earned \$873 during the week beginning February 11, 2018. These are the facts underlying the General Division decision. I see no arguable ground that the General Division based its decision on an erroneous finding of fact.

¹ DESDA, ss 58(2) and 58(3)

² See, for example, *Osaj v. Canada (Attorney General)*, 2016 FC 115

³ DESDA, s 58(1)

[11] As for the law, the Claimant accepts that benefits are generally reduced due to employment earnings, but he wants his parental benefits paid for the two weeks, or ten working days, when he had no earnings. The Claimant's concern is that he didn't receive parental benefits for a full two weeks because he took his two weeks starting mid-week rather than Monday to Friday. Understandably, this strikes him as unfair. However, this is what the law requires.

[12] I see no arguable case that the General Division made an error of law in this respect. The General Division correctly referenced the statutory requirement that a benefit period begins on a Sunday. The legislation defines a week as beginning on a Sunday. Benefits are paid for each week of unemployment, not each day of unemployment. A week of unemployment is a week when the individual doesn't work the full week. These sections of the *Employment Insurance Act* are set out below:

2 (1) In this Act, [...] "week" means a period of seven consecutive days **beginning on and including Sunday**, or any other prescribed period;⁴

[...]

10 (1) A **benefit period begins** on the later of:

(a) **the Sunday of the week** in which the interruption of earnings occurs, and

(b) **the Sunday of the week** in which the initial claim for benefits is made.

[...]

11 (1) A **week of unemployment** for a claimant is a week in which the claimant **does not work a full working week**.

[...]

12 (1) If a benefit period has been established for a claimant, benefits **may be paid to the claimant for each week of unemployment** that falls in the benefit period, subject to the maximums established by this section.

[...]

⁴ No other periods have been prescribed

23 (1) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant to care for one or more new-born children [...]

(2) Subject to section 12, benefits under this section are **payable for each week of unemployment in the period**

(a) that begins with the week in which the child or children of the claimant are born or the child or children are actually placed with the claimant for the purpose of adoption; and

(b) that ends 52 weeks after the week in which the child or children of the claimant are born or the child or children are actually placed with the claimant for the purpose of adoption.

[Emphasis added]

[13] As with any insurance plan, there are rules that constrain the payment of benefits. Canada's employment insurance scheme provides benefits for weeks of unemployment, and not for days of unemployment. Those weeks of unemployment are from a Sunday to a Saturday. The Claimant claimed two weeks of parental benefits. He took one full (Sunday to Saturday) week off and two half weeks off work. The Claimant received benefits for two weeks of unemployment as claimed but, since he had earnings for one of those weeks, his benefits were reduced for that week.⁵ Unfortunately for the Claimant, there simply is no mechanism for him to be paid for ten days of unemployment, rather than two (Sunday to Saturday) weeks. Similarly, there is no mechanism for three days to be removed from the Claimant's claim and added to his wife's claim.

[14] I agree with the Claimant that the Commission ought to alert individuals to the fact that benefits are paid for weeks of unemployment with the benefit period and each week starting on a Sunday. However, this does not reflect an error on the part of the General Division, and it does not raise an arguable ground of appeal to the Appeal Division. Regardless of what the Claimant knew about benefit periods, the General Division was bound to follow the law when considering the allocation of earnings against the Claimant's benefits for the week of February 11, 2018.

⁵ During the reconsideration process, a Service Canada agent considered whether it would be to the Claimant's financial advantage to receive benefits for the week of January 28 rather than the week of February 11, but it was not.

[15] Since I have found no arguable ground upon which the Claimant's appeal may succeed, I must refuse leave to appeal.

CONCLUSION

[16] The Application for leave to appeal is refused.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	J. S., Self-represented
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