



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. B. v Canada Employment Insurance Commission*, 2019 SST 1377

Tribunal File Number: AD-19-801

BETWEEN:

C. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 26, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, C. B. (Claimant), is pregnant and her expected due date is December 2, 2019. She left her employment on April 1, 2019, because she is suffering from a rare pregnancy-related illness which causes severe nausea, vomiting, weight loss, dehydration and emotional distress. On April 13, 2019 the Claimant applied for sick benefits, maternity benefits and extended parental benefits. Her benefit period started the week of March 24, 2019. Following a one week waiting period, the Claimant received 15 weeks of sick benefits from March 31 – July 13, 2019.

[3] When the Claimant's sick benefits ended on July 13, 2019, she asked the Canada Employment Insurance Commission (Commission) to immediately start her maternity benefits as she was still ill and could not return to work. The Commission denied the Claimant's request because the earliest she could receive maternity benefits was 12 weeks before the week of her expected due date, which in this case is the week of September 8, 2019. The Commission, after reconsideration, did not change its decision. The Claimant appealed to the General Division.

[4] The General Division concluded that Section 22 of the *Employment Insurance Act* (EI Act) sets out a specific period of time during which maternity benefits can be paid, based on either the expected due date or when the baby is actually born. The earliest this period can start is 12 weeks before the expected due date.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she deserves benefit coverage during the gap period of July 13, 2019, to September 8, 2019. She was never informed that starting her sick leave in March 2019, would leave a gap between sick leave benefits and parental leave benefits. She feels that the General Division had already decided her case before the hearing.

[6] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[12] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice,

jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

[13] The Claimant submits that she deserves benefit coverage during the gap period of July 13, 2019 to September 8, 2019. She was never informed that starting her sick leave in March 2019 would leave a gap between sick leave benefits and parental leave benefits. She feels the General Division had already decided her case before the hearing.

[14] Section 22 of the EI Act reads as follows:

22 (1) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant who proves her pregnancy.

Weeks for which benefits may be paid

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

(a) that begins the earlier of

(i) 12 weeks before the week in which her confinement is expected, and

(ii) the week in which her confinement occurs;

(b) that ends 17 weeks after the later of

(i) the week in which her confinement is expected, and

(ii) the week in which her confinement occurs.

[15] The General Division correctly concluded that Section 22 of the EI Act sets out a specific period of time during which maternity benefits can be paid, based on either the expected due date or when the baby is actually born. The earliest this period can start is 12 weeks before the expected due date, which in this case, is the week of September 8, 2019.

[16] Unfortunately for the Applicant, and as stated by the General Division, the Tribunal must apply the law and does not have the authority to modify the legislation despite its sympathy for the Applicant's particular situation.

[17] Only Parliament has the authority to change the current legislation regarding the earliest week a Claimant can receive maternity benefits.

[18] In her application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. She has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[19] For the above mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[20] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	C. B., Self-represented
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