



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. C. v Canada Employment Insurance Commission*, 2020 SST 88

Tribunal File Number: AD-19-627

BETWEEN:

R. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shirley Netten

DATE OF DECISION: February 5, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The matter is returned to the General Division for the appeal to proceed on the merits.

OVERVIEW

[2] When his child was 9 ½ months old, R. C. (Claimant) applied for parental benefits. He claimed 35 weeks of standard parental benefits but received only 12 weeks. His benefits ended after his child turned one year old, as required by the *Employment Insurance Act* (Act). At that point, the Claimant asked for extended parental benefits instead. The Canada Employment Insurance Commission (Commission) denied this request.

[3] The Claimant appealed to the General Division of the Social Security Tribunal. His appeal was summarily dismissed, without a hearing, because there was no reasonable chance of success. The Claimant now appeals to the Appeal Division. I have found that the General Division made an error when it summarily dismissed the appeal. I am returning the appeal to the General Division for a hearing on the merits.

PROCEEDING ON THE RECORD

[4] This appeal was scheduled for an oral hearing at the Appeal Division. The Commission advised that it would not attend the hearing, and the Claimant's position was clear from his written submissions. As such, I proceeded based on the written materials.

ISSUE

[5] The issue in this appeal is whether the General Division made a reviewable error when it decided that the Claimant's appeal had no reasonable chance of success.

ANALYSIS

Options for parental benefits

[6] Under the Act, claimants must elect one of two options for parental benefits.¹ Standard parental benefits are paid at the regular benefit rate, for up to 35 weeks.² Extended parental benefits are paid at a lower rate, for up to 61 weeks.³ The election is irrevocable (cannot be changed) once parental benefits are paid.⁴

[7] Parental benefits are payable during a period that ends 52 weeks after the child's birth or placement for adoption.⁵ However, when the extended option is chosen, this period is extended to 76 weeks after the child's birth or placement.⁶

Underlying facts in this appeal

[8] The Claimant applied for parental benefits on December 6, 2018. The Claimant put his child's birthdate, February XX, 2018, on the application form. He indicated that he had stopped working on November 30, 2018, and would return to work on August 19, 2019. The application form presented the following information and contained the following additional responses:⁷

As of December 3, 2017, two options are available for parental benefits, standard and extended.

- Standard option - up to 35 weeks of benefits at a benefit rate of 55% of your weekly insurable earnings up to a maximum amount
- Extended option - up to 61 weeks of benefits at a benefit rate of 33% of your weekly insurable earnings up to a maximum amount

If parental benefits are being shared by two parents, the parental benefit option selected by the parent who first makes a claim is binding on the other parent.

To avoid an incorrect amount of benefits being paid, ensure you choose the same option as the other parent.

¹ Act, s 23(1.1).

² Act, ss 12(3)(b)(i) and 14.

³ Act, ss 12(3)(b)(ii) and 14.

⁴ Act, s 23(1.2).

⁵ Act, s 23(2). There are limited exceptions, which do not apply here.

⁶ Act, s 23(3.21).

⁷ At GD3-9

Once parental benefits have been paid on the claim, the choice between standard and extended parental benefits is irrevocable.

Select the type of parental benefits you are applying for:

- Standard option – up to 35 weeks of benefits at a benefit rate of 55% of your weekly insurable earnings up to a maximum amount
- Extended option – up to 61 weeks of benefits at a benefit rate of 33% of your weekly insurable earnings up to a maximum amount

[...]

Parental benefits are payable only to the biological, adoptive, or legally recognized parents while they are caring for their newborn or newly adopted child, up to a maximum combined total of 35 weeks.

Consequently, the 35 weeks can be paid to one parent, or shared between both parents.

How many weeks do you wish to claim?

[9] The child’s other parent did not claim any parental benefits.

[10] The Claimant did not know that standard parental benefits could be paid only within one year of his child’s birth. Neither the application form nor the online claim status available to him when payments began⁸ suggested that anything less than 35 weeks of benefits would be paid, or that benefits could not be paid after the child’s first birthday. It seems that the Claimant learned that he would receive only 12 weeks of benefits after the benefits had ended.

The General Division decision

[11] In its decision, the General Division noted that the Act does not permit the payment of standard parental benefits beyond the 52-week benefit period, and that the Claimant’s choice of standard parental benefits could not be changed since benefits had already been paid. The General Division concluded that “the failure of the appeal is pre-ordained no matter what

⁸ Dated December 24, 2018; at GD2-7.

evidence or arguments might be presented at a hearing.” The General Division summarily dismissed the appeal.

[12] The General Division has to summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.⁹ The General Division correctly recognized that the threshold for summary dismissal is very high. An “utterly hopeless” appeal meets this threshold, but a weak case does not. A decision-maker must ask whether it is plain and obvious that the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing.¹⁰

[13] As described below, the General Division applied the right test for summary dismissal to the questions it considered. However, the General Division failed to recognize that the Claimant had raised a different legal argument for consideration on the issue of his entitlement to additional parental benefits.

The Claimant’s position at the General Division

[14] To the General Division, the Claimant argued that the online application form did not provide enough information for him to choose the appropriate option for his situation. He elaborated:

For example, the instructions need to include the time frame as to when the standard or the extended benefits apply. For example, it needs to be stated that the standard option only applies within the first 12 months the child is born and if any parents wish to receive after those 12 months, the extended option needs to be selected. This is important in situations like mine.

In my case, my son was born on February 2018. My wife is self employed and is unable to receive EI. We decided to wait until December 2018 to apply for EI, and then receive benefits for the next 35 weeks. This would take us to August 2019 (78 weeks after my son was born).

[...] To reiterate, there was not enough information provided in the application process for me to select the appropriate option, given my situation. There is simply not enough information. In the application

⁹ *Department of Employment and Social Development Act (DESDA)*, s. 53(1).

¹⁰ See, for example, *Lessard-Gauvin c Canada (Attorney General)*, 2013 FCA 147; *DS v Minister of Employment and Social Development*, 2017 SSTADIS 506.

process, it states that the standard option includes up to 35 weeks of benefits, and the extended option includes up to 61 weeks. There are no other details, criteria, stipulations provided to help people select the appropriate option. There is a responsibility to ensure that there are enough details provided in the application process so that applicants can make the appropriate choices. I don't think this was met.

[15] In response to the Commission's submissions to the General Division (which did not address the Claimant's points), the Claimant added:

I was not able to make an informed decision between the standard and extended option because the information provided to me during the application process left out some important criteria (ie. the parental window). I shouldn't have to be "penalized", by receiving less than 35 weeks of benefits, because information regarding the parental window was left out - that isn't fair. Information regarding the parental window needs to be provided in order for applicants to make an informed decision regarding the standard and extended options.

[16] At the General Division, the Claimant asked for benefits for the full 35 weeks, whether under the standard or the extended option. He did not say how standard benefits could be paid beyond the period allowed by law. He did not say how his choice of standard benefits could be changed after benefits had been paid to him, when the law says that it could not. Any such arguments would have been "utterly hopeless" because, as the General Division pointed out, the Act allows no discretion in these matters.

[17] However, the Claimant's main argument was that there was a problem with the election itself, from the outset. As I interpret his comments, the Claimant was challenging the legitimacy of the initial choice made in December 2018. Effectively, he questioned its validity (or perhaps its accuracy) on the basis that his selection of standard benefits was misinformed and inconsistent with the balance of his application. In his view, the information given by the Commission led him to believe that he would receive 35 weeks of standard parental benefits. The details in his application form — his child's birthdate, his return to work date, his selection of standard benefits, and his selection of 35 weeks — could not be reconciled, yet he was not alerted to the contradictions. The Claimant further asserted that the Commission has a responsibility to provide accurate information about the election it asks claimants to make, and claimants cannot otherwise make an accurate or informed choice.

[18] The Claimant's application to the Appeal Division supports my understanding of his position at the General Division. He wrote, "Without this information, it misleads applicants applying for EI parental benefits to think that they only need to consider the number of weeks they wish to receive EI..."

The General Division's Error

[19] The Claimant noted in his application that the General Division did not recognize the points he had made. He did not specifically reference the test for summary dismissal.

[20] The Commission's written submissions to the Appeal Division focuses on the benefit period and irrevocability provisions, for which the result was inevitable. The Commission did assert that the Claimant "was ultimately responsible for the answers he provided [...], as well as applying for parental benefits several months after his son's birth." This responds to the Claimant's substantive argument, but it does not address the question of whether the General Division made an error in its summary dismissal.

[21] I find that the General Division failed to recognize the main argument raised by the Claimant in his appeal, about the validity or accuracy of the initial election and its impact on his benefit entitlement. The General Division thereby failed to apply the test for summary dismissal to the issue as framed. In this way, the General Division erred in law. An error of law is one of the grounds of appeal that allow the Appeal Division to intervene.¹¹

Remedy

[22] To address the General Division's error, I will substitute my decision regarding the summary dismissal and refer the merits of the appeal back to the General Division.¹²

[23] Regardless of whether challenging the validity or accuracy of the initial election is a strong argument or a weak one, it is not "utterly hopeless." There is a factual foundation to support the argument. And, by focusing on the initial election, the argument does not run afoul of

¹¹ DESDA, s 58(1)(b).

¹² These are among the remedies available at the Appeal Division: DESDA, s 59(1).

the Act's irrevocability provision.¹³ The Claimant's appeal of his parental benefits entitlement does not meet the high threshold for summary dismissal. It must be decided on its merits.

[24] The parties have not yet had a full opportunity to provide evidence and submissions on the question of the validity or accuracy of the Claimant's initial election for parental benefits. Consequently, I am returning the matter to the General Division.

CONCLUSION

[25] The General Division made an error when it summarily dismissed the Claimant's appeal. The appeal is returned to the General Division to proceed on the merits.

Shirley Netten
Member, Appeal Division

¹³ Act, s 23(1.2).