



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v B. R.*, 2020 SST 480

Tribunal File Number: AD-20-87

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

B. R.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: June 8, 2020

DECISION AND REASONS

DECISION

[1] I am allowing the Commission's appeal and sending this file back to the General Division for reconsideration.

OVERVIEW

[2] The Claimant, B. R., applied for Employment Insurance parental benefits in June 2019. As part of her application, she chose the standard parental benefits option. This option offered her a higher weekly benefit rate, but over fewer weeks. If she changed her mind, however, the Claimant understood that she had until November 22, 2019, to switch to the extended option. The extended option offered her more weeks of benefits, but at a lower rate.

[3] On November 12, 2019, the Claimant called the Commission (through Service Canada) to switch from the standard to the extended option. The Commission refused. It said that it had already paid standard parental benefits to her husband. And once it paid parental benefits to either parent, it became impossible for them to change from one option to the other.

[4] The Claimant successfully appealed the Commission's decision to the Tribunal's General Division. In short, the General Division concluded that the Commission failed to prove that it had paid standard parental benefits to the Claimant's husband before November 2019.

[5] The Commission is now appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division acted unfairly towards it and that the General Division decision contains errors of fact and law. The Claimant, on the other hand, argues that I should maintain the General Division decision.

[6] I have concluded that the General Division acted unfairly in this case and that I should send the file back to the General Division for reconsideration.

ISSUES

[7] I reached this decision by focusing on the following questions:

- a) Did the General Division act unfairly towards the Commission by failing to give it the chance to respond to a new issue?
- b) If so, what is the best way to fix the General Division's error?

ANALYSIS

[8] I must follow the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, I can intervene in this case only if the General Division committed a relevant error.¹

[9] Here, I focused on whether the General Division acted unfairly towards the Commission.² If so, I can intervene in this case.³

The General Division acted unfairly towards the Commission.

[10] As mentioned above, the General Division concluded that the Commission had not provided enough evidence to prove that it had paid standard parental benefits to the Claimant's husband before November 2019. In particular, the General Division criticized the Commission for not providing it with the application for benefits filed by the Claimant's husband or with a summary of the parental benefits that the Commission had paid to him.

[11] The concern that the Commission might never have paid standard parental benefits to the Claimant's husband took the Commission by surprise. As the Commission notes, this was not among the issues that the Claimant had raised in her Notice of Appeal.⁴

¹ The relevant errors, formally known as grounds of appeal, are listed under section 58(1) of the DESD Act.

² Section 58(1)(a) of the DESD Act gives me the power to intervene in a case if the General Division fails to observe a principle of natural justice.

³ Based on the wording of the DESD Act, I can intervene in a case based on any failure to observe a principle of natural justice. This focus on the wording of the DESD Act is explained in *Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19.

⁴ Document GD2.

[12] Instead, the Claimant was arguing that the Commission had provided her with misinformation, and that the relevant sections of the *Employment Insurance Act* were ambiguous. Indeed, the Claimant did not dispute—but admitted—that her husband had received parental benefits around the time of their child’s birth, in the summer of 2019.⁵

[13] Given that the Claimant raised this issue late in the process, the General Division should have given the Commission an opportunity to respond to it. The General Division could have easily requested the missing information, under section 32 of the *Social Security Tribunal Regulations* or otherwise. Instead, the General Division ruled against the Commission, saying that it had failed to prove its case.

[14] By proceeding as it did, the General Division acted unfairly towards the Commission. As a result, I have the power to intervene in this case.⁶

I am returning the file to the General Division for reconsideration.

[15] To try to fix this error, I mostly considered whether to return the file to the General Division for reconsideration or to give the decision that the General Division should have given.⁷

[16] On the one hand, the Commission argued that I should send the file back to the General Division for reconsideration.⁸ Indeed, this would allow it to provide the Tribunal with the missing information. The General Division could then make a new decision, based on all the relevant facts.

[17] On the other hand, the Claimant encouraged me to give the decision that the General Division should have given. Even if the General Division had committed an error, she submitted that the outcome was correct. She also complained that her case has been dragging on for too long.

⁵ See, for example, pages GD2-2 to 3; GD3-21 to 22; GD3-25; GD3-27.

⁶ The failure to provide a fair process falls under section 58(1)(a) of the DESD Act.

⁷ Section 59(1) of the DESD Act sets out all the remedies available to me.

⁸ See page AD2-4.

[18] I sympathize with the length of time these processes can take. However, the Appeal Division rarely considers new evidence.⁹ As a result, it is only by returning the file to the General Division that the missing information can be admitted and considered.

[19] During the hearing of this appeal, I also drew the parties' attention to a recent Appeal Division decision that could be of help to the Claimant. In *ML v Canada Employment Insurance Commission*, 2020 SST 255, the Appeal Division found that the Commission's application process had misled ML into choosing the wrong parental benefits option. As a result, the Appeal Division concluded that ML's first election between the standard and extended parental benefits options was invalid, meaning that he got to choose again.

[20] The Appeal Division released its decision in *ML* after the General Division decision in this case. As a result, the General Division did not fully canvas the possibility that the Commission had misled the Claimant in a way that might make her first election invalid. The contents of her husband's application form could also be relevant to this issue.

[21] In other words, I see a need for the General Division to thoroughly address all the issues in this case, based on a complete factual picture. This reinforces my decision to send the file back to the General Division for reconsideration.

CONCLUSION

[22] I am allowing this appeal and sending it back to the General Division for reconsideration. The General Division will provide the parties with an opportunity to file additional evidence before reconsidering the case.

Jude Samson
Member, Appeal Division

⁹ Because of the legal framework created by the DESD Act, the Appeal Division normally bases its decisions on just the information that the General Division had in front of it.

HEARD ON:	May 6, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. Dumoulin, Representative for the Appellant B. R., Respondent