



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v J. H.*, 2020 SST 483

Tribunal File Number: AD-20-561

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. H.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 10, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Respondent (Claimant)'s benefits representative from work applied for parental benefits on his behalf. In the application, the benefits representative selected the extended option for parental benefits in which the Claimant would receive up to 61 weeks of benefits at a benefit rate of 33% of his weekly insurable earnings.

[3] The application identified the Claimant's last day of work, the date he intended to return to work, and that he wished to claim seven weeks of parental benefits. After he started to receive parental benefits, the Claimant contacted the Canada Employment Insurance Commission (Commission) to request to change the option selected. The Commission denied the Claimant's request because they had already paid him parental benefits. The Claimant appealed to the General Division.

[4] The General Division concluded that the Claimant intended to select the standard option for parental benefits. It found that the Commission incorrectly denied the Claimant's request to change the election made by his benefits representative who selected the extended option by mistake.

[5] The Tribunal granted the Commission leave to appeal. The Commission submits that the General Division erred in law when it found that the Commission incorrectly denied the Claimant's request to change his election from extended benefits to standard benefits.

[6] The Tribunal must decide whether the General Division erred when it found that the Commission incorrectly denied the Claimant's request to change his election from extended benefits to standard benefits.

[7] The Tribunal dismisses the Commission's appeal.

ISSUE

[8] Did the General Division err when it found that the Commission incorrectly denied the Claimant's request to change his election from extended benefits to standard benefits?

ANALYSIS

Appeal Division's mandate

[9] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Did the General Division err when it found that the Commission incorrectly denied the Claimant's request to change his election from extended benefits to standard benefits?

[12] The Commission submits that the General Division erred in law when it found that it incorrectly denied the Claimant's request to change his election from extended benefits to standard benefits.

[13] The Commission submits that the Claimant's application indicated that he elected extended parental benefits. It issued benefits in accordance with that election. The Claimant then contacted the Commission to request a change to his election after he had received two

¹ *Canada (Attorney general) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney general)*, 2015 FCA 274.

² *Idem*.

payments. The Commission decided that it could not grant his request because the Claimant's election was irrevocable by that point.

[14] The Commission puts forward that in finding that the Claimant could amend his election, the General Division ignored the clear language of subsection 23(1.2) of the *Employment Insurance Act* (EI Act) and created an exception for the Claimant that an election is revocable after benefits are paid if the claimant made a mistake.

[15] The Commission submits that there is no statutory authority to change an election after payment of benefits. The statutory language is clear that an election is irrevocable once benefits are paid. The Commission puts forward that the General Division erred in law when it found that the Claimant could change his election after he had received benefits.

[16] The facts of the present case are simple and not in dispute. The application for benefits shows that the Claimant's last day worked was November 1, 2019, and his return to work date was December 23, 2019. The Claimant intended to take seven weeks off work and therefore claim seven weeks of parental benefits.

[17] The Claimant contacted his benefits representative by phone to say that he needed to add two weeks to his claim for parental benefits. The benefits representative misinterpreted what the Claimant said and completed the benefits application on his behalf, selecting by error the extended option instead of the standard option. The Claimant realized there was something wrong after receiving the second payment of parental benefits.

[18] The General Division concluded that the Claimant intended to select the standard option for parental benefits. It found that the Commission incorrectly denied the Claimant's request to change the election made by his benefits representative who selected the extended option by mistake.

[19] Parental benefits are payable to a claimant to care for a newborn child of the claimant.³A claimant must elect the maximum number of weeks for which benefits can be paid.⁴ This

³ Subsection 23(1) of the EI Act.

⁴ Subsection 23(1.1) of the EI Act.

election is irrevocable once benefits are paid.⁵ The maximum number of weeks for which parental benefits can be paid in a benefit period is 35 or 61.⁶

[20] The Appeal Division has rendered several decisions on the election issue. I see no reason in the present matter to depart from the Tribunal's jurisprudence.⁷

[21] The Tribunal does not agree that a claimant's choice on the application form is necessarily the claimant's election, or that the circumstances in which a claimant makes that choice are irrelevant.

[22] While it is true that the purpose of making the election irrevocable is to prevent claimants from changing their minds as their circumstances change and they reassess which type of benefit would be most advantageous, its purpose is not to punish claimants for provable slips or objectively reasonable misunderstandings at the time that they complete their applications.⁸

[23] In the present matter, the undisputed evidence shows that the Claimant always intended to select the standard option. He intended to take seven weeks off work and therefore claim seven weeks of parental benefits. The Claimant's election followed a provable slip or an objectively reasonable misunderstanding at the time the application was completed. The Claimant believed that his benefits representative would follow correctly his instructions but he did not do so. The benefits representative clearly did not respect the mandate he was given. As a result, the Claimant's selection of the extended parental benefit was invalid from the outset.

[24] As stated during the appeal hearing, the Tribunal is not empowered to retry a case or to substitute its discretion for that of the General Division. The Tribunal's jurisdiction is limited by section 58(1) of the DESD Act. Unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

⁵ Subsection 23(1.2) of the EI Act.

⁶ Paragraph 12(3) (b) of the EI Act.

⁷ *V. V. v Canada Employment Insurance Commission*, 2020 SST 274, *M. L. v Canada Employment Insurance Commission*, 2020 SST 255, *Canada Employment Insurance Commission v T. B.*, 2019 SST 823,

⁸ *V. V. v Canada Employment Insurance Commission*, 2020 SST 274, paragraph 11.

[25] The Tribunal finds that the General Division based its decision on the evidence submitted before it, and that it complies with both the legislative provisions and the case law.

[26] For the reasons above-mentioned, the Tribunal dismisses the Commission's appeal.

CONCLUSION

[27] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 4, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Matthew Vens, representative for the Appellant Dean G. Lindsey, representative for the Respondent