Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

REVISED DECISION – corrections integrated into the main text of the original decision

Citation: *C. D. v Canada Employment Insurance Commission*, 2020 SST 759

Tribunal File Number: AD-20-720

BETWEEN:

C. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: ~~September 4, 2020~~

September 15, 2020

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, C. D. (Claimant), applied for maternity benefits and selected the extended benefit option for her parental benefits. After her maternity benefits ended, she was surprised to receive a reduced rate of parental benefits. She asked the Respondent, the Canada Employment Insurance Commission (Commission), to change her parental benefits to the standard benefit. The Commission responded that the Claimant could not revoke her election of the reduced extended parental benefit. The Claimant asked the Commission to reconsider but it maintained its original decision.

[3] The Claimant appealed the reconsideration decision to the Appeal Division of the Social Security Tribunal. The General Division dismissed her appeal and the Claimant appealed to the Appeal Division, which returned her appeal to the General Division for a new decision. The General Division again dismissed her appeal and the Claimant is now appealing a second time to the Appeal Division.

[4] The appeal is dismissed. The General Division did not fail to observe a principle of natural justice, and I have not found that the General Division made any error of law or important error of fact.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] "Grounds of appeal" are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:[1]

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.

[1] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

3. The General Division based its decision on an important error of fact.

ISSUES

[6] Was the General Division process unfair?

[7] Did the General Division ignore the evidence that the Claimant did not intend to elect extended benefits?

[8] Did the General Division mistake the Claimant's evidence of what she understood when she viewed the My Service Canada website?

[9] Did the General Division misapply the case law provided by the Claimant?

[10] Did the General Division find that the Claimant selected the extended benefit in a manner that was inconsistent with its findings of fact?

ANALYSIS

Fairness of the process

[11] The Claimant argued that the General Division did not follow procedural fairness. She says that there was "confusion and misinterpretation" in the evidence[2], and that the General Division ~~did~~ **did not** hear her correctly or treat her impartially.[3]

[12] I find that the General Division was procedurally fair. The ~~Claimant~~ **General Division** did not fail to observe a principle of natural justice.[4]

[13] In the original General Division appeal, the General Division did not give the Claimant an adequate opportunity to respond to additional information that the General Division obtained from the Commission. This was not procedurally fair, and the Appeal Division returned the decision to the General Division to make a new decision.

---

[2] ADN1-4.
[3] ADN2-3
[4] This is the ground of appeal that is concerned with fairness of the process. See section 58(1)(a) of the DESD Act.

[14] In her second General Division appeal, there was no similar failure to disclose. The Claimant was fully aware of the case she had to meet. She requested that the hearing proceed by way of Questions and Answers and the General Division proceeded according to that request.

[15] The General Division asked the Claimant a series of questions appropriate to the issues and the evidence before it, and requested that the Claimant answer those questions. It also invited the Claimant to provide and explain any additional information that might help her case. The Claimant responded to the General Division's questions and the General Division considered her answers.

[16] The Claimant gave an example of how she believed the General Division did not hear her correctly. She stated that the General Division surmised what she had concluded after she reviewed the My Service Canada website. She also says that the General Division was not impartial because it used case law she provided "against her".[5]

[17] The General Division may have been mistaken on some of the evidence or used case law in a manner that the Claimant had not anticipated. However, that does not mean that the General Division infringed on the Claimant's right to be heard, or her right to have an impartial and unbiased decision maker.

[18] The Claimant was also concerned that the Commission supplied additional case law that was not relevant. The Commission is entitled to submit whatever it thinks is relevant to the case. That does not mean that the General Division will rely on the Commission's submissions or find those submissions persuasive. The General Division is independent of the Commission. It must decide on the basis of all the evidence and submissions before it. If the General Division had relied on case law that was clearly irrelevant, this would be an error of law, but it would generally not suggest bias.

[19] I will consider the specific examples raised by the Claimant later in my decision where I decide whether the General Division made an important error of fact or an error of law.

---

[5] ADN2-3.

Evaluation of the evidence of the Claimant's intention

[20] The Claimant argued that the General Division should have decided in her favour because the evidence was unclear about what type of benefit she intended to select. She noted that the General Division acknowledged that there was conflicting evidence and that certain paragraphs of the decision (paragraphs 19, 20, 21 and 26) seemed to support her position.[6]

[21] The General Division did not make an error of law in how it evaluated the evidence.

[22] Some of the evidence before the General Division could have supported an inference that the Claimant's intention was to elect standard benefits. However, the General Division was not required to make a finding of fact favourable to the Claimant, just because *some* of the evidence could have supported that finding. There was also evidence that supported the opposite inference, that is; that the Claimant meant to select extended benefits.

[23] Appellants at the General Division must establish the facts on which they expect to rely according to a "balance of probability" standard.[7][8] To decide if a Claimant has met this standard of proof, the General Division weighs the evidence that supports a fact against the evidence that opposes the fact. If it finds a fact to be more likely true than not, it accepts the fact as true.

[24] The Claimant may actually be disagreeing with the weight that the General Division gave to the different evidence. However, I cannot find an error in the General Division decision, based on how the General Division weighed or assessed the evidence. This does not fit within the grounds of appeal that I am authorized to review.[9]

[25] In the Questions and Answers that I put to the Claimant, I asked the Claimant about the circumstances in which she made her choice of benefits.[10] I asked her to identify any evidence that the General Division overlooked or that it clearly misunderstood. The Claimant responded

---

[6] ADN1-2.
[7] There are some situations under the *Employment Insurance Act* (EI Act) in which the onus shifts so that the Commission must establish the facts on a balance of probabilities. This is not one of them.
[8] See General Division decision, footnote 7.
[9] *Bergeron v. Canada (Attorney General)*, 2016 FC 220; *Hideq v. Canada (Attorney General)*, 2017 FC 439.
[10] AD0, Question 2.

by explaining again that she had expected to receive a prorated benefit over 14 months, and that the benefit information was not clear.

[26] However, the General Division did not misunderstand or ignore this evidence. The General Division stated that the Claimant selected the extended benefit option because she thought she would receive benefits for the entire 14-month period she was off work. She also thought she would receive a prorated benefit because she claimed less than 61 weeks of benefits.[11] The General Division acknowledged her confusion over the information proved on the application form,[12] but it was not persuaded that she intended to select the standard benefit.

The Claimant's reaction to the My Service Canada website

[27] The Claimant also argued that the General Division mischaracterized or misunderstood some of the evidence about what she understood from her review of the My Service Canada webpage. The General Division said that the Claimant's evidence was that the webpage made her think that she had "selected the standard benefit option by mistake". The General Division stated that this supported a conclusion that the Claimant had elected the extended benefit option.[13]

[28] I agree with the Claimant that the General Division may have mischaracterized the Claimant's evidence when it said that she believed she had "selected the standard parental benefit by mistake".

[29] However, the Claimant was not always clear on what she understood from the My Service Canada webpage. When she filed her Notice of Appeal to the General Division the first time, she said that she gave birth in August and only wanted the 12-month benefit. She said that she wanted the 55% benefit and not the 30% benefit. According to the Claimant, when she saw that the webpage gave a claim end-date of June 27, 2020, she never thought that she had selected anything different from 12 months of benefits.[14] This suggests that she wanted the standard

[11] General Division decision, para 14.
[12] General Division decision, para 21.
[13] General Division decision, para 25.
[14] GD2-4

benefit and that she believed she had selected the standard benefit. On its own, this evidence could not have supported a finding that the Claimant intended to elect the extended benefit.

[30] However, the Claimant's subsequent documents and testimony are not consistent with what she wrote in her Notice of Appeal. The Claimant said that she knew she selected 57 weeks of benefits (in total) and that she had always wanted 14 months of benefits. She said that she believed it would be a prorated benefit. The Claimant stated that she had intended to receive benefits until September 8, 2020 when she would return to work.[15] The General Division accepted this other evidence. Even now, she maintains that her intention had to ~~recieve~~ receive benefits to September 4, 2020.[16]

[31] To find that the General Division made an error of fact under the grounds of appeal,[17] I must find that the General Division based its finding on its misunderstanding of the evidence.

[32] In my view, the General Division's finding did not depend on whether the Claimant believed that she made a mistake or believed the Commission had made a mistake. The General Division was still substantially correct when it found that the Claimant's response to the information on the My Service Canada website suggested that she had intended to select the extended benefit.

[33] This finding is supported by the evidence. Regardless of whether the Claimant admitted to making a mistake, or believed the Commission made a mistake, the Claimant understood from the website that she was mistakenly receiving the full benefit for a period of about 12 months.

[34] The Claimant elected the extended parental benefit so that she could obtain 14 months of benefits. The extended benefit offers benefits over an extended period of time but at a reduced rate. The Claimant was not clear on how much the Commission would reduce her payment, because she believed the Commission would prorate them somehow. However, she expected to receive a reduced benefit payment.

---

[15] RGD3-3.
[16] ADN4-2.
[17] Section 58(1)(c) of the DESD Act: This ground of appeal is described as: "The General Division 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."

[35] The Claimant acknowledged that she had initially chosen 57 weeks of benefits deliberately, and admitted that she intended to select 14 months of benefits. Whether 57 weeks or 14 months, her intention had been to collect benefits over a longer period than would have been possible under the standard option.

[36] The Claimant confirmed that what she understood from viewing the webpage was not what she expected based on her original election. Before she viewed the My Service Canada webpage, the Claimant expected to receive a prorated benefit over a period of 14 months. In other words, she expected to receive an "extended benefit". After she viewed it, she believed she would receive the full benefit rate of 55% but only until June 27, 2020. This roughly corresponds to what she would receive if she had selected standard benefits to receive the maximum of 50 weeks of combined maternity and parental benefits at the 55% rate.

[37] According to the evidence, the webpage led the Claimant to believe that she was receiving the full benefit for about a year (something like a standard benefit) when her intention had been to elect a reduced benefit over an extended time (something like an extended benefit).

[38] The General Division did not make an important error of fact when it found that the manner in which the Claimant understood the webpage supported a finding that her original intention had been to select extended benefits.[18]

Use of case law

[39] The Claimant states that she sent the General Division a decision of the Appeal Division of the Social Security Tribunal (M.H.), which she believed supported a decision in her favour.[19] She argues that the General Division made an error when it used the case she supplied against her.

[40] The General Division did not make an error of law in its use of M.H. for several reasons:

- Appeal Division decisions are not binding on the General Division but may be persuasive;

[18] As an error of fact is defined in Section 58(1)(c) of the DESD Act.
[19] *M.H. v Canada Employment Insurance Commission*, 2019 SST 1385.

- If the General Division finds a decision persuasive, it is persuasive for what it actually means, and not necessarily what a claimant or other party asserts that it means;
- The General Division did not use the decision to deny the Claimant. The General Division did not apply the case, explaining that the case did not assist the Claimant because the facts of that case were different from the Claimant's facts.

[41] There was nothing improper in how the General Division analyzed the decision in M.H. and the General Division did not make an error of law in its consideration of M.H.

Inconsistent findings related to intention of Claimant

[42] The Claimant has argued that the General Division's decision is inconsistent with its findings on some of the evidence.

[43] As I discussed above, the General Division recognized that some of the evidence might lead to one conclusion and some might lead to another. However, that does not mean that the General Division cannot weigh that evidence and reach a conclusion. That is its proper role. It is a rare case where all the evidence points in one direction.

[44] The General Division understood the Claimant's confusion about the benefits, and that the Claimant presumed that the Commission would prorate her benefit somehow if she selected the extended benefit.[20] The General Division found that the Claimant's confusion about the meaning of the extended benefit supported a finding that she did not mean to select the extended benefit.

[45] However, the General Division was persuaded by unchallenged evidence that the Claimant intended to receive benefits for 14 months at the time that she made the election of extended benefits. She could not have obtained 14 months of benefits, or the 57 weeks of benefits that she requested, if she had not selected the extended benefit option.

[46] The Claimant argues that she did not fully understand the implications of her election of extended benefits. However, she knew that she chose "Extended" on the application form,[21]and

[20] General Division decision, para 20, 21.
[21] ADN1-3

that she was selecting more weeks of benefits than she could have received by selecting the full benefit under the standard option.

[47] The General Division was clear that the intention of the Claimant was relevant to its decision on which benefit she elected.[22] However, it found that the Claimant intended to elect extended benefits because the evidence suggesting that she intended to elect extended benefits outweighed the evidence that this was not her intention. I cannot reweigh or re-evaluate the evidence in the absence of an error under the grounds of appeal.

[48] The General Division did not make an error of law. Its decision that the Claimant elected the extended benefit is not inconsistent with the evidence or with its findings. The *Employment Insurance Act* states clearly that a claimant cannot revoke a parental benefit election, once he or she begins to receive parental benefits in accordance with that election.[23]

CONCLUSION

[49] The appeal is dismissed.

Stephen Bergen
Member, Appeal Division

METHOD OF PROCEEDING:	Questions and answers
Submissions:	C. D., Appellant Susan Prud'homme, Representative for the ~~Appellant~~ **Respondent**

[22] General Division decision, para 16.
[23] Section 23(1.2) of the EI Act.