



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MN v Canada Employment Insurance Commission*, 2021 SST 314

Tribunal File Number: AD-21-216

BETWEEN:

M. N.

Applicant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: July 5, 2021

DECISION AND REASONS

DECISION

[1] The appeal filed by the Claimant, M. N., does not have a reasonable chance of success. For that reason, I am refusing the Claimant's application to move ahead with her appeal.

OVERVIEW

[2] The Claimant is appealing the General Division's decision. The General Division decided two issues. One of the issues was about which weekly rate applied when calculating the Claimant's maternity and parental benefits. There is a higher weekly benefit rate under the COVID-19 temporary measures. The Claimant argued that she is entitled to this higher rate.¹

[3] The General Division decided that the temporary measures did not apply in the Claimant's case. The result was that the Claimant did not qualify for the higher weekly rate for maternity and parental benefits.

[4] The Claimant argues that the General Division misinterpreted or misapplied the *Employment Insurance Act*.

[5] I have to decide whether the appeal has a reasonable chance of success.² Having a reasonable chance of success is the same thing as having an arguable case.³

[6] I am not satisfied that there is an arguable case that the General Division made any legal errors about the Claimant's weekly benefit rate. Therefore, I am not giving permission to the Claimant to move ahead with her appeal. This ends the Claimant's appeal.

ISSUE

[7] Is there an arguable case that the General Division misinterpreted or misapplied the *Employment Insurance Act*?

¹ See Part VIII.5 Temporary Measures to Facilitate Access to Benefits under the *Employment Insurance Act*.

² Under section 58(1) of the *Department of Employment and Social Development Act*, I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ANALYSIS

[8] There is a two-step process for most appeals at the Appeal Division. This appeal falls into that category.

[9] At the first step, an applicant has to get permission from the Appeal Division before they can move on to the second and final step. Before the Appeal Division will grant permission to applicants, they have to show that the appeal has a reasonable chance of success. In particular, applicants have to show that the General Division made a certain type of error.⁴ These errors are about whether the General Division:

- (a) Failed to make sure that the process was fair;
- (b) Failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- (c) Made an error of law; or
- (d) Based its decision on an important factual error. (The error has to be perverse, capricious, or without regard for the evidence before it.)

[10] Once an applicant gets permission from the Appeal Division, they move to the last step where the Appeal Division will make a decision on the merits of the appeal.

[11] The Claimant argues that the General Division made a legal error when it failed to recognize that she qualified for the minimum weekly rate under the temporary measures. The Claimant argues that the General Division misinterpreted and misapplied the law. The Claimant argues that she qualifies for benefits at the higher rate because:

- The only reason she qualified for maternity and parental benefits at all was due to the temporary measures. Otherwise, she did not have enough qualifying insurable hours and

⁴ See section 58(1) of the *Department of Employment and Social Development Act*.

- If the Commission approved her under these temporary measures, she argues that the weekly benefit rate should also be based on the temporary measures.

[12] The General Division found that the higher benefit rate applied only if a claimant's benefit period started on or after September 27, 2020.⁵

[13] The General Division examined when a benefit period starts. The General Division found that a benefit period "begins on the Sunday of the week in which the interruption of earnings occurs or the Sunday of the week in which the initial claim for benefits is made, whichever is later."⁶

[14] The General Division noted that the Claimant's last day of work was December 26, 2019. It also found that she made a claim for maternity and parental benefits on July 5, 2020. The later of these two dates was July 5, 2020. Therefore, the General Division concluded that the Claimant's benefit period began on July 5, 2020.

[15] Because the Claimant's benefit period began before September 27, 2020, the General Division found that the weekly benefit rate under the COVID-19 temporary measures did not apply.

FINDINGS

[16] The rate of benefits is based on a claimant's weekly insurable earnings. Section 153.192 of the *Employment Insurance Act* defines a claimant's weekly insurable earnings, for those whose benefit period begins on or after September 27, 2020. The section reads:

Weekly insurable earnings

153.192(1) Despite subsection 14(2), the weekly insurable earnings of a claimant whose benefit period begins on or after September 27, 2020 are deemed to be the greater of

⁵ General Division decision, at para. 36, citing section 153.192 of the *Employment Insurance Act*.

⁶ General Division decision, at para. 35, citing section 10(1) of the *Employment Insurance Act*.

- (a) the claimant's insurable earnings in the calculation period referred to in subsection 14(4), divided by the number of weeks in that period in which they had insurable earnings, and
- (b) \$909.

[17] Without the temporary measures, generally, the rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings. In the case of extended parental benefits, the weekly benefit rate is 33% of a claimant's weekly insurable earnings.⁷

[18] According to the General Division, the Claimant confirmed at the hearing that she was not disputing the earnings information used by the Commission to calculate her benefit rate.⁸ However, the Claimant is saying that her weekly insurable earnings should be deemed to have been \$909, for the purposes of calculating the benefit rate. Fifty-five percent of this amount would be about \$500.

[19] However, if the Claimant hopes to be able to rely on section 153.192(1)(b) of the *Employment Insurance Act* to receive a higher weekly benefit rate, she has to establish that her benefit period began on or after September 27, 2020.

[20] There are no provisions under the COVID-19 temporary measures that establish when a benefit period begins. Therefore, section 10(1) of the *Employment Insurance Act* applies. The General Division did not make a legal error when it relied on section 10(1) of the *Employment Insurance Act* to determine when the Claimant's benefit period began.

[21] The General Division also correctly noted that the Claimant last worked on December 26, 2019,⁹ and that she applied for benefits on July 5, 2020.¹⁰ So, the Claimant's benefit period began on the Sunday of the week in which she made an initial claim for benefits.¹¹ The benefit period began on July 5, 2020.

⁷ Section 14(1) of the *Employment Insurance Act*. See also sections 12(3)(b)(ii) and 23 of the *Employment Insurance Act*.

⁸ General Division decision, at para. 40.

⁹ Claimant's application for benefits, at GD3-8.

¹⁰ *Ibid*, at GD3-23.

¹¹ Section 10(1)(b) of the *Employment Insurance Act*.

[22] Because the Claimant's benefit period began on July 5, 2020 – which is before September 27, 2020 – the Claimant could not rely on section 153.192(1)(b) of the *Employment Insurance Act*.

[23] The General Division did not make a legal error when it determined that section 153.192(1)(b) of the *Employment Insurance Act* did not apply in the Claimant's case. The General Division correctly concluded that the weekly benefit rate under the COVID-19 temporary measures did not apply.

CONCLUSION

[24] I am refusing the Claimant's application. This means the Claimant will not be moving ahead to the next stage of the appeal. This ends her appeal on this issue.

Janet Lew
Member, Appeal Division

REPRESENTATIVES:	M. N., Applicant A. M., for the Applicant
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