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

Citation: *Canada Employment Insurance Commission v JF*, 2021 SST 344

Tribunal File Number: AD-21-174

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

J. F.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Melanie Petrunia

Date of Decision: July 16, 2021

Canada

DECISION AND REASONS

DECISION

[1] The Commission's application for leave to appeal is refused.

OVERVIEW

[2] J. F. (Claimant), left work on October 30, 2020 in anticipation of having a baby. She established a claim for maternity and parental benefits effective November 8, 2020. When completing the application for benefits she clicked on the extended benefits option and stated that she was requesting 39 weeks of benefits.

[3] The Claimant noticed the first payment of parental benefits in her account was less than she expected. As soon as she noticed this, she contacted the Canada Employment Insurance Commission (Commission). She was told that she had elected to receive extended parental benefits. The Claimant told the Commission that this was an error and she only intended to receive maternity and parental benefits for one year.

[4] The Commission denied the Claimant's request to change to standard parental benefits, stating that the choice was irrevocable once benefits had been paid. She asked for reconsideration but the Commission did not change its decision.

[5] The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division. The General Division member allowed her appeal, finding that she had elected standard benefits.

[6] The Commission now wants to appeal the General Division decision. It argues that the General Division made errors of law and based its decision on an important error of fact. I am refusing leave to appeal. There is no arguable case that the General Division made an error of law by not considering all of the relevant facts of the case or by failing to apply section 23(1.2) of the *Employment Insurance Act* (the Act). There is no arguable case that the General Division failed to consider the application for benefits form in its analysis.

ISSUES

[7] Is there an arguable case that the General Division made an error of law by failing to consider all of the relevant facts of the case?

[8] Is there an arguable case that the General Division made an error of law by failing to apply ss. 23(1.2) of the Act?

[9] Is there an arguable case that the General Division based its decision on an important error of fact in this case by failing to consider the application form?

ANALYSIS

[10] The legal test that the Commission needs to meet on an application for leave to appeal is whether there is any arguable ground on which the appeal might succeed. The threshold for this question is low.[1]

[11] To decide this question, I have to determine whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed under section 58(1) of the DESD Act. I am only allowed to consider whether the General Division:[2]

a) provided a fair process;

b) decided all the questions that it had to decide, without deciding questions that were beyond its powers to decide;

c) misinterpreted or misapplied the law; and

d) based its decision on an important error about the facts of the case.

There is no arguable case that the General Division failed to consider all of the relevant

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[1] This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

[2] 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.*

facts

[12] The General Division decided that the Claimant elected the standard benefits option. In coming to this conclusion the General Division noted that, on her application form, the Claimant chose extended parental benefits and picked 39 for the number of weeks of benefits she wished to receive. The Claimant said that she chose 39 weeks because she thought the number of weeks of benefits had to match the number of weeks that she was off work. At the time, her return to work date was November 22, 2021 though it was later changed to November 8, 2021. The Claimant testified that she only ever intended to receive one year of benefits.

[13] The Commission claims that the General Division did not consider all of the relevant facts, which is an error of law.[3] Specifically, the Commission argues that the General Division failed to consider that the application form clearly asks how many weeks the Claimant wishes to claim when it decided that she thought the number of weeks of benefits had to match the number of weeks that she was off work.

[14] I do not agree. The General Division, in its decision, considered the question posed by the application form, stating:

> [15] I examined the application as completed by the Appellant. In fact, she did click the button associated with extended benefits.
>
> [16] Under the section for "**Parental Information**" the question posed to claimants is, *"How many weeks do you wish to claim?"* The Appellant input 39 (weeks).[4]

[15] The General Division then goes on to review the Claimant's testimony that she misunderstood that she was asking for more than a year of benefits when she chose extended benefits on the form. The General Division found the Claimant to be credible and accepted her explanation that she did not believe that she was requesting more than a year's worth of benefits (when combined with maternity benefits).

[3] *Oberde Bellefleur v Canada (Attorney General)*, 2008 FCA 13
[4] General Division decision at paras 15 and 16.

[16] The General Division clearly considered the application form and analyzed the evidence in a meaningful manner. The General Division considered the Claimant's application form, looked at the surrounding evidence and found that the Claimant intended to choose the standard benefits option.

There is no arguable case that the General Division failed to apply section 23(1.2) of the EI Act

[17] There is no arguable case that the General Division made an error of law by failing to apply section 23(1.2) of the Act which establishes that the election is irrevocable once benefits are paid.

[18] The General Division has the power under section 64(1) of the DESD Act to decide any question of law or fact that is necessary for it to decide the appeal. This includes the ability to consider all of the evidence so that it can determine which election was actually made and whether it was validly made.

[19] Whether a claimant has elected extended parental benefits in the first place is not the same question as whether a claimant's election may be changed. I recognize that the Commission asks claimants to make the election on the benefit application form and that the election can't be changed once the Commission pays the Claimant parental benefits. However, this does not mean that the General Division cannot evaluate the evidence in order to determine which type of benefits the Claimant elected in the first place, or whether the Claimant's election was valid.

[20] The General Division considered the Commission's argument that, once benefits were paid to the Claimant on March 12, 2021, the election of extended parental benefits was irrevocable.[5] It found that the issue in this matter was not whether or not the election was irrevocable but what the Claimant's true election was. The General Division evaluated the evidence and found that the Claimant checked the button for extended benefits but that "all the

[5] General Division decision at para 13.

other information she provided was consistent with electing the standard parental benefit option."[6]

[21] The Appeal Division has issued a number of decisions in which it found that a claimant's actual election of parental benefit may be different from the benefit the claimant selected on the application form. The selection of the benefit has been treated as *evidence* of the Claimant's election, but not conclusive of the election.[7] The General Division followed this line of reasoning. While it is not bound by decisions of the Appeal Division there was no reason to depart from this reasoning.

[22] There is no arguable case that the General Division made an error of law by failing to apply section 23(1.2) of the Act.

The General Division did not base its decision on an important error of fact

[23] The Commission argues that the General Division based its decision on an important error of fact. It says that the General Division failed to consider the application form when it determined that it would be illogical for the Claimant to input 39 weeks of benefits at a reduced rate, given her circumstances.

[24] The General Division noted that the Claimant chose the extended benefits option when applying for benefits. It also recognized that she selected 39 for the number of weeks of benefits she wished to receive. The General Division found that the Claimant made an error when she chose extended benefits; that she only wanted to receive benefits for one year but wrote 39 weeks believing that the number of weeks had to match the number of weeks that she may be off work.

[25] The General Division found that the Claimant should have input 35 weeks and that it was possible she thought that she was still only claiming one year of benefits, while indicating 39

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[6] General Division decision at para 28.
[7] See for example, *Canada Employment Insurance Commission v J.H*., AD-21-86; *Canada Employment Insurance Commission v. T. B.,* 2019 SST 823*; M. H. v Canada Employment Insurance Commission,* 2019 SST 1385*; V. V. v Canada Employment Insurance Commission,* 2020 SST 274*; M. L. v Canada Employment Insurance Commission,* 2020 SST 255.

weeks. It found that there was nothing in the testimony or submissions to support that the Claimant chose extended benefits.

[26] The Commission argues that the General Division erred in ignoring the evidence that supports that the Claimant asked for 39 weeks of benefits and that the application form was clear that she would receive 33% of her weekly insurable earnings. As discussed above, the General Division clearly considered that the Claimant checked off extended benefits on the application form. The General Division's reasons clearly support that it did not ignore the information about the benefit rate and extended benefits in the application form. This was one piece of evidence that the General Division considered in its decision.

[27] I find that the General Division did not base its decision on the important errors of fact the Commission alleged. It considered all relevant evidence and found, on a balance of probabilities, that the Claimant elected the standard benefit option for parental benefits.

[28] The Commission has not made out an arguable case that the General Division made an error of law by not considering all of the relevant facts of the case or by failing to apply section 23(1.2) of the Act. There is no arguable case that the General Division based its decision on an important error of fact.

[29] The Commission has no reasonable chance of success in the appeal.

CONCLUSION

[30] The application for leave to appeal is refused.

Melanie Petrunia
Member, Appeal Division