Citation: *Canada Employment Insurance Commission v SA*, 2021 SST 406

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	Canada Employment Insurance Commission
Respondent:	S. A.

Decision under appeal:	General Division decision dated June 25, 2021 GE-21-938

Tribunal member:	Melanie Petrunia
Decision date:	August 18, 2021
File number:	AD-21-235

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Respondent, S. A., is the Claimant in this matter. He applied for Employment Insurance (EI) parental benefits on February 3, 2021, when his child was almost 11 months old. He chose standard parental benefits and requested 17 weeks of benefits. On April 29, 2021, the Canada Employment Insurance Commission (Commission) told the Claimant that he could only be paid 6 weeks of parental benefits because standard parental benefits are payable in the 52-week window after the birth of the child.

[3] The Claimant asked to switch to extended parental benefits, saying that he made a mistake when he chose standard. The Commission refused the Claimant's request. It said that the Claimant could not be paid standard parental benefits beyond the 52-week window and that it was too late to change options because some of the benefits had already been paid.

[4] The Claimant successfully appealed the Commission's decision to the Tribunal's General Division. The General Division found that the Claimant could not be paid standard parental benefits for more than 6 weeks. It also found that the Claimant was not informed of the length of the standard parental benefit window and was unable to make an informed decision. It found that the Claimant's election of standard parental benefits was invalid.

[5] The Commission now wants to appeal the General Division decision to the Tribunal's Appeal Division. It argues that the General Division made errors of law. The Commission's appeal has no reasonable chance of success. As a result, I am refusing permission to appeal.

Issue

[6] The issues are:

a) Is there an arguable case that the General Division made an error of law when it decided that the Claimant was misled by the application form and voided the Claimant's election?

b) Is there an arguable case that the General Division made an error of law by failing to apply ss. 23(1.2) of the *Employment Insurance Act* (EI Act), which prevented the Claimant from changing options after he had started to receive parental benefits?

Analysis

[7] 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]

[8] 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:

a) Provided a fair process;

b) Decided all of 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.[2]

[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 test is in section 58(1) of the *Department of Employment and Social Development Act* (*DESD Act*).

There is no arguable case that the General Division made an error of law

[9] In its decision, the General Division found that the Claimant intended to be away from work for less than 35 weeks and therefore chose standard parental benefits on his application form. It also found that the application form explains the difference between standard and extended parental benefits. However, it decided that the Claimant was not informed about the length of the parental benefit window and was unable to make an informed decision. It found that the election for standard parental benefits was invalid.

– The General Division did not fail to apply the principle that ignorance of the law is not an excuse

[10] The Commission argues that the General Division erred in law by failing to apply the principle that ignorance of the law is not an excuse. In its decision, the General Division discusses the Claimant's testimony. At the hearing he said that, if he had known that he would only receive six weeks of standard parental benefits at the time of the application, he would have applied sooner or would have chosen the extended parental benefit option. The General Division acknowledged that the Claimant has the responsibility to understand the option he is choosing but found that the Commission is responsible for ensuring the application form provides all of the information that the Claimant needs to make an informed decision.

[11] The Courts have not yet considered whether claimants may be relieved of the consequences of an unintentional or mistaken selection of parental benefits. However, the Courts have stated that ignorance of the law is not an excuse for claimants who have failed to meet other requirements of the *Employment Insurance Act*.[3] That said, the General Division did not find that the Claimant was ignorant about the law and excuse him for this. It found that he was misled or misinformed about his options by the application form.

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[3] *Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 710; *Canada (Attorney General) v. Caron* (1986), 69 N.R. 132; *Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Bryce*, 2008 FCA 118; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.

[12] The General Division found that the Claimant's choice was based on a reasonable interpretation of the information and instructions in the application.[4] Because he was requesting less than 35 weeks of benefits, the Claimant chose standard parental benefits, believing that this was the only option he could choose. The General Division found that the application form misled the Claimant to make a selection that was contrary to his needs and wishes.

[13] The Commission relies on the recent Federal Court decision in *Karval v. Canada (Attorney General)*.[5] The Commission acknowledges that information about the benefit period is not on the application form but argues that this cannot be the basis for an error on its part. According to *Karval*, applicants need to seek information about the benefits they are applying for and ask the Commission questions if there are things they don't understand.

[14] I find that Karval does not apply in this case. In *Karval*, the Court was careful to distinguish between people who lack the knowledge to answer clear questions and those who are misled by relying on incorrect information that the Commission provides.[6]

[15] The General Division found that the Claimant was misled by the Commission's application form.[7] It was not a situation where the Claimant lacked "the knowledge necessary to accurately answer unambiguous questions."[8] In *Karval*, the Claimant unequivocally chose the extended parental benefit option and waited for six months to ask to change to standard benefits. There are important factual differences which mean that *Karval* does not apply in the situation.

[16] I find that there is no arguable case that the General Division failed to apply the principle that ignorance of the law is no excuse. It found that the Claimant made the selection he did because he was misled by the application form, not because he was ignorant of the law.

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[4] General Division decision at para 34.
[5] *Karval v. Canada (Attorney General)*, 2021 FC 395
[6] See paragraph 14 of the *Karval* decision.
[7] General Division decision at para 32.
[8] See paragraph 14 of the *Karval* decision.

– **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 standard 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, the election of standard parental benefits was irrevocable.[9] The General Division evaluated the evidence and found that the Claimant's election of standard parental benefits was invalid.

[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.[10] The General

[9] General Division decision at para 24.
[10] 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.

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.

[23] Aside from the Commission's arguments, I have reviewed the file and examined the General Division decision.[11]

[24] The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. Finally, the Commission has not argued that the General Division acted unfairly in any way.

Conclusion

[25] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division

[11] The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.