



Citation: *RP v Canada Employment Insurance Commission*, 2021 SST 402

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** R. P.  
**Representative:** D. P.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Melanie Allen

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**Decision under appeal:** General Division decision dated April 30, 2021 GE-21-595

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference  
**Hearing date:** August 12, 2021  
**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative

**Decision date:** August 18, 2021  
**File number:** AD-21-184

## Decision

[1] The appeal is dismissed.

## Overview

[2] The Appellant (Claimant) applied for sickness benefits on August 30, 2020. She indicated that she was pregnant and would like her maternity benefits to start immediately after her illness benefits. A benefit period was established starting August 16, 2020.

[3] The Claimant received two weeks of the EI-Emergency Response Benefit (EI-ERB), and then her baby was born on September 11, 2020. Her claim then switched to maternity EI benefits. She was paid 55% of her weekly income and not the \$500 offered by EI-ERB.

[4] The Claimant requested that the Respondent, the Canada Employment Insurance Commission (Commission), reconsider the benefit rate paid. She argued that the new temporary measures that began on September 27, 2020, allowed maternity and standard parental benefits to be paid at a benefit rate of at least \$500 per week. The Commission maintained its decision that the Claimant was to receive a benefit rate representing 55% of her weekly earnings because her benefit period started before September 27, 2020.

[5] The General Division determined that the temporary measures were implemented on September 27, 2020. Because the Claimant's benefit period was established before the new temporary law was in place, she did not qualify for the \$500 benefit rate. It concluded that the Commission had correctly calculated that the Claimant was entitled to maternity and standard parental benefits at a rate of \$213 per week.

[6] The Appeal Division granted the Claimant leave to appeal. She submits that the General Division erred in fact or in law when it concluded that she was not entitled to the \$500 benefit rate.

[7] I must decide whether the General Division erred in fact or in law.

[8] I am dismissing the Claimant's appeal.

## Issues

[9] Issue 1: Did the General Division make an error by not considering that the law treated the Claimant differently than other claimants in violation of her Equality Rights under the *Canadian Charter of Rights (Charter)*?

[10] Issue 2: Did the General Division make an error in its interpretation of the emergency legislation considering that the Commission's website does not indicate that the temporary COVID-19 relief benefit rate is only available to parents whose baby is born on or after September 27, 2020, or only for maternity and parental claims starting September 27, 2020?

## Analysis

### Appeal Division's mandate

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

[12] 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.<sup>2</sup>

[13] 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, I must dismiss the appeal.

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

**Issue 1: Did the General Division make an error by not considering that the law treated the Claimant differently than other claimants in violation of her Equality Rights under the Charter?**

[14] The Claimant submits that the General Division erred by not considering that the law treated her differently than other claimants in violation of her rights to equal protection and benefit under the law.<sup>3</sup>

[15] I proceeded to listen to the recording of the General Division hearing to determine whether the Claimant is raising the Charter issue for the first time before the Appeal Division.

[16] The Claimant did not raise any argument under the Charter during the hearing before the General Division. The issue of discrimination does not appear in her reconsideration application and in her notice of appeal. I also note that there is no notice of a constitutional challenge filed before the General Division.<sup>4</sup>

[17] I find that the Claimant is raising the Charter issue for the first time before the Appeal Division.

[18] According to the general principle, constitutional questions cannot be raised for the first time before the Appeal Division because the General Division has the authority to decide on a constitutional question.<sup>5</sup>

[19] I am of the view that there is no reason that would justify waiving the general principle in this case.<sup>6</sup> The Claimant could have raised this issue before the General Division but did not. Furthermore, the evidentiary record before the Appeal Division is simply insufficient to decide a Charter issue.

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<sup>3</sup> Section 15(1) of the Charter.

<sup>4</sup> As required by section 20 of the *Social Security Tribunal Regulations*.

<sup>5</sup> *Erasmus v Canada (Attorney General)*, 2015 FCA 129; *M. L. v Canada Employment Insurance Commission*, 2020 SST 258; *S. Z. v Canada Employment Insurance Commission*, 2018 SST 671; *M. E. v Canada Employment Insurance Commission*, 2016 CanLII 96445.

<sup>6</sup> *Okwuobi v Lester B. Pearson School Board*; *Casimir v Québec (Attorney General)*; *Zorrilla v Québec (Attorney General)*, [2005] 1 SCR 257, 2005 SCC 16; *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245, 465 N.R. 152

[20] I must therefore dismiss this ground of appeal.

**Issue 2: Did the General Division make an error in its interpretation of the emergency legislation considering that the Commission’s website does not indicate that the temporary COVID-19 relief benefit rate is only available to parents whose baby is born on or after September 27, 2020, or only for maternity and parental claims starting September 27, 2020?**

[21] I note that the Commission’s website summarily indicates that starting September 27, 2020, there are some temporary changes to the EI program to help a claimant access EI maternity and parental benefits. It stipulates that the changes, namely the rate of 500\$, “**could apply to you**”.<sup>7</sup>

[22] In my view, the website contains the necessary information to alert and encourage a claimant to investigate and to contact the Commission to see if they could benefit from the temporary changes to maternity and parental benefits. It does not claim to deal with each person’s particular situation.

[23] Furthermore, a claimant cannot reasonably treat information on the Commission’s website as if it were personally provided to them by an agent in response to an inquiry about their eligibility based on given facts.<sup>8</sup>

[24] I find that the General Division did not make an error in fact or in law. Furthermore, I see no contradiction between the information on the Commission’s website and the General Division’s interpretation of the emergency legislation.

[25] The Claimant applied for sickness EI benefits on August 30, 2020. She indicated that she was pregnant and would like her maternity benefits to start immediately after her illness benefits. A benefit period was established starting August 16, 2020.

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<sup>7</sup> See GD2-16.

<sup>8</sup> *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

[26] As per the emergency legislation that came into effect March 15, 2020, a claim for EI-ERB was established effective August 16, 2020.

[27] The Claimant later informed the Commission that her baby was born prematurely on September 11, 2020. The actual due date was the last week of October 2020. The Claimant received two weeks of EI-ERB before her claim changed to a claim for maternity benefits effective September 6, 2020.<sup>9</sup> She received a benefit rate representing 55% of her weekly insurable earnings.<sup>10</sup>

[28] Unfortunately, for the Claimant, changes to the maternity and parental benefits started on September 27, 2020, after she had established her benefit period and after her child was born. The General Division did not make an error in finding the Claimant did not qualify for the \$500 benefit rate.<sup>11</sup>

[29] The Claimant argues that the actual due date was the last week of October 2020. She puts forward that she could have delayed the start of her claim to September 27, 2020.

[30] The EI Act indicates that maternity benefits are payable the week in which the confinement occurs. The Claimant's maternity claim became effective September 6, 2020, as this is the week her baby was born. Therefore, the Commission could not consider the start date of the Claimant's claim to be September 27, 2020, in order that she benefit from the emergency legislation.

[31] Despite my sympathy for the Claimant, the General Division could not have granted her request to be paid the \$500 benefit rate without committing an error of law. The fact that the Commission may have misinformed the Claimant does not prevent the application of the EI Act.

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<sup>9</sup> Pursuant to section 22(2) (a) of the EI Act, her maternity claim became effective September 6, 2020 as this is the week her baby was born.

<sup>10</sup> See section 14(1) of the EI Act.

<sup>11</sup> See sections 153.5(2) (b), 153.5(3) (a) and 153.192(1) of the EI Act.

[32] I must point out that the emergency legislation does not allow discrepancy and does not give me discretion in its application.<sup>12</sup>

[33] I understand the Claimant's argument that the application of this emergency legislation is penalizing her because her child was born prematurely. The fact remains that neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

[34] This ground of appeal is dismissed.

## **Conclusion**

[35] The appeal is dismissed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>12</sup> *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.