



Citation: *Canada Employment Insurance Commission v JC*, 2021 SST 514

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: A. F.

Respondent: J. C.

Decision under appeal: General Division decision dated May 14, 2021
(GE-21-688)

Tribunal member: Janet Lew

Type of hearing: On the Record

Decision date: September 23, 2021

File number: AD-21-188

Decision

[1] The appeal is allowed. I am setting aside the General Division decision. The Claimant will receive extended parental benefits.

Overview

[2] The Appellant, Canada Employment Insurance Commission (Commission), is appealing the General Division decision. The General Division found that the Claimant elected to receive standard parental benefits over extended parental benefits.

[3] The Commission argues that the General Division made jurisdictional, legal, and factual errors. It argues, for instance, that the General Division failed to analyze the evidence in a meaningful manner. The Commission maintains that the Claimant clearly elected extended parental benefits.

[4] Before the hearing of this appeal proceeded, the Claimant informed the Social Security Tribunal that she now accepts keeping extended parental benefits in place. She will be going back to work later than she had first planned. She is no longer pursuing standard parental benefits. She asks to withdraw the appeal. However, it is the Commission's appeal and the Commission is uninterested in withdrawing its appeal.

[5] I still have to consider the issues on appeal. I agree with the Commission that the General Division did not analyze the evidence in a meaningful manner. It overlooked the Claimant's evidence that she did not understand the differences between the two parental benefit types when she filled out the application form.

[6] The parties agree on the remedy and the outcome. They agree that the Claimant should continue to receive extended parental benefits, as she had in the first place. Essentially, they agree to vacate the General Division decision. For that reason, I am setting aside the General Division decision. The Claimant will keep her extended parental benefits in place.

Issue

[7] The Commission raises several issues, but I will focus on whether the General Division failed to analyze the evidence in a meaningful way.

Analysis

[8] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors. The Commission argues that the General Division made jurisdictional, legal, and factual errors.

Background Facts

[9] There are two types of parental benefits:

- Standard parental benefits – the benefit rate is 55% of an applicant's weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits is payable to one parent.
- Extended parental benefits - the benefit rate is 33% of an applicant's weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits is payable to one parent.

[10] When the Claimant applied for parental benefits, she selected the extended option on the application form. She claimed 57 weeks of benefits.

[11] The Claimant realized that she made a mistake on the application form when she began receiving parental benefits. The weekly parental benefit rate was lower than the weekly maternity benefits she had been getting.

[12] The Claimant asked the Commission to switch from the extended to the standard parental option. The Commission refused the Claimant's request. The Commission told the Claimant that she could not change her choice of parental benefits because it had already begun paying her parental benefits. So, she appealed to the General Division.

[13] The General Division found that the Claimant always intended to be off work for little more than a year. She mistakenly asked for 57 weeks of benefits, thinking she was asking for 52 weeks of benefits in total. She did not realize that she was asking for just parental benefits and that her request did not include 15 weeks of maternity benefits.

[14] The General Division concluded that the Claimant elected to receive standard benefits because she intended to be off work for one year and because she believed that she was asking for a total of one year of benefits (that included both maternity and parental benefits). The General Division found that it would have been unreasonable for the Claimant to choose extended parental benefits that pays a lower weekly benefit rate, versus standard parental benefits.

[15] The Commission argues that the General Division made several errors, as follows, that it:

- Failed to analyze the evidence in a meaningful way;
- Failed to apply section 23(1.1) of the *Employment Insurance Act*;
- Failed to apply the principles set out in *Karval*¹ and
- Exceeded its authority by determining what option the Claimant elected, and the validity of that election.

[16] I will focus on the Commission's argument that the General Division failed to analyze the evidence in a meaningful way. This in no way means that I have made any conclusions about the balance of the Commission's arguments.

Did the General Division fail to analyze the evidence in a meaningful way?

[17] The Claimant's answers on the application form suggest that she wanted extended parental benefits: she said she would be going back to work after about 13 months, she chose the extended over the standard option, and she claimed 57 weeks of

¹ See case of *Karval v Canada (Attorney General)*, 2021 FC 395.

(parental) benefits. Even if the 57 weeks included maternity benefits, this was still more than a year of benefits.

[18] Despite this evidence, the General Division concluded that the Claimant had in fact chosen the standard option. It relied on her intentions about when she planned to return to work. It also accepted the Claimant's evidence that she mistakenly thought the number of weeks she claimed was the total weeks of benefits she would be getting. And, it found that it would have been unreasonable for the Claimant to elect to receive a lower weekly rate of parental benefits.

[19] The Commission argues that the General Division failed to meaningfully analyze the evidence when it concluded that the Claimant chose the standard option. In particular, it says that the General Division overlooked the information on the application form.

[20] The Commission argues that the application form clearly shows that maternity benefits are different from parental benefits, and that maternity benefits are paid first, followed by parental benefits. The Commission also argues that the application form clearly describes the differences between standard and extended parental benefits, including the payment rate.²

[21] It might be unreasonable that the Claimant chose the option that paid a lower weekly rate, as the General Division found. But, the Commission argues that the Claimant should have been aware that she would be getting paid less if she chose the extended parental benefit option. After all, it is clear from the application form that extended parental benefits pay a lower weekly rate compared to the standard parental option.

[22] The evidence showed that the Claimant simply did not understand the differences between the two types of parental benefits,³ let alone the differences between maternity and parental benefits.

² See Claimant's application form, at GD3-5 and GD3-8 to GD3-9.

³ At approximately 10:06 to 10:24 of the audio recording of the General Division hearing.

[23] The Claimant testified that she was confused. She thought she would be getting 35 weeks of maternity benefits, even though the application form indicates that there is a maximum of 15 weeks of maternity benefits. And, the only reference on the application form to 35 weeks is for parental benefits.

[24] The Claimant thought 35 weeks of standard parental benefits would not be enough because it did not add up to a year, the length of time that she wanted to be off work. So, this led her to choose extended parental benefits,⁴ without considering the weekly benefit rate for each parental benefit type.

[25] This evidence was important to address. After all, if the Claimant did not understand the differences between the two types of parental benefits, this could have been a relevant consideration in determining whether she had consciously elected one parental benefit type over another. The General Division should have addressed all of this evidence in a meaningful manner.⁵

Remedy

[26] The parties agree on the remedy and the outcome. They agree that the Claimant should continue to receive extended parental benefits. Essentially, they agree to vacate the General Division decision. For that reason, I am setting aside the General Division decision. This leaves the Commission's reconsideration decision in place. In other words, the Claimant will receive extended parental benefits.

Conclusion

[27] The appeal is allowed. I am setting aside the General Division decision. The Claimant shall continue to receive extended parental benefits.

Janet Lew
Member, Appeal Division

⁴ At approximately 10:24 to 12:07 of the audio recording of the General Division hearing.

⁵ See *Bellefleur v Canada (Attorney General)*, 2008 FCA 13 at paras. 3 and 7. The Court says that a decision-maker has to analyze all of the evidence, and if it decides to dismiss certain evidence or to not assign it the value that it appears to reveal or convey, it has to explain why.