Citation: *LF v Canada Employment Insurance Commission*, 2021 SST 534

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	L. F.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated September 3, 2021 (GE-21-1263)

Tribunal member:	Melanie Petrunia
Decision date:	October 4, 2021
File number:	AD-21-287

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not proceed.

Overview

[2] The Applicant, L. F. (Claimant), applied for Employment Insurance (EI) maternity and parental benefits. On her application, she had to choose between two options for her parental benefits: standard or extended.

[3] The standard option offers a higher benefit rate, paid for up to 35 weeks. The extended option offers a lower benefit rate, paid for up to 61 weeks. When combined with 15 weeks of maternity benefits, the standard option provides EI benefits for about a year, whereas the extended option provides EI benefits for about 18 months.

[4] The Claimant selected the extended option on her application form. She said she was claiming 61 weeks of benefits and that she expected to return to work on May 2, 2022.

[5] After she started receiving parental benefits at a reduced rate, the Claimant asked the Commission to switch to standard parental benefits because of financial hardship. The Commission denied the Claimant's request because she had already received benefits under the extended option and the election was irrevocable. The Claimant's appeal to the Tribunal's General Division was dismissed.

[6] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. She argues that the General Division made errors of fact in its decision. I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error upon which the appeal might succeed?

Analysis

[8] The *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision.[1] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;[2] or

d) made an error in law.[3]

[9] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[10] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[11] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of

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[1] DESD Act, s 58(2).
[2] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.
[3] This paraphrases the grounds of appeal.

these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[4]

Does the Claimant raise some reviewable error upon which the appeal might succeed?

[12] In her application for leave to appeal, the Claimant states the General Division made factual errors in the decision. She says that she went on maternity leave on October 30, 2020 because she had gestational diabetes and that she would have otherwise worked until she gave birth. She states that she gave birth on December 6, 2020 and that she clearly stated this at the hearing before the General Division.

[13] In the General Division's decision, it states in the overview that the Claimant gave birth on November 14, 2019 and applied for benefits on November 18, 2019.[5] Later in the decision, the General Division states that the Claimant applied for benefits on November 5, 2020 and the child was born on November 14, 2020.[6]

[14] The Claimant's application for benefits is dated November 5, 2020.[7] In it, she states that she went off work on October 30, 2020 and that she is returning to work on May 2, 2022.[8] The Claimant indicates that she has not given birth and that the expected date of birth is December 15, 2020.[9] At the hearing before the General Division, the Claimant stated that she gave birth on December 6, 2020.

[15] The Claimant is right that the General Division made an error with respect to the date of birth. The General Division has two different dates in the decision and neither are the correct date of birth. Despite this error, I find that the appeal has no reasonable chance of success.

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[4] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[5] General Division decision at para 2.
[6] General Division decision at para 10.
[7] GD3-14
[8] GD3-7
[9] GD3-8

[16] In order to be successful, the factual error has to be related to an important fact that the General Division based its decision on. The fact has to be one that had a material impact on the decision.[10]

[17] While the date of birth is incorrectly stated, the decision is not based on this fact. The date of birth of the Claimant's child does not impact the findings of the General Division that the Claimant elected extended benefits and that this election is irrevocable once benefits have been paid.

[18] The General Division found that the Claimant elected to receive extended parental benefits for 61 weeks and that this choice was irrevocable after benefits had been paid. The fact that the Claimant gave birth on December 6th and not November 14th does not affect this finding. The General Division did not base its decision on the date that the Claimant gave birth.

[19] The General Division considered the Claimant's evidence that she wanted to change to standard benefits because of financial hardship. The Claimant gave evidence that her circumstances had changed and that she was unable to manage on the reduced parental benefits payments. The General Division found that it did not have the authority to change the Claimant's election.

[20] I find that there is no arguable case that the General Division made any errors of fact with respect to the Claimant's gestational diabetes. The General Division does not specifically mention that Claimant's medical circumstances but I find that this is not relevant to the decision.

[21] I have also considered other grounds of appeal. After reviewing the record and listening to the hearing before the General Division, I have not identified any errors of law or jurisdiction. There is no arguable case that the General Division failed to provide a fair process.

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[10] *Marlowe v. Canada (Attorney General),* 2009 FCA 102 at para 11.

Conclusion

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

Melanie Petrunia
Member, Appeal Division