



Citation: *Canada Employment Insurance Commission v BS*, 2021 SST 479

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Angèle Fricker

Respondent: B. S.
Representative: Swarandeeep Pandher

Decision under appeal: General Division decision dated May 21, 2021
(GE-21-775)

Tribunal member: Janet Lew

Type of hearing: Videoconference

Hearing date: August 26, 2021

Hearing participants: Appellant's representative
Respondent
Respondent's representative

Decision date: September 15, 2021
File number: AD-21-199

Decision

[1] The appeal is dismissed. The General Division did not appreciate the Claimant's evidence that she selected standard parental benefits, but this error does not change the outcome.

Overview

[2] The Appellant, Canada Employment Insurance Commission (Commission), is appealing the General Division decision. The General Division found that the Claimant made a mistake when she chose extended parental benefits. The General Division found that she actually elected standard parental benefits because that is what she had intended.

[3] The Commission argues that the General Division made legal and factual errors. The Commission asks the Appeal Division to allow the appeal and give the decision that it says the General Division should have given. The Commission argues that the General Division should have decided that the Claimant elected to receive extended parental benefits and that her election is irrevocable.

[4] The Claimant asks the Appeal Division to dismiss the appeal. She claims that she always knew that she would be off work for one year. She claims that, for this reason, she chose standard benefits when she completed the application form. She does not deny that she asked for 48 weeks of benefits but says that she mistakenly thought she was asking for a year of benefits in total. She was surprised when she received the first payment of parental benefits because it was less than the amount she had been getting in the last few weeks. She argues the General Division did not make any mistakes.

[5] I find that the General Division overlooked the Claimant's evidence and based its decision on an important factual error about what type of parental benefit the Claimant chose. The Claimant was consistent in her evidence throughout that she chose the standard option. Her spouse gave supporting evidence. The General Division was aware of this evidence but did not address it. However, this does not change the outcome.

Issues

[6] The issues in this appeal are as follows:

- a) Did the General Division fail to consider what information was in the application form?
- b) Did the General Division fail to consider the fact that the Claimant asked for 48 weeks of benefits?
- c) Did the General Division fail to apply section 23(1.2) of the *Employment Insurance Act* by allowing the Claimant to change her election?
- d) Did the General Division fail to follow the case of *Karval*¹ by relieving the Claimant of her duty to understand her entitlement options?

Analysis

[7] 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 several errors.

Background Facts

[8] 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.

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

[9] The Claimant applied for maternity and parental benefits. The application form indicates that she selected extended parental benefits, although she claims that she selected standard parental benefits.²

[10] The Claimant asked for 48 weeks of benefits, without realizing that it covered only parental benefits and did not include 15 weeks of maternity benefits. She did not understand that there was a difference between maternity and parental benefits. She thought 48 weeks represented the total amount of benefits she would get and that it covered a full year. She calculated that there are 4 weeks in a month and 12 months in a year, to come up with 48 weeks in total.

[11] The Claimant last worked on December 11, 2020. Her application form shows that she will be returning to work on December 13, 2021.³

[12] The Claimant received her first parental benefit payment in April 2021. The Claimant noticed the amount was for far less than she had been getting in the past few weeks. She thought she would be getting the same weekly amount throughout the year.

[13] The Claimant immediately called the Commission because she thought there was a mistake in the payment rate as she had asked for standard parental benefits. The Commission told her she could not change the parental benefit option because it had already started to pay her parental benefits.⁴

[14] The Claimant asked the Commission to reconsider. She claimed that she had applied for standard parental benefits, “but due to some technical issue it was submitted as a Extended Parental Benefits.”⁵ With the pandemic, she and her spouse assumed that possibly the Commission had changed her selection from standard to extended

² Evidence of both Claimant and her spouse, at approx. 8:09, 9:29, 10:40, 11:00 12:00, 17:00, and 17:56 of the audio recording of the General Division hearing on May 20, 2021.

³ See Claimant’s application for employment Insurance benefits, at GD3-4. The employer stated in the Record of Employment dated October 9, 2020, that it did not know the expected date of recall. The Claimant provided copies of letters with her employer, showing that she would be returning to work on December 13, 2021.

⁴ See Supplementary Record of Claim, dated April 20, 2021, at GD3-20.

⁵ See Claimant’s Request for Reconsideration, at GD3-21 to GD3-24.

benefits. When the Commission advised her that she had chosen extended parental benefits, she testified that she was shocked and questioned how that was possible.⁶

[15] The Commission maintained that it could not change the parental benefit type from extended to standard parental benefits. The Claimant appealed to the General Division.

[16] The General Division found that the Claimant elected standard parental benefits. But, it found that she made a mistake when she filled out the application form by choosing the extended parental option. The General Division held that “a mistake is not an election.”

Did the General Division fail to consider what was in the application form?

[17] The Commission argues that the General Division failed to consider the fact that the application form explained the differences between the standard and extended option for parental benefits. The application form set out the different benefit rates and how many weeks of payments each option offered. The application form also informed an applicant that an election is irrevocable once parental benefits were paid in respect of the child.

[18] As my colleague wrote in his decision on June 22, 2021, this particular information in the application form would have been relevant when the General Division evaluated which benefit the Claimant intended to elect when she applied for benefits.⁷ However, the General Division did not mention any of this information when it examined the Claimant’s choice.

[19] When the General Division examined the Claimant’s choice of parental benefit, it wrote that the Claimant said she selected standard parental benefits.

The Claimant appealed the Commission’s decisions explaining she planned to go back to work on December 13, 2021. She selected standard parental benefits,

⁶ Claimant’s testimony at approx. 17:00 of the audio recording of the General Division hearing.

⁷ See Appeal Division decision dated June 22, 2021, at para. 16.

which in general would be 48 weeks. She thought maybe it was a technical issue as she had no plans to be off work for more than a year. It was explained to her that the 15 weeks of maternity benefits aren't calculated in the number of weeks of parental benefits. She didn't know this rule, so she selected 48 weeks.⁸

. . .

The Claimant told me at the hearing that she only ever wanted one year off, so it is not possible that she chose extended benefits. It was not intentional, it was a mistake.⁹

[20] Despite this evidence, the General Division found that the Claimant actually selected extended parental benefits.

[21] However, the Claimant and her spouse both testified—several times, in fact—that the Claimant chose standard benefits when she completed the application form. The Claimant's spouse was with her when she completed the online application form. The General Division did not mention the fact that the Claimant's spouse gave evidence and that he supported what his wife said she chose.

[22] The Claimant's spouse testified, "We hit standard benefits"¹⁰ and the Claimant testified, "We applied for standard but got extended."¹¹ In other words, the Claimant says that what she chose is not what appears on the application form.

[23] The Claimant explained this is why she was "very shocked"¹² when she later discovered that the application form showed that she selected the extended option. It was different from what she recalled she had chosen. She denies that she ever chose or even considered choosing extended parental benefits.

[24] Although the General Division noted the Claimant's evidence that she had selected standard parental benefits, it decided that she had selected extended parental benefits instead.

⁸ See General Division decision, in overview section, at para. 4.

⁹ See General Division decision, at para. 15.

¹⁰ Spouse's testimony at approx. 8:09 of the audio recording of the General Division hearing.

¹¹ Claimant's testimony at approx. 17:00 of the audio recording of the General Division hearing.

¹² Claimant's testimony at approx. 10:40 of the audio recording of the General Division hearing.

[25] It is unclear whether the General Division failed to appreciate the evidence of the Claimant and her spouse, or whether it rejected their evidence altogether. If the General Division rejected the Claimant's evidence that she selected the standard option, the reasons are deficient. The General Division did not say that it was implausible that the Claimant could have chosen the standard option since the application form reflected another choice. The General Division also did not explain why it might have accepted that the application form accurately reflected the Claimant's choice, over the Claimant's own evidence about her choice.

[26] There are two reasonable explanations or scenarios. One, both the Claimant and her spouse were mistaken that she had chosen the standard option. Or, the Claimant had in fact chosen the standard option, but somehow the computer application automatically changed her selection once she asked for 48 weeks of benefits. After all, payment of standard parental benefits is limited to 35 weeks. So, getting more than 35 weeks of parental benefits would necessarily be extended parental benefits.

[27] The evidence from the Claimant is that she chose the standard option, and that her spouse observed the Claimant mark this specific choice on the application form. This conflicts with what actually appears on the application form, which indicates a choice of "extended benefits."

[28] The Commission had the opportunity to address this conflicting evidence and the two possible scenarios. It was aware of the Claimant's evidence before the General Division hearing took place. But, it did not challenge the Claimant's evidence at the hearing nor did it produce any of the following:

- evidence that could have cast doubt on whether this second scenario was even at all possible.
- evidence that could have suggested the Claimant and her spouse were mistaken about what she had selected on the application form.

- evidence that could have shown that, after the Claimant finished completing the application form, she was given a summary of all of her choices. This could have included confirming what parental benefit type she had chosen.

[29] There was no evidence that, if the Claimant chose the standard option, as she alleges, that her choice would have remained fixed or unchanged even if she had asked for more weeks of benefits than the option provided.

[30] This is not to suggest that the Commission held the initial burden of proof, but the Claimant's evidence that she chose the standard option has been consistent from the time that she asked the Commission to reconsider its initial decision. The Commission simply did not challenge the Claimant's evidence.

[31] The General Division made an important factual error when it set out what it believed was the Claimant's evidence. It found that she had selected the extended parental option, when her evidence was in fact that she had chosen the standard option. The General Division compounded its error by failing to recognize that the Claimant's spouse had given the same evidence. Indeed, it did not even acknowledge him as a hearing participant.

[32] However, these errors do not change the outcome of the decision because the General Division determined that the Claimant intended and therefore elected to receive standard parental benefits.

[33] While these particular errors do not change the outcome, they are important in the context of this appeal. They undercut the Commission's arguments.

[34] The Commission bases its arguments on the assumption that the General Division's finding that the Claimant chose the extended option on the application form accurately reflected the evidence before it. But the General Division's findings do not reflect the Claimant's and her spouse's testimony. Its findings rest on the assumption that the application form correctly recorded the Claimant's choice. They also rest on the assumption that the Claimant could not have asked for standard parental benefits and

48 weeks of parental benefits at the same time. But there was no evidence to support these assumptions one way or the other.

[35] So, if the General Division's findings do not accurately reflect the testimony of the Claimant and her spouse, the Commission cannot rely on those particular findings.

[36] I turn now to the Commission's specific argument that the General Division did not consider the information in the application form.

[37] It is true that the General Division may not appear to have considered the information contained in the application form. But the information supports the Claimant's assertions that she had chosen the standard parental option and that she expected to receive the higher rate of benefits. If the General Division had considered the information, along with the Claimant's evidence, more likely than not it would have had to conclude that she chose standard parental benefits.

Did the General Division fail to consider the fact that the Claimant asked for 48 weeks of benefits?

[38] The Commission argues that the General Division failed to consider the fact that the Claimant asked for 48 weeks of benefits. The Commission suggests that the General Division should have concluded that, because the Claimant asked for 48 weeks of benefits, she had to have chosen extended parental benefits. This is because 48 weeks of parental benefits is consistent with the extended option. Under the standard option, an applicant is limited to 35 weeks of benefits.

[39] The General Division did in fact consider the fact that the Claimant asked for 48 weeks of benefits. The General Division simply did not draw the conclusion that the Commission is seeking.

[40] The General Division set out the Claimant's evidence.¹³ The General Division asked the Claimant why she chose 48 weeks. The General Division noted the Claimant's explanation. The Claimant said she calculated that there are 48 weeks in a

¹³ See General Division decision, at paras. 4, 14, 16, and 18.

year and that she wanted to be off work for one year.¹⁴ She was unaware that the question “How many weeks do you wish to claim” referred to only parental benefits. She did not realize that the 15 weeks of maternity benefits were not included in these weeks.

[41] Ultimately, the Claimant was mistaken in thinking that 48 weeks of benefits included all the benefits that she would receive. However, that does not establish that she knew that she was asking for benefits that would pay her beyond a year.

[42] While the Claimant asked for 48 weeks of parental benefits (mistakenly assuming that it covered all the benefits that she would receive), this does not negate the fact that she wanted and allegedly chose standard parental benefits on the application form.

[43] The General Division accepted the Claimant’s explanation that, in her mind, 48 weeks represented all the benefits that she would receive. Given this explanation, the General Division was entitled to conclude that the Claimant equated 48 weeks with the standard parental option.

Did the General Division fail to apply section 23(1.2) of the Employment Insurance Act by allowing the Claimant to change her election?

[44] The Commission argues that the General Division failed to apply section 23(1.2) of the *Employment Insurance Act*. Under that section, a claimant cannot change their election of parental benefits once parental benefits have been paid.

[45] The General Division referred to the section. It noted that, “Once you have a received a parental benefit payment, you cannot change your election.”¹⁵

[46] However, the Claimant testified at the General Division hearing that she selected standard parental benefits on her application form. She also testified that she was very shocked when she began receiving the extended parental benefit because she had chosen and expected to be receiving the standard parental benefit.

¹⁴ The Claimant calculated 48 weeks. As the General Division noted, the Claimant multiplied 12 months by four weeks in a month, to come up with 48 weeks in a year.

¹⁵ See General Division decision, at para. 7.

[47] Given this evidence, the Claimant was not looking to change her election. She was simply asking the Commission to respect her election of the standard parental benefit, even if the application form reflected a different choice in the Commission's system.

[48] Under this unique set of circumstances, section 23(1.2) of the *Employment Insurance Act* does not apply.

Did the General Division fail to follow the case of Karval by relieving the Claimant of her duty to understand her entitlement options?

[49] The Commission argues that the General Division failed to follow the case of *Karval*. The Commission argues that the Claimant was responsible for carefully reading and understanding her entitlement options and, if in doubt, to ask the necessary questions.

[50] *Karval* provides basic guiding principles but they are not relevant because the facts of this case are different. Hence, the General Division did not err by failing to apply the decision to the Claimant's case.

[51] Unlike Ms. Karval, the Claimant maintains that she knew all along that she wanted to be off work for one year and that she wanted standard parental benefits. More importantly, the Claimant maintains that she chose standard parental benefits on the application form.

[52] There was no need for the Claimant to seek out more information regarding the parental benefit type because she already knew which option she wanted. She wanted the standard option because she found it the most suitable option for her.

Conclusion

[53] The appeal is dismissed. The General Division made a factual error, but it does not change the outcome.

Janet Lew
Member, Appeal Division