[TRANSLATION]

Citation: *Canada Employment Insurance Commission v EA*, 2021 SST 638

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Louise Laviolette
Respondent:	E. A.
Representative:	Denis Poudrier

Decision under appeal:	General Division decision dated July 10, 2019 (GE-19-982)

Tribunal member:	Pierre Lafontaine
Type of hearing:	
Decision date:	November 3, 2021
File number:	AD-19-531

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Claimant) received three weeks of paternity benefits under the Québec Parental Insurance Plan (QPIP). Afterward, he received 25 weeks of parental benefits, again under that plan. Next, the Claimant applied for Employment Insurance (EI) sickness benefits. He received 15 weeks of EI sickness benefits. The Claimant then made two renewal claims for EI family caregiver benefits.

[3] The Appellant (Commission) refused to pay EI family caregiver benefits because the Claimant had received the maximum number of weeks of benefits, that is, 50 weeks. Since the benefit period could not be extended, the claims for family caregiver benefits were denied.

[4] According to the Commission, the benefit period should be established effective December 10, 2017, and end on October 6, 2018, which is when the Claimant had received 50 weeks of benefits. The three weeks of paternity benefits should be included in the benefit period calculation, since these benefits are similar to those of parental benefits.

[5] The Claimant requested a reconsideration of that decision. However, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[6] The General Division found that QPIP paternity benefits are not identical to EI parental benefits. As a result, section 76.19 of the *Employment Insurance Regulations* (EI Regulations) does not apply. This means that the Claimant was entitled to family caregiver benefits, subject to medical evidence.

[7] The Commission was granted leave (permission) to appeal the General Division decision. It argues that the General Division made an error of law in its interpretation of section 76.19 of the EI Regulations.

[8] The parties agreed to place this file in abeyance pending a decision by the Federal Court of Appeal (FCA) on the same question of law. In that other case, the claimant applied for judicial review of a decision by the Appeal Division, which found that QPIP paternity benefits correspond to EI benefits within the meaning of section 76.19 of the EI Regulations.[1]

[9] On October 15, 2021, the FCA dismissed the application for judicial review.[2] The FCA upheld the Appeal Division's decision that paternity benefits received under the Quebec plan correspond to the EI benefits offered when a child is born.

[10] Under the circumstances, the parties do not object to my making a decision on the record.

[11] I have to decide whether the General Division made an error of law in its interpretation of section 76.19 of the EI Regulations.

[12] I am allowing the Commission's appeal.

Issue

[13] Did the General Division make an error of law in its interpretation of section 76.19 of the EI Regulations?

Analysis

Appeal Division's mandate

[14] The FCA has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.[3]

---

[1] *Canada Employment Insurance Commission v EO*, 2019 SST 358.
[2] *Ouimet* c *Canada (Attorney General)*, 2021 FCA 200.
[3] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[15] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[16] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or 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.

Did the General Division make an error of law in its interpretation of section 76.19 of the EI Regulations?

[17] The Commission argues that the General Division made an error of law in its interpretation of section 76.19 of the EI Regulations because the section does not require that the benefits be identical, but only that they be a corresponding type of benefit. It argues that, under section 76.19 of the EI Regulations, the QPIP benefits the Claimant received are the equivalent of parental benefits under the EI program.

[18] The Commission argues that the Claimant's benefit period should have been established on December 10, 2017, and should have ended on October 6, 2018, which is when the Claimant had received 50 weeks of benefits.

[19] The Commission also argues that the General Division made an error of law by failing to consider section 76.19 of the EI Regulations in context and as a whole, and because it ascribed a major role rather than a complementary one to the legislative debates.

[20] The Claimant, in turn, argues that section 76.19 of the EI Regulations does not apply in his case because the benefits he received are paternity benefits and that this type of benefit was not part of the EI program during the period in question. This means that QPIP paternity benefits should not be considered a corresponding type of benefit within the meaning of section 76.19 of the EI Regulations.

[21] As the General Division pointed out, the federal EI program offers two types of benefits for a family that has had a child: maternity benefits, which only the birth mother of a newborn can receive, and parental benefits, which are available to the two parents with the flexibility of splitting the benefits as they see fit.

[22] As for the QPIP, the provincial plan also allows a family that has had a child to take advantage of maternity and parental benefits similar to their federal equivalent. However, the provincial plan also offers a third type of benefit—paternity benefits. These benefits are exclusively for fathers and for a total of three or five weeks following the child's birth.

[23] The General Division found that QPIP paternity benefits are not comparable to EI parental benefits because they have no equivalent in the federal system. As a result, section 76.19 of the EI Regulations does not apply, and the Commission did not have just cause for changing the date of the Claimant's benefit period.

[24] The General Division found that the Commission should not have included the Claimant's three weeks of paternity benefits in the benefit period.

[25] During the proceedings, the FCA decided another case on the same issue. The FCA found that the words "*du même genre*" [corresponding types] do not mean "identical" but rather refer to a resemblance or sharing common characteristics. The FCA found that this interpretation is consistent not only with the plain meaning of the words and with the overall context of the regulatory text containing section 76.19 of the EI Regulations, but also with Parliament's purpose.

[26] The FCA did not accept the argument that paternity benefits under the Quebec plan do not correspond to parental benefits simply because paternity benefits are not part of the federal program. The FCA found that paternity, maternity, and parental benefits undeniably have the same purpose: to allow the

parents of newborns (or of adopted children) to temporarily take time off work to care for their children.

[27] The FCA found that paternity benefits received under the Quebec plan correspond to the EI benefits offered by federal law when a child is born.

[28] Taking into account the FCA's teachings, I am of the view that the General Division made an error of law in its interpretation of section 76.19 of the EI Act [*sic*].

[29] This means that I should intervene.

Remedy

[30] Since the Claimant had the opportunity to present his case before the General Division, and since this appeal essentially raises an issue of interpretation of the law, I will give the decision that the General Division should have given.[4]

[31] The Claimant's benefit period is established on December 10, 2017, and ends on October 6, 2018, which is when the Claimant had received 50 weeks of benefits. The three weeks of paternity benefits paid under the QPIP should be included in calculating the benefits paid in the benefit period, since paternity benefits received under the Quebec plan correspond to the EI benefits offered by federal law when a child is born.

[32] As a result, the Claimant is not entitled to family caregiver benefits because, when he applied for them, the benefit period had ended, since he had been paid 50 weeks of benefits.

---

[4] In accordance with the powers set out in section 59(1) of the *Department of Employment and Social Development Act*.

Conclusion

[33] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division