



Citation: *Canada Employment Insurance Commission v ZZ*, 2021 SST 609

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Angele Fricker

Respondent: Z. Z.

Decision under appeal: General Division decision dated May 6, 2021
(GE-21-653)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference
Hearing date: September 1, 2021
Hearing participant: Appellant's representative

Decision date: October 21, 2021
File number: AD-21-171

Decision

[1] The Commission's appeal is allowed. I am rescinding the General Division decision.

Overview

[2] The Respondent, Z. Z. (Claimant), applied for maternity and parental Employment Insurance (EI) benefits. She selected the extended benefit option on the application form, and asked for 52 weeks of benefits.

[3] When the Claimant's maternity benefits were completed, she began to receive the extended parental benefit. After about a month, she contacted the Applicant, the Canada Employment Insurance Commission (Commission) to ask why her benefit amount had gone down.¹ The Commission told her that it had reduced her benefit because she had elected the extended parental benefit.

[4] The Claimant asked that the Commission give her the standard parental benefit instead, but the Commission refused. It told her that the law did not allow it to change her election. The Claimant asked the Commission to reconsider but the Commission would not change its decision.

[5] The Claimant then appealed to the General Division of the Social Security Tribunal, which allowed her appeal. The General Division found that the Claimant elected to receive standard parental benefits.

[6] The Commission is appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division went beyond its powers, made an error of law and based its decision on an erroneous finding of fact in allowing the appeal.

[7] The Claimant has now decided to remain on extended parental benefits and has changed her return to work date. She did not attend the Appeal Division hearing or file

¹ GD3-20 to 21

written submissions and has not stated if she agrees that the General Division made an error.

[8] I am allowing the appeal. The General Division based its decision on an important error of fact and failed to meaningfully analyze the information in the application form.

[9] The parties agree on 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 rescinding the General Division decision. The Claimant will keep her extended parental benefits in place.

Preliminary matters

– Claimant's position

[10] The hearing in this appeal was first scheduled for August 10, 2021. A translator was supposed to attend to translate for the Claimant. The translator did not attend the hearing so it was adjourned to a later date. Just before concluding that hearing, the Claimant stated that she didn't think the hearing was necessary because she now wanted to remain on extended parental benefits and had decided to delay her return to work. Without the translator present, I decided to proceed with the hearing at a later date and asked the Claimant to confirm her position in writing with the Tribunal.

[11] After the adjournment, the Claimant contacted the Tribunal and stated that she would not be attending the hearing.² The Claimant did not provide her position in writing and did not indicate whether she agreed that there was an error made by the General Division. As there is no formal agreement between the parties, I proceeded with the hearing and I must still consider the issues on appeal.

Issues

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

² Telephone Log dated August 25, 2021.

- i) Did the General Division base its decision on an error of fact when it decided that the Claimant didn't validly elect extended benefits?
- ii) Did the General Division fail to apply section 23(1.1) of the *Employment Insurance Act*?
- iii) Did the General Division exceed its jurisdiction?
- iv) Did the General Division disregard the Claimant's obligations?

Analysis

[13] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:³

- acted unfairly;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

Background

[14] 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.

³ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

- 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.

[15] The Claimant made an application for maternity and parental benefits on September 4, 2020. In her application, the Claimant said that her last day of work was August 15, 2020. She said that she would be returning to work with the same employer but did not know when. On the application form, the Claimant was asked how many weeks of benefits she wished to receive. She chose 52 weeks from the drop down menu.

[16] The Claimant received her first payment of extended benefits on January 12, 2021. She contacted the Commission on February 16th and asked to change to standard benefits. The Commission refused the Claimant's request to switch because the choice was irrevocable once she had been paid extended benefits. On March 16, 2021, the Claimant made a request for reconsideration but the Commission maintained its decision.

[17] The General Division allowed the Claimant's appeal. It found that it was more likely than not that the Claimant intended to chose standard parental benefits, believing that the number of weeks was the total number of maternity and parental weeks combined.

The General Division based its decision on an important mistake about the facts of the case

[18] The Claimant did not attend the hearing at the General Division. The General Division proceeded in the absence of the parties and issued its decision based on the information in the record.

[19] The General Division decided that the Claimant intended to elect one year of maternity and parental benefits combined. It found the Claimant's statements in her Request for Reconsideration and Notice of Appeal to be credible. In these documents,

the Claimant stated that she thought the two benefits were the same period and she only wanted 52 weeks combined.

[20] The General Division found that the Claimant did not intend to be off work for more than a year and, because standard benefits provide a higher rate of benefits for a 35-week period, it would not have been reasonable to choose extended benefits.⁴

[21] The Commission argues that the General Division overlooked information on the application form in making its decision. Specifically, it states that the application form contains information which explains that maternity and parental benefits are different. The General Division did not consider this information.

[22] I agree with the Commission that the General Division overlooked information on the application form in making its decision. The form also describes the differences between standard and extended parental benefits, including the payment rate.⁵

[23] It might be unreasonable that the Claimant chose the option that paid a lower weekly rate. However, the application form showed that extended parental benefits pay a lower weekly rate compared to the standard parental option.

[24] The Claimant did not mention the lower benefit rate in the Request for Reconsideration, only that she wanted a full year of leave and her employer expected her back in September 2021. There is no evidence whether the Claimant was aware that, by selecting the extended parental option, she would be getting a lower weekly benefit rate.

[25] The General Division did not hear evidence from the Claimant because she did not attend the hearing. The General Division based its finding of the Claimant's intention on her statements in the Notice of Appeal and the Request for Reconsideration. Yet, there was no evidence about what the Claimant's intentions were when she submitted the application for benefits.

⁴ General Division decision at para 19.

⁵ See Claimant's application form, at GD3-4 and GD3-8 to GD3-9.

[26] The General Division also relied on the Appeal Division's decision in a case called *Employment Insurance Commission v TB*.⁶ But the glaring contradictions on TB's application form meant that it revealed no clear choice between the standard and extended options. So, the General Division had to look at all the evidence and decide which option TB was mostly likely to have chosen. In other words, the facts in this case and in *TB* are quite different.

[27] There is no contradictory information on the application form that would suggest the Claimant's choice of extended benefits was not valid.

[28] The Claimant chose to receive 52 weeks of parental benefits, which is more than a claimant can receive under the standard option. She did not provide a date on which she would return to work on the application form. The Record of Employment (ROE) also states that her return date is unknown. Because the Claimant did not attend the hearing at the General Division, she did not provide an explanation for why there was no return to work date on her application for benefits or on her ROE.

[29] Here, it was perverse for the General Division to find that the Claimant had chosen the standard option. This finding ignores the clear and deliberate answers that the Claimant provided to the Commission on her application form.

[30] The General Division erred by not considering this evidence. As I have found that the General Division erred, I do not have to address the balance of the Commission's arguments.

Remedy

[31] The parties agree on 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 rescinding the General Division decision. This leaves the Commission's reconsideration decision in place. The Claimant elected to receive extended parental benefits.

⁶ *Employment Insurance Commission v TB*, 2019 SST 823.

Conclusion

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

Melanie Petrunia
Member, Appeal Division