



Citation: *Canada Employment Insurance Commission v MN*, 2022 SST 25

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Angele Fricker
Respondent: M. N.

Decision under appeal: General Division decision dated July 16, 2021
(GE-21-969)

Tribunal member: Melanie Petrunia
Type of hearing: Teleconference
Hearing date: November 2, 2021
Hearing participant: Appellant's representative
Decision date: January 20, 2022
File number: AD-21-267

Decision

[1] The appeal is allowed. The General Division made an error of law. The matter is referred back to the General Division for reconsideration.

Overview

[2] The Respondent, M. N. (Claimant) applied for and received Employment Insurance (EI) maternity benefits, followed by parental benefits. On her application for parental benefits, she had to elect (choose) between two options: standard and 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 indicated on the application form that she wanted to receive 52 weeks of parental benefits and selected the extended option. The Claimant received her first payment of parental benefits on May 11, 2021. On May 12th, she contacted the Commission to switch to the standard benefit option.

[5] The Commission refused the Claimant's request. The Commission said that it was too late for the Claimant to change options because she had already received parental benefits.

[6] The Claimant appealed the Commission's decision to the Tribunal's General Division and won. The General Division decided that she elected standard parental benefits. It found that it was more likely than not that the Claimant wanted to receive one year of maternity and parental benefits combined.

[7] The Commission is now appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division exceeded its jurisdiction, made errors of law and based its decision on an erroneous finding of fact in allowing the appeal.

[8] I have decided that the General Division erred in law by ignoring relevant facts and contradictory evidence. I am allowing the appeal and sending the matter back to the General Division for redetermination.

Preliminary matters

[9] The hearing in this appeal was held on November 2, 2021. The Claimant did not attend. The following day, the Claimant contacted the Tribunal to say that she had a hearing that day and did not have the information to call in.¹

[10] The Claimant was sent the Notice of Hearing by email on September 20, 2021.² The Tribunal also contacted the Claimant and left voicemail messages to remind her of the hearing on October 26, 27 and 29.³ The Claimant says that she did not receive these messages.⁴

[11] The Claimant was sent an audio recording of the hearing that took place on November 2nd and given an opportunity to file written submissions by November 17, 2021. No written submissions were filed. I am satisfied that the Claimant was sent the Notice of Hearing and given an opportunity to make arguments after the hearing concluded.

Issues

[12] I have focused on the following issues:

- Did the General Division fail to consider relevant evidence when it found that the Claimant had chosen to receive standard parental benefits?
- If so, what is the best way to fix the General Division's error?

¹ AD3

² The Claimant authorized the Tribunal to communicate with her by email. An email was sent to the address provided on September 20, 2021 attaching the Notice of Hearing and decision on the Application for Leave to Appeal.

³ Tribunal telephone logs dated October 26, 27 and 29.

⁴ Tribunal telephone log dated November 4, 2021.

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:⁵

- failed to provide a fair process;
- 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.

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 established a claim for maternity and parental benefits effective January 3, 2021. On her application for benefits, the Claimant indicated that she wanted to receive parental benefits immediately after maternity benefits. She chose the option for extended parental benefits. The Claimant was asked how many weeks of benefits she wished to receive and she chose 52 weeks from the drop down menu.⁶

⁵ 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).

⁶ GD3-9

[16] The first payment of extended benefits was processed on May 7th and received in the Claimant's account on May 11, 2021. The Claimant contacted the Commission on May 12, 2021 to request to change to standard parental benefits.⁷

[17] The Commission refused the Claimant's request. The Commission said that it was too late for the Claimant to change options because she had already received parental benefits. The Claimant made a request for reconsideration but the Commission maintained its decision.

The General Division decision

[18] The General Division allowed the Claimant's appeal. It found that the Claimant intended to elect standard parental benefits. The General Division found that it must consider all relevant evidence when determining which option the Claimant meant to choose when she filled out the application for benefits.⁸

[19] The General Division determined that the information on the application for benefits is unclear about the distinction between maternity and parental benefits.⁹ It found that the Claimant thought that the two types of benefits were the same when she filled out the application.¹⁰ She chose to receive 52 weeks of parental benefits, believing that this included 15 weeks of maternity benefits.¹¹

[20] The General Division decided that it was more likely than not that the Claimant intended to elect one year of maternity and parental leave combined. It found the Claimant's testimony to be credible and accepted her evidence that she planned to take one year off work before she left on maternity leave, with the possibility of returning to work earlier.¹²

⁷ GD3-22

⁸ General Division decision at para 17.

⁹ General Division decision at paras 24 and 26.

¹⁰ General Division decision at para 28.

¹¹ General Division decision at para 27.

¹² General Division decision at para 30.

The Commission's appeal to the Appeal Division

[21] The Commission argues that the General Division made several errors in its decision. It makes the following arguments:

- The General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner when it found that the claimant's election was invalid because the application form does not specify that maternity benefits are a separate type of benefit than parental benefits or that the weeks of maternity benefits are paid in addition to the number of weeks of parental benefits requested;
- The General Division exceeded its jurisdiction by determining what option the Claimant had elected on her application form and the validity of that election;
- The General Division erred in law by effectively changing the Claimant's election from extended to standard after benefits had been paid to her; and
- The General Division erred in law by failing to hold the claimant to their obligation to know their rights and entitlements under the *Employment Insurance Act*.

The General Division erred by failing to consider relevant evidence

[22] In its decision, the General Division found that the Claimant intended to take one year of combined maternity and parental leave. It determined that the Claimant did not understand that maternity and parental were separate periods when she filled out the application and chose 52 weeks of benefits.

[23] The General Division decided that the application form does not make it clear that the weeks of maternity leave are not to be included in the number of weeks of parental leave.

[24] The General Division reviewed the recent Federal Court decision in *Karval*.¹³ The General Division distinguished the facts in *Karval* from the Claimant's circumstances. The General Division found that the Court in *Karval* also did not consider the interplay between maternity and parental benefits.¹⁴

[25] In reviewing the *Karval* decision, the General Division notes that the Court in that case stated: “[f]undamentally it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions.”¹⁵

[26] The General Division determined that the Claimant did not know to ask the Commission questions because she didn't realize she had filled out the form incorrectly.¹⁶ The Claimant believed that the maternity and parental leave weeks were combined when she chose 52 weeks of parental benefits.

[27] The General Division failed to consider important evidence from the Claimant's testimony. At the hearing before the General Division, the Claimant was asked if she read the information on the application form that describes the two options for standard and extended parental leave.¹⁷ The Claimant answered: “I do not recall. If I had read this it would have told me exactly what to pick, to be honest. I don't think I took the time to really look at the documents.”¹⁸

[28] The General Division does not address this evidence. The Claimant's testimony suggests that the Claimant would have filled the form out differently if she had read it. This could contradict the General Division's finding that the application form does not make the distinction between maternity and parental leave clear.

¹³ *Karval v. The Attorney General of Canada*, 2021 FC 395

¹⁴ General Division decision at para 24.

¹⁵ *Karval* at para 14.

¹⁶ General Division decision at para 27.

¹⁷ Recording of General Division hearing at approx. 15:18. The General Division directed the Claimant to page GD3-8.

¹⁸ Recording of General Division hearing at approx. 15:25 to 15:50

[29] The General Division asked the Claimant at the hearing about her understanding of the difference between maternity and parental leave at the time that she applied for benefits. The Claimant explained that she did not understand the difference and did not know that she was being asked only about the weeks of parental leave when she chose extended benefits.

[30] The General Division did not ask the Claimant why she believed this to be the case. It explains in its decision why it does not find the application to be clear about the distinction between the two types of benefits. However, the Claimant was not asked specifically about whether or not the application form confused or misled her. The Claimant's only evidence about the application form is her statement that, if she had read the descriptions of standard and extended benefits, she would have picked the right option.

[31] In *Karval*, the Federal Court found that the questions about parental benefits on the application form are not objectively confusing. It stated that legal remedies are not available where a Claimant "merely lacks the knowledge necessary to accurately answer unambiguous questions."¹⁹

[32] However, the Federal Court did not rule out the availability of legal recourse "where a claimant is actually misled by relying on an official and incorrect information."²⁰ The General Division found that the Federal Court did not address the interplay between the parental and maternity benefit sections. The General Division reviewed sections of the application form which it found did not make it clear that the weeks of maternity benefits are not counted when indicating the weeks of parental benefits a claimant wishes to claim.

[33] The General Division did not ask the Claimant whether any of these parts of the application form led her to believe that maternity and parental benefits were considered one period. The General Division did not ask the Claimant why she believed that

¹⁹ *Karval* at para 14.

²⁰ *Karval* at para 14.

maternity and parental leave periods were considered together or whether information on the application form led her to believe that.

[34] The General Division did not explain the reasons why it dismissed or assigned little weight to this aspect of the Claimant's testimony. By not considering all the relevant facts and not resolving the inconsistent evidence that was before it, the General Division committed an error of law.²¹

[35] Having found that the General Division erred, I do not need to consider the Commission's other arguments.

Remedy

[36] I have options for fixing the General Division's error. I can substitute my own decision or I can refer the matter back to General Division for reconsideration. If I substitute my own decision, this means I may make findings of fact.

[37] The Commission argues that I should give the decision that the General Division should have given: that the Claimant elected to receive extended parental benefits and that election was irrevocable once benefits were paid. The Commission's position at the hearing was that the record is complete. The Claimant did not make any submissions on this issue.

[38] As discussed above, the Federal Court left open the possibility that there may be recourse for a Claimant who has been misled by the Commission. Other decisions of the Tribunal have found this to be the case in some circumstances.

[39] The General Division found that the application form is not clear. It also found that the Claimant did not understand the difference between maternity and parental benefits when she filled out the form. The General Division did not ask the Claimant about the reasons for her misunderstanding. It did not ask the Claimant about the

²¹ *Bellefleur v Canada*, 2008 FCA 13; *Parks v Canada*, A-321-97.

sections of the form it found were unclear and whether the Claimant read these sections or if the form contributed to her misunderstanding.

[40] I have found that the General Division erred by ignoring relevant evidence in its decision. The Claimant was asked specifically if she read the section of the form that explains the difference between standard and extended benefits. She was not asked if she read the rest of the application form, or the additional information that the form links to on the Service Canada website.

[41] The source of the Claimant's misunderstanding is relevant to determining whether the Claimant fulfilled her responsibility to carefully read and understand her entitlement options. It is also relevant to determining whether or not the Claimant might have been misled by the information on the application form.

[42] I find that this is an appropriate case to refer back to the General Division. There is insufficient evidence to address why the Claimant misunderstood the types of benefits and made the election she did on her application form.

Conclusion

[43] The appeal is allowed. The General Division made an error of law by ignoring relevant evidence. The matter is being returned to the General Division for redetermination.

Melanie Petrunia
Member, Appeal Division