



Citation: *Canada Employment Insurance Commission v HF*, 2022 SST 87

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: A. Fricker

Respondent: H. F.

Decision under appeal: General Division decision dated November 15, 2021
(GE-21-2004)

Tribunal member: Jude Samson

Type of hearing: Teleconference

Hearing date: February 9, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: February 14, 2022

File number: AD-21-403

Decision

[1] The appeal is allowed. The Claimant chose to receive Employment Insurance (EI) parental benefits under the extended option and she missed the deadline for changing to the standard option.

Overview

[2] H. F. is Claimant in this case. She established a claim for EI sickness, maternity, and parental benefits. On her application form, the Claimant had to choose between two parental benefit options: standard or extended.¹

[3] The standard option offers a higher rate of parental benefits, paid for up to 35 weeks. The extended option offers a lower 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, and the extended option provides EI benefits for about 18 months.

[4] The Claimant planned to take a year's leave from work after the birth of her child. For medical reasons; however, she started her leave about a month before her due date. And on her application for EI benefits, the Claimant said that she was claiming 61 weeks of benefits under the extended option.

[5] After the Claimant's maternity benefits ran out, the Commission paid her parental benefits at the lower, extended option rate. When the Claimant noticed the change in her bank account, she quickly contacted the Commission and an agent told her again about the difference between the standard and extended options.

[6] So, the Claimant asked to switch to the standard option. The Commission refused the Claimant's request. The Commission said that it was too late for the Claimant to change options because it had already paid her some parental benefits.

[7] The Claimant successfully appealed the Commission's decision to the Tribunal's General Division. Although the Claimant had selected the extended option on her

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

application form, the General Division found that that was a mistake. Instead, the General Division found that the Claimant had chosen the standard option because it better matched her plans of taking a year's leave.

[8] The Commission is now appealing the General Division decision to the Tribunal's Appeal Division.² It argues that the General Division went beyond its powers, that its decision contains errors of law, and that it based its decision on an important mistake about the facts of the case.

[9] I am allowing the Commission's appeal. The General Division decision contains an error of law. I am also giving the decision the General Division should have given. On her application, the Claimant validly chose the extended option. And, by the time she contacted the Commission about changing options, it was already too late.

Issues

[10] My decision focuses on these issues:

- a) Did the General Division make an error of law by not considering the Federal Court's decision in *Karval v Canada (Attorney General)*?³
- b) If so, what is the best way to fix the General Division's error?
- c) Is the Claimant entitled to the standard option?

Analysis

[11] I can intervene in this case only if the General Division made a relevant error.⁴ In this decision, I focused on whether the General Division decision contains an error of law.

² I already gave the Commission leave (or permission) to appeal.

³ *Karval v Canada (Attorney General)*, 2021 FC 395 (*Karval*).

⁴ 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).

The General Division made an error of law by not considering the *Karval* decision

[12] The Tribunal has to consider Federal Court decisions that are sufficiently similar to the case it has in front of it.

[13] Here, the Commission is arguing that the General Division should have considered the Federal Court's decision in *Karval*. The Commission says that many of the important facts in this case are similar to the ones in *Karval*.

[14] I agree.

[15] Like in this case, Ms. Karval chose the extended option on her application form, and later asked to change to the standard option. However, the Commission, Tribunal, and Federal Court all decided that it was too late for Ms. Karval to change options.

[16] In addition to the timing of her request, the Federal Court decision highlights at least two important factors that prevented Ms. Karval from getting any relief:⁵

- the Commission had not misled Ms. Karval; and
- there was nothing on Ms. Karval's application form to contradict her choice of the extended option.

[17] Similarly in this case, the General Division did not find that the Commission had misled the Claimant. Instead, the General Division characterized the Claimant's choice as a mistake. On this issue, the General Division made several references to the Claimant's personal situation when completing her application for parental benefits. For example, the General Division noted the following:

- Because the Claimant had been in and out of hospital, she "didn't take the time to read the application for benefits carefully."⁶

⁵ See paragraphs 14 and 16 of *Karval v Canada (Attorney General)*, 2021 FC 395.

⁶ See paragraph 20 of the General Division decision.

- Given the Claimant's circumstances, it was reasonable that "she would hurriedly do an application for benefits without paying attention to the details."⁷
- The Claimant acknowledged that she was responsible for choosing the wrong parental benefit option because "she must have just been rushing through the application to get it done [on] time."⁸

[18] In addition, the Claimant's application form does not contain any contradictions that might have alerted the Commission to her confusion. For example, the Claimant did not provide the Commission with a planned return to work date that would have been inconsistent with the total number of weeks of benefits that she was claiming.⁹

[19] Given these important similarities, I agree that the General Division made an error of law by not considering the *Karval* decision.

I will fix the General Division's error by giving the decision it should have given

[20] At the hearing before me, both parties argued that, if the General Division made an error, then I should give the decision the General Division should have given.¹⁰

[21] I agree. The parties are not arguing that the General Division prevented them from fully presenting their cases. In fact, most of the important facts are not in dispute.

[22] This means that I can decide whether the Claimant is entitled to parental benefits under the standard option.

⁷ See paragraph 21 of the General Division decision.

⁸ See paragraph 29 of the General Division decision.

⁹ On page GD3-6, the Claimant noted that she did not know her return to work date.

¹⁰ Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16 to 18.

The Claimant is not entitled to standard parental benefits

[23] I use a two-step approach when deciding cases like this one:

- a) What option did the applicant choose on her application form? The applicant's choice must be clear.¹¹
- b) Was the applicant's choice valid? In several cases, the Tribunal has found the applicant's choice to be invalid because it was based on misleading information from the Commission.¹² In these cases, applicants need to make their choice again.

[24] Here, the Claimant clearly chose the extended option. There are no glaring contradictions on her application form. All the answers she provided to the Commission are consistent with the extended option.

[25] In addition, there's no reason to invalidate the Claimant's choice.

[26] The General Division member asked the Claimant why she chose "61" in response to the question, "How many weeks do you wish to claim?"¹³ The Claimant explained that she understood the question to be referring to the total number of weeks she was claiming, inclusive of sickness, maternity, and parental benefits.

[27] However, she did not point to any information from the Commission as misleading her in this way.

[28] Instead, the Claimant repeatedly took responsibility for rushing through the application and not reading things closely enough.

¹¹ Cases like *Semenchuck v Ruhr*, 1996 CanLII 7148 (SK QB) have emphasized the need for a choice to be clear and unequivocal.

¹² See, for example, *ML v Canada Employment Insurance Commission*, 2020 SST 255; *Canada Employment Insurance Commission v LV*, 2021 SST 98; and *KK v Canada Employment Insurance Commission*, 2021 SST 182; and *VV v Canada Employment Insurance Commission*, 2020 SST 274. To the best of my knowledge, the Commission has not applied to judicially review any of these decisions.

¹³ See page GD3-10.

[29] In addition, the Commission wrote to the Claimant on April 23, 2021, and made clear that it would be paying her parental benefits at a lower rate.¹⁴ At that time, the Claimant still had several months left to change options.

[30] The Claimant denies receiving this letter. She says that it was sent to an old address and that she had moved from that address a few months earlier, in February.

[31] However, the Commission sent the letter to the address that the Claimant had used on the application form she submitted in late March 2021. It was the Claimant's responsibility to provide the Commission with a current address, and to update her address as required.

[32] I sympathize with the Claimant's difficult circumstances. However, I must follow the *Karval* decision, which says that I need to respect the choice she made on her application form. The Claimant clearly chose the extended option on her application form and the Commission didn't mislead her into making the wrong choice.

[33] The Commission first paid parental benefits to the Claimant on July 30, 2021.¹⁵ The Claimant asked to change options on August 4, 2021, after receiving her first payment of parental benefits.¹⁶ In the circumstances, it was too late for her to change options.

Conclusion

[34] The appeal is allowed. The General Division decision contains an error of law that allows me to give the decision the General Division should have given. In this case, the Claimant chose to receive parental benefits under the extended option. And, by the time she contacted the Commission about changing options, it was already too late.

Jude Samson
Member, Appeal Division

¹⁴ This letter starts on page GD3-23.

¹⁵ A summary of the Claimant's EI benefit payments is on page GD3-22.

¹⁶ A record of the Claimant's request is on page GD3-25.