



Citation: *Canada Employment Insurance Commission v CP*, 2022 SST 147

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: A. Fricker

Respondent: C. P.

Decision under appeal: General Division decision dated October 1, 2021
(GE-21-1531)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference

Hearing date: January 24, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: March 8, 2022

File number: AD-21-349

Decision

[1] The appeal is dismissed.

Overview

[2] The Respondent, C. P. (Claimant), applied for 15 weeks of Employment Insurance (EI) parental benefits. He selected standard parental benefits on his application for benefits. He applied a week before his child's first birthday and could not receive all of the weeks of benefits. The Claimant contacted the Commission and asked to change to the extended parental benefits option.

[3] The Commission refused the Claimant's request. It said that it was too late to change after parental benefits had been paid. The Claimant requested a reconsideration and the Commission maintained its decision.

[4] The Claimant successfully appealed to the General Division of the Tribunal. The General Division decided that the Claimant made a mistake when he chose standard parental benefits because he didn't know about the parental benefit window. It found that the Claimant's election wasn't valid because the Commission didn't give him enough information to make a valid choice between standard and extended parental benefits.

[5] The Commission is now appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division made errors of law and exceeded its jurisdiction.

[6] I have decided that the General Division did not make any errors of law and did not exceed its jurisdiction. This means that the appeal is dismissed.

Issue

[7] The issues in this appeal are:

- a) Did the General Division make an error of law by effectively changing the Claimant's election after benefits had been paid?
- b) Did the General Division make an error of law by failing to apply the principle that ignorance of the law is not an excuse?
- c) Did the General Division exceed its jurisdiction by determining what option the claimant elected on his application form and the validity of that election?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- 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

[9] 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 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).

[10] The period of time during which benefits may be paid is commonly referred to as the parental benefit window. The *Employment Insurance Act* (EI Act) says that the parental benefit window ends 52 weeks after the child was born.² This period can be extended in certain circumstances. When a claimant elects to receive extended parental benefits, the period is extended by 26 weeks.³

[11] The Claimant made an application for parental benefits on May 31, 2021. In his application, he said that his last day of work was May 28, 2021 and that he planned to return to work on September 13, 2021.⁴ The Claimant also stated that his child was born on X.⁵

[12] The Claimant chose the option for standard parental benefits. The Claimant was asked how many weeks of benefits he wished to receive and he chose 15 weeks from the drop down menu.⁶

[13] The Claimant received 2 weeks of parental benefits before the parental benefit window ended. The Claimant contacted the Commission on July 2, 2021 to request to change to extended parental benefits.⁷ The Commission refused the Claimant's request. The Commission said that it was too late for the Claimant to change options because he had already received parental benefits. The Claimant made a request for reconsideration but the Commission maintained its decision.

– The General Division decision

[14] The General Division allowed the Claimant's appeal. It found that the Claimant elected standard parental benefits but that his election was not valid. The General Division determined that the application form did not provide all of the information that the Claimant needed to make a valid choice. The Claimant stated at the hearing that he

² Section 23(2)(b) of the *Act*.

³ Section 23(3.21) extends the period by 26 weeks when no regular or other special benefits are paid to a claimant. Section 23(3.2) extends the period when a claimant was not paid regular benefits but was paid other special benefits.

⁴ GD3-7

⁵ GD3-8

⁶ GD3-9

⁷ GD3-20

would have chosen extended parental benefits if he had had all of the relevant information. The General Division allowed the Claimant's appeal and found that he could elect extended parental benefits because his first election was not valid.⁸

– **The Commission's appeal to the Appeal Division**

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

- The General Division erred in law by effectively changing the Claimant's election after benefits had been paid;
- The General Division erred in law by failing to apply the principle that ignorance of the law is not an excuse; and
- The General Division exceeded its jurisdiction by determining what option the claimant elected on his application form and the validity of that election.

The General Division did not make any errors of law

[16] In its decision, the General Division followed a two-step approach set out in some decisions of the Appeal Division. The General Division considered, first, which kind of benefits the Claimant chose on his application. Second, the General Division considered whether the choice was valid.⁹

[17] The General Division found that the Claimant's choice of standard benefits was clear. That was the option that he checked on the application form and the choice was not contradicted by the number of weeks of benefits he was requesting or his return to work date.¹⁰

[18] Having found that the Claimant made a clear election, the General Division went on to consider whether or not that election was valid. It found that the choice was not

⁸ General Division decision at para 20.

⁹ General Division decision at para 9, following the approach set out in *Canada Employment Insurance Commission v. MO.*, 2021 SST 435.

¹⁰ General Division decision at para 14.

valid because the application form did not provide the information that the Claimant needed to make a valid choice between standard and extended benefits.¹¹

[19] The General Division accepted that the Claimant did not know about the parental benefit window and didn't realize that the choice of standard parental benefits meant that he would not be able to receive 15 weeks of benefits. The General Division considered the application form and found that there is no information on the form about the parental benefit window.¹²

[20] The Commission argues that the General Division made an error of law by effectively changing the Claimant's election after benefits had been paid. Section 23(1.2) of the EI Act establishes that the election is irrevocable once benefits are paid.

[21] The General Division has the power under section 64(1) of the DESD Act to decide any question of law or fact that is necessary for it to decide the appeal. This includes the ability to consider all of the evidence so that it can determine which election was actually made and whether it was validly made.

[22] I recognize that the Commission asks claimants to make the election on the benefit application form and that the election can't be changed once the Commission pays the Claimant parental benefits. However, this does not mean that the General Division cannot evaluate the evidence in order to determine which type of benefits the Claimant elected in the first place, or whether the Claimant's election was valid.

[23] The General Division evaluated the evidence and found that the Claimant's election of standard parental benefits was invalid. The Tribunal has issued other decisions in which it found that claimants were misled because the application form does not contain any information about the parental benefit window.¹³

¹¹ General Division decision at para 15.

¹² General Division decision at paras 17 and 18.

¹³ *ML v Canada Employment Insurance Commission*, 2020 SST 255 (ML); *SD v. Canada Employment Insurance Commission*, 2020 SST 255.

[24] I find that the General Division did not make an error of law by effectively changing the Claimant's election after benefits were paid. The General Division determined that the Claimant's initial election was invalid.

[25] The Commission also argues that the General Division failed to apply the principle that ignorance of the law is not an excuse. The General Division considered the Claimant's testimony. It accepted that the Claimant read the application form closely and would have chosen extended parental benefits if he had known about the parental benefit window.¹⁴ The General Division found that the application form misled the Claimant to make the wrong selection.

[26] The Courts have not yet considered whether claimants may be relieved of the consequences of an unintentional or mistaken selection of parental benefits. However, the Courts have stated that ignorance of the law is not an excuse for claimants who have failed to meet other requirements of the EI Act.¹⁵ That said, the General Division did not find that the Claimant was ignorant about the law and excuse him for this. It found that he was misled or misinformed about his options by the application form. It found that the application form did not provide the information that the Claimant needed to make a valid election.

[27] The Commission relies on the recent Federal Court decision in *Karval v. Canada (Attorney General)*.¹⁶ The Commission acknowledges that information about the benefit period is not on the application form but argues that this cannot be the basis for an error on its part. According to *Karval*, applicants need to seek information about the benefits they are applying for and ask the Commission questions if there are things they don't understand.

[28] I find that *Karval* does not apply in this case. In *Karval*, the Court was careful to distinguish between people who lack the knowledge to answer clear questions and

¹⁴ General Division decision at para 19.

¹⁵ *Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 710; *Canada (Attorney General) v. Caron* (1986), 69 N.R. 132; *Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Bryce*, 2008 FCA 118; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.

¹⁶ *Karval v. Canada (Attorney General)*, 2021 FC 395

those who are misled by relying on incorrect information that the Commission provides.¹⁷

[29] Other decisions of the Appeal Division have found that the application form misleads claimants with respect to the parental benefit window by providing incomplete information.¹⁸ The Appeal Division has acknowledged that it is possible for claimants find additional information from Service Canada about the parental benefit window; however, it is reasonable for claimants to assume that the information on the application form is complete and to rely on this information.¹⁹

[30] I find that the General Division did not make an error of law when it determined that the Claimant was misled by the incomplete information on the application form.

The General Division did not exceed its jurisdiction

[31] The Commission argues that the General Division exceeded its jurisdiction by determining which option the Claimant elected. It argues that the General Division determined whether or not the Claimant's intent accorded with his election, which was beyond its jurisdiction to decide.

[32] I do not agree that determining which option a Claimant has elected is beyond the jurisdiction of the General Division. That said, in this case the General Division accepted that the Claimant elected standard parental benefits but found that the election was not valid. In its submissions, the Commission did not argue that this is outside of the jurisdiction of the Tribunal. Many decisions of the Appeal Division have found that the approach taken by the General Division is correct and within its jurisdiction.²⁰

¹⁷ See paragraph 14 of the Karval decision.

¹⁸ *ML v Canada Employment Insurance Commission*, 2020 SST 255 (ML); *SD v. Canada Employment Insurance Commission*, 2020 SST 255.

¹⁹ ML at para 24.

²⁰ *Canada Employment Insurance Commission v JH*, 2021 SST 292; *Canada Employment Insurance Commission v MO*, 2021 SST 435.

[33] I find that the General Division did not exceed its jurisdiction when it found that the Claimant's election of standard parental benefits was invalid.

[34] Aside from the Commission's arguments, I have reviewed the file and examined the General Division decision.²¹ The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. Finally, the Commission has not argued that the General Division acted unfairly in any way.

Conclusion

[35] The appeal is dismissed. The General Division did not make an error when it decided that the Claimant's election was not valid and allowed him to elect extended parental benefits.

Melanie Petrunia
Member, Appeal Division

²¹ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.