



Citation: *Canada Employment Insurance Commission v EL*, 2022 SST 263

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: L. LaViolette

Respondent: E. L.

Decision under appeal: General Division decision dated December 20, 2021
(GE-21-1785)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference
Hearing date: April 4, 2022
Hearing participants: Appellant's representative
Respondent

Decision date: April 14, 2022
File number: AD-22-16

Decision

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

Overview

[2] The Respondent, E. L. (Claimant), applied for employment insurance (EI) regular benefits after losing her job. A benefit period was established effective December 20, 2020. She made a renewal claim for maternity and parental benefits on June 28, 2021, asking for 15 weeks of maternity benefits and 35 weeks of standard parental benefits.

[3] The Appellant, the Canada Employment Insurance Commission (Commission) told the Claimant that her benefit period would end on December 18, 2021 so she could only receive 13 weeks of parental benefits. The Claimant requested a reconsideration but the Commission maintained its decision.

[4] The Claimant appealed to the General Division of the Tribunal. The General Division allowed the Claimant's appeal in part. It decided that the Claimant's benefit period could be extended by four weeks for the period that her child was hospitalized so she could receive four more weeks of benefits.

[5] The Commission now appeals the General Division decision to the Tribunal's Appeal Division. It argues that the General Division made an error of law by failing to consider section 12(6) of the *Employment Insurance Act* (EI Act). This section says that a claimant who receives regular EI benefits cannot be paid more than 50 weeks of regular and special benefits combined.

[6] I agree that the General Division made an error of law by failing to consider section 12(6) in its decision. The Claimant did not have an opportunity to address this section at the hearing before the General Division. I am returning the matter to the General Division for redetermination so that the Claimant has an opportunity to present evidence and arguments on this issue.

Issues

[7] The issues in this appeal are:

- a) Did the General Division err in law by failing to consider section 12(6) of the EI Act in rendering its decision?
- b) If so, how should the error be fixed?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error, which is known as a “ground of appeal.”¹ One of the grounds of appeal is that the General Division made an error of law in making its decision. The interpretation of legislation is a question of law.²

– Background

[9] The Claimant lost her job and made an initial claim for regular benefits effective December 20, 2020.³ She stated in her application that she was pregnant and her child was expected to be born on June 17, 2021.⁴

[10] The Claimant was paid 21 weeks of regular benefits.⁵ Her child was born on June 8, 2021 and she submitted a renewal application for maternity and parental benefits. She asked to receive 35 weeks of standard parental benefits after receiving 15 weeks of maternity benefits.

[11] The Commission told the Claimant that her benefit period would end on December 18, 2021. This meant that she could receive 15 weeks of maternity benefits, followed by only 13 weeks of parental benefits.

¹ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.

² See *Canada (Attorney General) v Trochimchuk*, 2011 FCA 268 at paragraph 7.

³ See paragraph 3 of the General Division decision.

⁴ See GD3-3 to GD3-17.

⁵ See GD4-2.

– **The General Division decision**

[12] The General Division allowed the Claimant's appeal in part. The only issue that the General Division considered was whether or not the Claimant's benefit period could be extended.⁶ The Claimant stated in her testimony that her child was hospitalized for four weeks. She submitted the discharge papers after the hearing.⁷

[13] The Commission did not attend the hearing before the General Division. The General Division gave the Commission an opportunity to provide additional submissions in light of the discharge papers that the Claimant submitted.⁸ The Commission did not make any additional arguments.

[14] The General Division found that the Commission had correctly determined that the Claimant's benefit period ran from December 20, 2020 to December 18, 2021. However, it found that the Claimant was entitled to have her benefit period extended for four weeks because her child was hospitalized for 28 days. It found that she could receive four more weeks of benefits.⁹

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

[15] The Commission agrees with the General Division's finding that the Claimant's benefit period could be extended by four weeks. However, it argues that the General Division erred in law when it decided that the Claimant could received four more weeks of benefits. This is because the General Division did not consider section 12(6) of the EI Act.

[16] According to section 12(6) of the EI Act, the maximum number of weeks of regular and special benefits combined in a benefit period cannot exceed 50. The section reads:

⁶ See paragraph 7 of the General Division decision.

⁷ See GD8.

⁸ See GD9.

⁹ See paragraph 24 of the General Division decision.

Combined weeks of benefits

(6) In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of benefits to which the claimant is entitled under subsection (2), (2.1) or (2.3) and because of a reason mentioned in subsection (3), but the total number of weeks of benefits shall not exceed 50.

[17] The Commission argues that this section prevents the Claimant from receiving four additional weeks of benefits regardless of the extension to her benefit period. The Claimant received regular benefits as well as special benefits (maternity and parental) during her benefit period, so she cannot receive more than 50 weeks combined.

[18] The Commission says that it was an error of law for the General Division not to have considered this section of the Act.

The General Division erred in law by not considering section 12(6)

[19] In its written submissions before the General Division, the Commission only argued that the Claimant's benefit period would end on December 18, 2021 and that she was not entitled to an extension. The Commission did not mention section 12(6).

[20] The Commission says that section 12(6) was not at issue when the matter was appealed to the General Division. It says that the Claimant had been paid 21 weeks of regular benefits, 15 weeks of maternity benefits and would be paid 13 weeks of parental benefits when she reached the end of her benefit period. The total number of weeks of combined benefits would be 49.

[21] The Commission says that there was no reason to include section 12(6) in its submissions before the General Division because it was not the reason that the Claimant could not receive more weeks of benefits. The issue at that point was that her benefit period ended.

[22] The General Division determined that the Claimant was entitled to have her benefit period extended by four weeks on the basis of her testimony at the hearing and the supporting documents she submitted after the hearing. It also decided that this extension would allow her to get four more weeks of benefits.

[23] The General Division does not mention section 12(6) in its decision. It does note that the Claimant received regular benefits during her benefit period. The General Division should have been aware that section 12(6) of the EI Act applies to the Claimant and considered that section in its decision. This was an error of law.

Remedy

[24] How can I fix the General Division's error? I have two basic choices.¹⁰ I can substitute my own decision or I can refer the matter back to the General Division for reconsideration.

[25] The Commission initially argued that I should make the decision that the General Division have made. However, at the Appeal Division hearing the Commission acknowledged that section 12(6) was not raised at the General Division in response to the Claimant's post-hearing documents showing that she was entitled to an extension to her benefit period. The Commission stated that the correct remedy may be to send the matter back to the General Division

[26] I find that it is appropriate to return the matter to the General Division. The Claimant did not have an opportunity to present any evidence or make arguments about the application of section 12(6) at the General Division. I note that a recent decision of the General Division found that sections 8(2), 8(5), 10(10), and 12(6) of EI Act violate the right to equality protected by section 15 of the *Canadian Charter of Rights and Freedoms*.¹¹

[27] Now that the parties agree that the Claimant is entitled to an extension to her benefit period, it is clear that section 12(6) must be considered. The matter is returned to the General Division so that the Claimant has an opportunity to present evidence and arguments with respect to this section.

¹⁰ See section 59 of the *Department of Employment and Social Development Act*.

¹¹ See *LC, EB, KG, VD, MT and CL v Canada Employment Insurance Commission*, 2022 SST 8. This decision has been appealed to the Tribunal's Appeal Division.

Conclusion

[28] The appeal is allowed. I am returning the matter to the General Division for reconsideration.

Melanie Petrunia
Member, Appeal Division