Citation : *AJ v Canada Employment Insurance Commission*, 2022 SST 309

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. J.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 30, 2021 (GE-21-2024)

Tribunal member:	Melanie Petrunia
Decision date:	February 21, 2022
File number:	AD-22-79

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, A. J. (Claimant), applied for and received Employment Insurance (EI) maternity benefits followed by parental benefits. She selected extended parental benefits on her application for benefits, which pays a lower rate of benefits over a longer period of time.

[3] The Claimant indicated on the application form that she wanted to receive 61 weeks of benefits. The Claimant received her first payment of parental benefits in June 2021. She contacted the Commission in August 2021 and asked to switch to the standard benefit option.

[4] 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 saying that she had decided to go back to work after 12 months and wanted to switch from the extended option to the standard option. The Commission maintained its decision.

[5] The Claimant appealed to the General Division of the Tribunal. The General Division dismissed her appeal. It decided that the Claimant could not change her election from extended to standard parental benefits because benefits had already been paid.

[6] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division didn't follow procedural fairness and made an error of law.

[7] The Claimant's appeal has no reasonable chance of success. I am refusing permission to appeal.

Issue

[8] Does the Claimant raise some reviewable error upon which the appeal might succeed?

Analysis

[9] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?[1]

[10] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed under section 58(1) the *Department of Employment and Social Development Act* (DESD Act). Briefly, the relevant errors are about whether the General Division:

> a) provided a fair process;
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> b) decided all the questions that it had to decide, without deciding questions that were beyond its powers to decide;
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> c) misinterpreted or misapplied the law; and
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> d) based its decision on an important error about the facts of the case.[2]

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[12] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on

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[1] This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[2] This paraphrases the relevant errors, formally known as "grounds of appeal," which are listed under section 58(1) of the DESDA.

in the process if leave to appeal is granted. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[3]

Does the Claimant raise some reviewable error upon which the appeal might succeed?

[13] In its decision, the General Division found that the Claimant knowingly chose the extended option on the application form and asked for 61 weeks of benefits.[4] It found that this was also consistent with the return to work date that she provided of August 15, 2022.

[14] The General Division considered the Claimant's argument that the Commission did not tell her about the deadline for changing her election. It rejected this argument, finding that the application form states that the election is irrevocable once benefits have been paid.[5]

[15] The General Division considered that the Claimant had relied on information from her employer that she could change her leave from 18 months to 12 months. The General Division found that the employer's policy is different from parental benefits paid by EI and did not accept the Claimant's misunderstanding as a basis for allowing her to change her election.[6]

[16] The General Division found that the Claimant did not contact the Commission until August 13, 2021, as was recorded in notes by a Service Canada Agent.[7] At this point, benefits had already been paid and it was too late to change her election.

[17] In her application for leave to appeal, the Claimant says that the General Division made an error of law. She argues that the amount of money stays the same under both options and that the proper interpretation of the Act is that she should be able to receive

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[3] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[4] General Division decision at para 11.
[5] General Division decision at para 12.
[6] General Division decision at para 13.
[7] General Division decision at para 14.

the full benefit that she's entitled to. She states that she is getting a lower monthly amount than she should be getting.[8]

[18] The Claimant relies on another case from the General Division in which, she says, the law was interpreted differently and the appeal was allowed.[9]

[19] The facts in the case that the Claimant references were different. In that case, the claimant mistakenly chose extended benefits and asked for 52 weeks of benefits. That claimant believed that she was stating the total amount of leave she planned to take, including both maternity and parental benefits, when she chose 52 weeks. On this basis, the General Division in that case found that the claimant had always intended to choose standard benefits. It decided that the election wasn't being revoked after benefits were paid, but rather that the claimant had actually chosen standard benefits to begin with.

[20] The facts in that case are different from the Claimant's situation. As the General Division found, the Claimant acknowledged that she chose extended benefits. She asked to receive 61 weeks of benefits and her return to work date matched this choice. The Claimant's circumstances changed and she decided to return to work earlier, but this does not mean that she always intended to choose standard benefits.

[21] The Claimant states in her application for leave to appeal that she chose extended benefits due to personal circumstances at the time. She may have had good reasons for making that choice initially, and good reasons for changing her mind and deciding to return to work earlier, but it is clear that she intended to choose extended benefits when she made her application.

[22] The General Division correctly applied the law when it found that the Claimant chose extended parental benefits and that she could not change the election after benefits were paid. There is no arguable case that the General Division made an error of law.

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[8] AD1-4
[9] *RW c Commission de l'assurance-emploi du Canada*, 2021 TSS 300

[23] The Claimant also indicated on the application for leave to appeal that the General Division did not follow procedural fairness. She did not explain how the process was procedurally unfair. She states that the decision was wrongful and not fair in her situation. The Claimant had an opportunity to fully present her case. There is no arguable case that the General Division failed to provide a fair process.

[24] I have also considered other grounds of appeal. After reviewing the record, I have not identified any errors of jurisdiction and the General Division did not base its decision on any erroneous findings of fact.

Conclusion

[25] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division