Citation: *KZ v Canada Employment Insurance Commission*, 2022 SST 299

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	K. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 25, 2022 (GE-21-2493)

Tribunal member:	Melanie Petrunia
Decision date:	April 19, 2022
File number:	AD-22-131

Decision

[1] I am refusing leave (permission) to appeal because the appeal does not have a reasonable chance of success. The appeal will not proceed.

Overview

[2] The Applicant, K. Z. (Claimant), applied for Employment Insurance (EI) maternity and parental benefits. On her application, she had to choose between two options for her parental benefits: standard or 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 selected the extended option on her application form. She said she was claiming 45 weeks of benefits. The Claimant understood that her employer would top up her EI benefits to 93% of her usual income for the first 12 months of her leave. She planned to take the next two months as leave without pay and only receive EI benefits.

[5] The Claimant later learned that her employer changed its policy and would only top up her benefits to 55.8%. The Claimant could not afford this and asked the Commission to switch to standard parental benefits.

[6] The Commission denied the Claimant's request because she had already received benefits under the extended option and the election was irrevocable. The Claimant's appeal to the Tribunal's General Division was dismissed.

[7] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. She argues that the General Division made an important error of fact in its decision. I have to decide whether there is some reviewable error of the General

Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Analysis

[9] The Department of Employment and Social Development Act (DESD Act) sets out the only grounds of appeal of a General Division decision.[1] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

> a) failed to provide a fair process;
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> b) failed to decide an issue that it should have, or decided an issue that it should not have;
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> c) based its decision on an important factual error;[2] or
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> d) made an error in law.[3]

[10] 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.

[11] 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

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[1] DESD Act, s 58(2).
[2] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.
[3] This paraphrases the grounds of appeal.

threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[12] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[4]

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

[13] In her application for leave to appeal, the Claimant states the General Division made an important factual error in the decision. She says that the General Division's finding that she always intended to chose extended benefits when she applied is an incomplete statement and is misleading.

[14] The Claimant says that she applied for 14 months of benefits instead of the 18 that is allowed under the extended option. She made this decision because her employer was going to top up her benefits to 93% of her income regardless of whether she chose standard or extended benefits.

[15] The Claimant argues that she would have chosen standard benefits if she had known about the employer's policy change sooner. She says that her intention was always to have her benefits topped up to 93% for her first 12 months of leave.

[16] The Claimant argues that her intention to be topped up to 93% for the first 12 months is proven by the number of weeks of benefits she chose and by the fact that she contacted the Commission as soon as she found out about the policy change.

[17] She argues that her actions are consistent and that she would have been able to change her benefits in time if her employer had informed her about the policy change

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[4] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.

earlier. She claims that it is not her fault that she wasn't informed until after she had been paid parental benefits.

[18] In its decision, the General Division notes that the Claimant planned to have her EI benefits topped up to 93% of her income for the first 12 months of her leave. She then planned to take 2 months off on leave without pay, receiving only EI benefits.[5]

[19] The General Division also acknowledged that the Claimant was not told about her employer's policy change until October 24, 2021.[6] It considered that she contacted the Commission as soon as she learned of the change.[7]

[20] The General Division accepted that the Claimant would have changed the type of benefits she chose is he had known about the employer's policy earlier.[8] However, it found that the Claimant's testimony was clear that she intended to chose extended benefits when she applied.[9]

[21] The fact that the Claimant intended to receive a top up to 93% for the first 12 months does not change the fact that she understood that she was choosing the extended option on the form at the time that she applied.

[22] I find that there is no arguable case that the General Division made any errors of fact with respect to the Claimant's choice of extended parental benefits when she applied. The General Division took all relevant facts into consideration.

[23] It is unfortunate that the Claimant only learned of her employers change in policy after parental benefits were paid. Like the General Division member, I am sympathetic to the Claimant's circumstances.

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[5] See General Division decision at paragraph 17.
[6] See General Division decision at paragraph 19.
[7] See General Division decision at paragraph 20.
[8] See General Division decision at paragraph 22.
[9] See General Division decision at paragraph 23.

[24] I have also considered other grounds of appeal. After reviewing the record, I have not identified any errors of law or jurisdiction. There is no arguable case that the General Division failed to provide a fair process.

Conclusion

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

Melanie Petrunia
Member, Appeal Division