



Citation: *RK v Canada Employment Insurance Commission*, 2022 SST 386

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 9, 2022
(GE-22-365)

Tribunal member: Melanie Petrunia

Decision date: May 15, 2022

File number: AD-22-236

Decision

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

Overview

[2] On November 10, 2021, the Applicant (Claimant) applied to receive 6 weeks of standard parental benefits. He later told the Respondent (Commission) that he made a mistake in the application and only wanted 5 weeks of benefits. He stated in his application that his child was born on August 27, 2020. The Claimant and his spouse had decided to share the maximum number of weeks of standard parental benefits allowed under the Employment Insurance (EI) Act, which is 40 weeks.

[3] The Commission told the Claimant that he could not receive any weeks of benefits because the period during which parental benefits can be paid ended 52 weeks after the date of birth of the Claimant's child, which was August 26, 2021. The Claimant requested a reconsideration and the Commission maintained its decision.

[4] The Claimant appealed this decision to the Tribunal's General Division. His appeal was dismissed. The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. He argues that the General Division did not follow procedural fairness. He says that General Division acknowledged that he was provided with misleading information on the phone by Service Canada agents.

[5] The Claimant is asking for the decision to be reconsidered because he did his due diligence and based his decision to take leave on misinformation from the Commission. He argues that the Commission should share responsibility for this error.

[6] 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

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

Analysis

[8] 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;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;² or
- d) made an error in law.³

[9] 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 his case and possibly win.

[10] 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 in the process if leave to appeal is granted.

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.

[11] 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?

[12] In his application for leave to appeal, the Claimant claims that the General Division failed to follow procedural fairness. He states that he mentioned all of the facts to the General Division during the hearing. Specifically, he says that he contacted the Commission about his eligibility for parental benefits and was given misinformation. He says that the General Division acknowledged this in its decision.⁵

[13] The Claimant says that he trusted the Commission to provide him with accurate information. If he had been told that he could not receive any parental benefits, he would have cancelled his leave and gone back to work. He argues that the Commission failed to provide him with prompt service and accurate information and they should also be responsible for the consequences of this failure.⁶

[14] The Claimant raised these issues and arguments at the General Division. The General Division found, in its decision, that the Claimant contacted the Commission in November 2021 and was given incorrect information.⁷

[15] However, the General Division also found that the Claimant's child was born on August 27, 2020 and that his wife received standard parental benefits. This meant that the Claimant had 52 weeks to from the date of birth to receive standard parental benefits. His application in November 2021 was after the 52-week period had ended.⁸

⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁵ See AD1 at page 9.

⁶ See AD1 at page 9.

⁷ See the General Division decision at paragraphs 22 and 23.

⁸ See the General Division decision at paragraphs 17 to 20.

[16] The General Division properly applied the law. It considered the Claimant's arguments that he contacted the Commission to ask about his entitlement to benefits. The General Division accepted that the Claimant was provided with incorrect information by the Commission.⁹

[17] The General Division considered the same arguments that the Claimant is making in his application for leave to appeal. It properly found that the Tribunal does not have the discretion to ignore clear statutory provisions of the EI Act. The Tribunal must apply the statutory requirements and cannot ignore the Act on the basis of fairness or compassion.¹⁰

[18] The Claimant is restating the same arguments as at the General Division and asking for the Appeal Division to come to a different conclusion. I have found that there is no arguable case that the General Division failed to follow procedural fairness.¹¹ The General Division considered all of the Claimant's arguments. I am not satisfied that the appeal has a reasonable chance of success.

[19] I have also considered other grounds of appeal. After reviewing the record and listening to the hearing before the General Division, I have not identified any errors of law or jurisdiction. There is no arguable case that the General Division based its decision on an important mistake about the facts of the case.

Conclusion

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

Melanie Petrunia
Member, Appeal Division

⁹ See the General Division decision at paragraphs 13 to 15.

¹⁰ See the General Division decision at paragraph 24 citing *Canada (Attorney General) v. Knee*, 2011 FCA 301.

¹¹ *Rouleau v. Canada (Attorney General)*, 2017 FC 534, at para 42.