Citation: *Canada Employment Insurance Commission v CW*, 2022 SST 514

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Anick Dumoulin
Respondent:	C. W.

Decision under appeal:	General Division decision dated November 22, 2021 (GE-21-1892)

Tribunal member:	Pierre Lafontaine
Type of hearing:	Teleconference
Hearing date:	June 2, 2022
Hearing participants:	Appellant's representative Respondent
Decision date:	June 14, 2022
File number:	AD-21-435

Decision

[1] The appeal is allowed.

Overview

[2] The Respondent (Claimant) applied for Employment Insurance (EI) maternity and extended parental benefits and her claim was established effective September 27, 2020. The Claimant received a credit of 480 hours of insurable employment.

[3] On September 10, 2021, the Claimant asked the Commission to remove the 480 hours credit applied to her claim of September 27, 2020. The Claimant wanted to stop her current claim and start another maternity and parental claim because she was pregnant again. She argued that she had no idea the credit had been added to her claim when she applied in September 2020, and that she did not need the credit as she had more than enough hours to qualify for benefits without it.

[4] The Appellant (Commission) determined that the one-time 480 hours credit was correctly added to the Claimant's September 2020 claim, as the one time hours are automatically added to a claim whether a claimant needs the hours or not. The Commission maintained its initial decision after reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division allowed the Claimant's appeal. It concluded that the one-time 480 hours credit should not have been applied to her claim of September 27, 2020, so those hours would be available to be applied to a subsequent benefit period, if needed. The General Division determined that the law should be interpreted as to use the credit only when a claimant needs the additional hours to qualify.

[6] The Appeal Division granted the Commission leave to appeal of the General Division's decision. The Commission submits that the General Division erred in law in its interpretation of the *Employment Insurance Act* (EI Act).

[7] I must decide whether the General Division made an error when it concluded that the one-time 480 hours credit should not have been applied to the maternity and extended parental benefits claim of September 27, 2020.

[8] I am allowing the Commission's appeal.

Issue

[9] Did the General Division make an error when it concluded that the one-time 480 hours credit should not have been applied to the to the maternity and extended parental benefits claim of September 27, 2020?

Analysis

Appeal Division's mandate

[10] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.[1]

[11] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.[2]

[12] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact

[1] *Canada (Attorney general) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney general)*, 2015 FCA 274.
[2] *Idem*.

that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

Did the General Division make an error when it concluded that the one-time 480 hours credit should not have been applied to the maternity and extended parental benefits claim of September 27, 2020?

[13] The Commission submits that the General Division erred in law when it found that the one-time 480 hours credit should be applied to a subsequent claim. It argues that the law does not allow for any discretion in this matter. The Commission submits that the law clearly identifies that a claimant is deemed to have additional hours if they make an initial claim for EI benefits on or after September 27, 2020.

[14] The Claimant submits that the 480 hours credit could not apply to her September 2020 claim since she had already accumulated the number of insurable hours in order to qualify. She puts forward that the law is vague and not clear. The Claimant submits that the Commission's interpretation of the law confers no advantage to claimants and is contrary to the objective of the program, which is to provide access to benefits during COVID-19. She puts forward that if she had known, she would have applied before September 2020 in order to receive the 480 hours credit on a subsequent application.

[15] Parliament has adopted temporary measures during the pandemic to facilitate access to benefits. One of the measures provides for an increase in hours of insurable employment.

[16] The law indicates that a claimant who makes an initial claim for special benefits on or after September 27, 2020, or in respect of an interruption of earnings that occurs on or after that date, is deemed to have in their qualifying period an additional 480 hours of insurable employment.[3]

[3] See article 153.17(1) of the EI Act.

[17] The Appeal Division has rendered several decisions on this issue. It has found that the law is clear and does not suffer from any ambiguity. The law does not provide for the possibility of applying the 480 hours credit to a future claim when a claimant establishes a sufficient number of hours during the reference period to establish a benefit period without the hour credit.[4]

[18] I am of the view that the program facilitating access to benefits fulfills its accessibility objective since it allows claimants who submit an initial claim for benefits on or after September 27, 2020, and who do not have enough hours of insurable employment, to qualify for benefits, when they would not qualify otherwise.

[19] The law is intended to help claimants who do not have enough insurable hours to establish a benefit period. It is not intended to assist claimants who have sufficient hours of insurable employment at the time of application on or after September 27, 2020, to establish multiple benefit periods.[5]

[20] I am of the view that the General Division erred in law in deciding that the statutory 480 hours credit should not be applied to the claim commencing September 27, 2020.

[21] Neither the General Division nor the Appeal Division has the power to deviate from the rules established by Parliament for the granting of benefits, even for compassionate reasons.

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[4] See Appeal Division decisions on this issue: *SS v Canada Employment Insurance Commission* - 2021 SST 885; *SF v Canada Employment Insurance Commission* - 2021 SST 836; SST - *MM v Canada Employment Insurance Commission* - 2021 SST 810; *Canada Employment Insurance Commission v NK* - 2021 SST 601; *TD v Canada Employment Insurance Commission* - 2021 SST 916;

[5] See section 153.17(2) of the EI Act, which restricts the use of additional hours to establishing a single benefit period.

Remedy

[22] Considering that both parties had the opportunity to present their case before the General Division, I will render the decision that should have been rendered by the General Division.[6]

[23] The Commission correctly applied the Claimant's single 480 hours credit to the qualifying period of her claim for special benefits of September 27, 2020. As such, it is not available for use in a subsequent claim for benefits.

Conclusion

[24] The appeal is allowed.

Pierre Lafontaine
Member, Appeal Division

[6] In accordance with the powers vested in me under article 59(1) of the DESD Act.