



Citation: *SS v Canada Employment Insurance Commission*, 2022 SST 48

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: S. S.
Representative: Ennio Aguilera

Respondent: Canada Employment Insurance Commission
Representative: Annick Dumoulin

Decision under review: Appeal Division decision dated November 18, 2021
(AD-21-383)

Tribunal member: Shirley Netten

Type of hearing: On the Record
Decision date: February 4, 2022
File number: AD-22-35

Decision

[1] I am dismissing the application to rescind the Appeal Division decision that gave the Canada Employment Insurance Commission (Commission) leave to appeal a General Division decision (“the leave decision”).

Overview

[2] S. S. (Claimant) received emergency response benefits from May to September 2020, regular employment insurance benefits from October 2020 to April 2021, and maternity benefits from May to October 2021. The Claimant didn’t have enough insurable hours of employment to start a new claim for maternity and parental benefits when she applied in June 2021. Her benefits stopped at the end of her existing benefit period, in October 2021.

[3] The issue under appeal at the General Division was whether a credit of additional hours should have been applied to the October 2020 claim (as Service Canada decided) or to the June 2021 claim for maternity and parental benefits (as the Claimant wanted). The General Division found in the Claimant’s favour. The Commission requested leave to appeal based on a possible error of law. The Appeal Division decided that the appeal has a reasonable chance of success and granted leave to appeal.

[4] The Commission’s appeal is scheduled to be heard by the Appeal Division next week. In the interim, the Claimant wants the leave decision rescinded because the Commission didn’t file its application to the Appeal Division in the manner required by the *Social Security Tribunal Regulations* (Regulations). I am dismissing the Claimant’s application.

Issues

[5] The issue in this appeal is whether the leave decision should be rescinded.

Analysis

[6] The Regulations say that an application to the Appeal Division must contain (among other things) contact information for the person authorized to represent the applicant¹ and, if the application is brought by the Commission, contact information for the Commission.²

[7] Here, the Commission's representative signed the application by name, but did not complete the section titled "Representative information". It is unclear to me if that was an oversight or if the Commission's representatives do not consider themselves representatives. There is no other section on the form for the Commission's contact information, and that information was not provided.

[8] The Claimant's representative did not ask the Appeal Division for the Commission's contact information. Around six weeks after the leave decision, he filed this application. When the application was processed, and on my request, the Commission's representative sent in her contact information.

The decision will not be rescinded

[9] Under our governing legislation, I have the discretion to rescind a decision only if:

... new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact;³

[10] The Claimant's representative says that the leave decision was based on a mistake of a material fact, with the material fact being that the Commission's application did not comply with the Regulations.

[11] A material fact is one that could reasonably be expected to affect the outcome of the decision.⁴ I agree with the Commission's representative that failing to provide

¹ Regulations, section 40(1)(b)

² Regulations, section 40(1)(f)

³ *Department of Employment and Social Development Act*, section 66(1)(a)

⁴ This test for materiality was set out by the Federal Court of Appeal in *Kent v Canada (Attorney General)*, 2004 FCA 420 at paragraph 34. See also *Mansour v Canada (Attorney General)*, 2001 FCA 328.

contact information is not a material fact upon which the leave decision was based. It is a fact that makes no difference to the decision about whether the Commission's appeal has a reasonable chance of success.

[12] The Claimant's representative argues that this fact was material, because no case exists without a complete application and the application wasn't valid. From this, I understand that he is really asking me to rescind the decision to accept or proceed with the Commission's application⁵ (which would effectively cancel the leave decision too).

[13] Whether an application meets the requirements of the Regulations is material to the question of whether it has been properly filed.⁶ But, even if I assume that the Appeal Division decided to proceed with the Commission's application without knowledge of the material fact that it was incomplete, I would not exercise the discretion to rescind that decision.

[14] The Appeal Division must proceed with appeals informally, quickly and fairly.⁷ Starting these proceedings all over again would cause delay without changing the outcome thus far. There was a minor deficiency in the application that was corrected as soon as it was brought to the Commission's attention. If the Appeal Division didn't implicitly dispense with the requirement to provide contact information at the time,⁸ the deficiency has now been corrected.

[15] The primary purpose of the requirement to provide contact information is for the Appeal Division to be able to communicate with the applicant. This was not an issue here, because the Appeal Division knows how to contact the Commission. A secondary purpose of the requirement may be for the responding party to know how to

⁵ The Claimant's representative might think of this as a preliminary aspect of the leave decision, rather than a separate decision.

⁶ Section 57(1) of the *Department of Employment and Social Development Act* says that an application must be made in the manner set out in the Regulations.

⁷ Section 3(1)(a) of the Regulations.

⁸ Under section 3(1)(b) of the Regulations, or under the general power to control our proceedings: *Prasad v Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC).

communicate directly with the applicant.⁹ The Claimant's representative argues that the missing information limited his ability to negotiate directly with the Commission to reach agreement. But the Claimant's representative did not express an interest in having the Commission's contact information until long after the application was filed. He also did not request alternative dispute resolution through the Appeal Division, or ask the Commission's representative to engage in further discussions at a recent case conference. The Appeal Division forwarded the Claimant's representative the contact information on January 26, 2022. I don't know if he has since contacted the Commission's representative about his interest in settlement; if necessary, he can ask to postpone the hearing of the appeal.

[16] Importantly, even if I were to rescind the decision to proceed with the Commission's application and the leave decision that followed, I would have to re-decide the (now complete) application. I would have to give the Commission leave to appeal on a possible error of law because, as the current leave decision explains, the interpretation of the law by the General Division is different from the interpretation in other decisions. This does not mean that the General Division's interpretation is necessarily wrong, but it does mean that the Commission can argue the point. The threshold for leave is low: an arguable case is all that is needed for an appeal to proceed.¹⁰

[17] For all of these reasons, the leave decision will not be rescinded. It remains in effect, and the Commission's appeal will proceed.

Conclusion

[18] The application to rescind the leave decision is dismissed.

Shirley Netten
Member, Appeal Division

⁹ I say "may" because parties most often communicate through the Appeal Division. The Appeal Division circulates correspondence to and from the parties and facilitates informal conferences: see sections 5, 15, 16, and 17 of the Regulations.

¹⁰ See, for example, *Osaj v. Canada (Attorney General)*, 2016 FC 115.