



Citation: *PD v Canada Employment Insurance Commission*, 2022 SST 747

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: P. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 22, 2022
(GE-22-1689)

Tribunal member: Janet Lew

Decision date: August 11, 2022

File number: AD-22-424

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, P. D. (Claimant), is appealing the General Division decision.

[3] The General Division accepted that the Claimant was caring for five grandchildren, including a newborn child. However, the General Division found that the Claimant did not meet the requirements of the *Employment Insurance Act* to qualify for parental benefits. The General Division determined that the Claimant had to be the biological parent or a newly adopted parent to qualify for parental benefits.

[4] The Claimant argues that the General Division misinterpreted the law. She also argues that the General Division also overlooked the fact that the website on which she applied indicates that benefits are available to those “caring for a newborn.”

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving the Claimant permission to move ahead with her appeal.

Issues

[7] The issues are as follows:

- a) Is there an arguable case that the General Division overlooked any of the evidence?

¹ Under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, “that the appeal has no reasonable chance of success.”

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

- b) Is there an arguable case that the General Division misinterpreted who was eligible for parental benefits?

Analysis

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.

[9] For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

[10] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

Is there an arguable case that the General Division overlooked any of the evidence?

[11] The Claimant argues that the General Division failed to consider the fact that the website on which she applied for Employment Insurance benefits encouraged anyone who was pregnant, had recently given birth, was adopting a child “or [was] caring for a newborn” to apply for benefits.

[12] In fact, the General Division considered this evidence. The General Division examined what appeared on the application form. The General Division noted that the application form described who was eligible for parental benefits.

[13] The application form read:

Parental benefits: you are caring for one or more newborn or newly adopted children.

[14] The General Division simply did not accept that the information on the website completely accurately or fully described who was eligible for parental benefits. I am not satisfied that the Claimant has an arguable case that the General Division overlooked the information on the website.

Is there an arguable case that the General Division misinterpreted who was eligible for parental benefits?

[15] The Claimant argues that the General Division misinterpreted who was eligible for parental benefits. She notes that the website on which she applied for benefits states that anyone caring for a newborn is eligible.

[16] The General Division found that the application form merely simplified the law. The General Division found that one has to look at the *Employment Insurance Act* as that is the actual law that spells out who qualifies for parental benefits.

[17] The General Division noted that the *Employment Insurance Act* states that:

Benefits are payable ... to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.³

[18] The General Division found that the words “new-born children” was followed by the words “of the claimant.” The General Division found that a “newborn child of the claimant” is different from a “newborn child.”

³ See section 23(1) of the *Employment Insurance Act*.

[19] It was not enough that the Claimant was caring for a newborn, for her to meet the requirements under the *Employment Insurance Act*. The General Division found that the Claimant had to be a biological parent of that newborn child.

[20] The General Division's interpretation is consistent with the case law.⁴ For that reason, I am not satisfied that the Claimant has an arguable case that the General Division misinterpreted who was eligible for parental benefits.

Conclusion

[21] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

⁴ See, for instance, CUB 54292. A grandmother who had joint custody of her grandchild was not entitled to parental benefits. Similarly, in CUB 54215, the common law spouse of a father who gained custody of his children was not entitled to parental benefits, even though she alleged that she might adopt the children in the future.