



Citation: *SB v Canada Employment Insurance Commission*, 2022 SST 850

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** S. B.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** J. Lachance

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**Decision under appeal:** General Division decision dated June 16, 2022  
(GE-22-1820)

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**Tribunal member:** Melanie Petrunia

**Type of hearing:** On the Record

**Decision date:** August 30, 2022

**File number:** AD-22-393

## Decision

[1] The appeal is allowed. The matter will go back to the General Division for the appeal to proceed on the merits.

## Overview

[2] The Appellant, S. B. (Claimant), applied for and received Employment Insurance (EI) maternity benefits followed by parental benefits. She selected extended parental benefits on her application, which pays a lower rate of benefits over a longer period of time.

[3] The Claimant says that she wanted to receive standard parental benefits. She planned to take one year of total leave from work and chose the wrong option on her application form by mistake.

[4] When the Claimant started receiving extended parental benefits she contacted the Respondent, the Canada Employment Insurance Commission (Commission) and asked to switch to the standard benefit option.

[5] The Commission refused the Claimant's request. It said that it was too late to change after parental benefits had been paid. The Claimant requested a reconsideration and the Commission maintained its decision.

[6] The Claimant appealed to the General Division of the Tribunal. Her appeal was summarily dismissed, without a hearing, because the General Division found that there was no reasonable chance of success. The Claimant now appeals to the Appeal Division.

[7] I have found that the General Division made an error when it summarily dismissed the Claimant's appeal. I am returning the matter to the General Division for a hearing on the merits.

## Issue

[8] The issue in this appeal is whether the General Division made a reviewable error when it decided that the Claimant's appeal had no reasonable chance of success.

## Analysis

[9] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:<sup>1</sup>

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

## Background

### – Summary dismissal

[10] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success. The issue is whether it is plain and obvious on the record that the appeal is bound to fail.<sup>2</sup>

[11] The threshold for a summary dismissal is high. A weak case will not meet this threshold, but an “utterly hopeless” appeal will. General Division considers whether the appeal is destined to fail regardless of the evidence or arguments that the claimant might provide at the hearing.<sup>3</sup>

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<sup>1</sup> The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> DESDA, s 53(1); see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

<sup>3</sup> The Tribunal explained this in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

– **Parental benefits**

[12] There are two types of parental benefits:

- Standard parental benefits – the benefit rate is 55% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits is payable to one parent.
- Extended parental benefits - the benefit rate is 33% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits is payable to one parent.

[13] The EI Act says that a claimant must elect standard or extended benefits when they make a claim for parental benefits and that the election is irrevocable once benefits are paid.<sup>4</sup>

[14] The Claimant made an application for maternity and parental benefits in November 2021.<sup>5</sup> In her application, the Claimant said that her last day of work was October 31, 2021 and that she planned to return to work on November 1, 2022.<sup>6</sup>

[15] The Claimant indicated that she wanted to receive parental benefits immediately after maternity benefits. She chose the option for extended parental benefits. The Claimant was asked how many weeks of benefits she wished to receive and she chose 52 weeks from the drop down menu.<sup>7</sup>

[16] The Claimant’s first payment of extended benefits was processed on March 11, 2022. The Claimant contacted the Commission on March 16, 2022 to request to change to standard parental benefits.<sup>8</sup>

[17] The Commission refused the Claimant’s request. The Commission said that it was too late for the Claimant to change options because she had already received

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<sup>4</sup> See Section 23(1.2) of the EI Act.

<sup>5</sup> General Division decision at para 9.

<sup>6</sup> GD3-6

<sup>7</sup> GD3-9

<sup>8</sup> General Division decision at para 9.

parental benefits. The Claimant made a request for reconsideration but the Commission maintained its decision.

– **The General Division decision**

[18] The General Division found that the evidence on the record showed the Claimant chose extended benefits on her application form. It also found that she was paid extended benefits before requesting to switch to standard.<sup>9</sup>

[19] The General Division found that the law is clear that once parental benefits have been paid, the choice between standard and extended cannot be changed. It found that there is no flexibility to interpret the law any differently due to the Claimant's circumstances.<sup>10</sup>

[20] The General Division determined that it is plain and obvious that the Claimant's appeal is bound to fail and therefore has no reasonable chance of success. For this reason, the General Division summarily dismissed the Claimant's appeal.

[21] The General Division considered that the Claimant chose extended benefits on her application form and had received benefits before asking to change. It determined that, because of these facts, there was no reasonable chance of success.

[22] The General Division wrote to the Claimant to tell her that it was considering summarily dismissing the appeal. It asked her to make arguments about why it should not dismiss her appeal without a hearing.<sup>11</sup>

[23] In her response, the Claimant referred to the return to work date that she provided on her application form, which is 52 weeks after her last day of work. She said that she was confused when she selected the extended option.<sup>12</sup> This return to work date was also confirmed on her Record of Employment.<sup>13</sup>

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<sup>9</sup> General Division decision at para 12.

<sup>10</sup> General Division decision at para 15.

<sup>11</sup> GD7

<sup>12</sup> GD8

<sup>13</sup> GD3-18

[24] The General Division did not address this evidence in its decision, or the Claimant's argument that she was confused when she chose the option for extended parental benefits. The General Division does not need to refer to every piece of evidence in its decisions. However, if the evidence is important enough, the General Division needs to discuss it.<sup>14</sup>

[25] The Commission argues that the General Division did not make an error when it summarily dismissed the appeal. It says that the law in the Claimant's situation is clear and unambiguous. It argues that the appeal is bound to fail because the Claimant chose extended benefits on her application form and was paid benefits before asking to switch to standard.<sup>15</sup>

[26] The Commission referred to decisions from the Federal Court and the Federal Court of Appeal in its submissions.<sup>16</sup> These decisions state that a claimant's election is what they choose on the application form, and that the election is irrevocable once benefits have been paid. The Court confirms that there is no relief available when a claimant makes a mistake and chooses the wrong option.

[27] However, the Federal Court has also stated that there may be relief available where a Claimant has been misled by relying on official and incorrect information from the Commission.<sup>17</sup> There are recent decisions from the General Division and the Appeal Division which have found that a claimant was misled by the Commission and therefore entitled to relief.<sup>18</sup> The Federal Court has not, as of yet, provided any direction as to what relief may be available when a Claimant is misled.

[28] The Claimant made it clear in her submissions that she was confused when she made her election. The return to work date on her application form contradicts her

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<sup>14</sup> The Federal Court of Appeal explained this in *Simpson v Canada (Attorney General)*, 2012 FCA 82 and *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

<sup>15</sup> AD4-4

<sup>16</sup> See *Canada (Attorney General) v Hull*, 2022 FCA 82 and *Canada (Attorney General) v De Leon*, 2022 FC 527.

<sup>17</sup> See *Karval v. Canada (Attorney General)*, 2021 FC 395 at para 14.

<sup>18</sup> *LJ v. Canada Employment Insurance Commission*, 2022 SST 380.

choice to receive 52 weeks of extended benefits after 15 weeks of maternity benefits. The General Division did not consider this evidence in its decision.

[29] By summarily dismissing the appeal, the Claimant did not have an opportunity to explain what may have led to her confusion. Given the decisions from the Tribunal, which have found this evidence relevant, I find that the Claimant's appeal is not "utterly hopeless."

[30] The General Division failed to consider the Claimant's evidence that her return to work date showed she planned to only take one year off work, as well as her statement that she was confused when she made her election. The General Division ignored this evidence which may be important to the outcome of the appeal. This is an error of fact.

## **Remedy**

[31] I have found that the General Division made an error when it summarily dismissed the Claimant's appeal. To fix the error, I will return the case to the General Division for reconsideration.<sup>19</sup> The Claimant will have a hearing.

[32] The parties have not yet had an opportunity to provide evidence and submissions on the question of the Claimant's misunderstanding when she made her initial election for parental benefits. I am returning the matter to the General Division so that the parties will have this opportunity.

## **Conclusion**

[33] The appeal is allowed. The General Division made an error when it summarily dismissed the Claimant's appeal. The matter is returned to the General Division for a hearing.

Melanie Petrunia  
Member, Appeal Division

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<sup>19</sup> My authority to return the case to the General Division once I have found an error comes from the DESD Act, s 59.