



Citation: *MM v Canada Employment Insurance Commission*, 2022 SST 1002

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. M.

Respondent: Canada Employment Insurance Commission
Representative: Josée Lachance

Decision under appeal: General Division decision dated May 4, 2022
(GE-22-1006)

Tribunal member: Janet Lew

Type of hearing: Teleconference

Hearing date: September 29, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: October 11, 2022

File number: AD-22-332

Decision

[1] The appeal is allowed in part. The Claimant's benefit period ended on October 16, 2021.

Overview

[2] The Appellant, M. M. (Claimant), is appealing the General Division decision. The General Division found that the Claimant had reached the end of her benefit period for Employment Insurance benefits. As claimants are entitled to receive benefits only within their benefit period, the General Division found that the Claimant could not get more weeks of benefits.

[3] The Claimant argues that the General Division was unfair. She argues that, as she is struggling, the General Division should have extended the benefit period on "humanitarian and compassionate grounds."¹ She asks the Appeal Division to grant her additional weeks of benefits.

[4] The Respondent, the Canada Employment Insurance Commission (Commission) argues that the General Division did not have any power to extend the benefit period. However, it accepts that the General Division made a reviewable error. The Commission submits that the General Division based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it, when it calculated that the Claimant's benefit period ended on October 2, 2021.

[5] The Commission asks the Appeal Division to give the decision it says the General Division should have given. The Commission asks the Appeal Division to make a finding that the benefit period for the Claimant started on October 18, 2020 and ended on October 16, 2021.

¹ See Claimant's Application to the Appeal Division—Employment Insurance, at AD1-4.

Issues

[6] The issues are as follows:

- a) Did the General Division have any jurisdiction to extend the benefit period on “humanitarian and compassionate grounds”?
- b) Did the General Division make a factual error about when the Claimant’s benefit period ended?

Analysis

[7] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.²

General Background

[8] According to the Claimant’s Record of Employment, she last worked on October 15, 2020.³ She applied for Employment Insurance regular benefits the next day.⁴ She received benefits from December 20, 2020 to July 17, 2021.

[9] On July 26, 2021, the Claimant applied for maternity and 61 weeks of extended parental benefits.⁵ She received nine weeks of maternity benefits from August 1, 2021 to October 2, 2021.

[10] The Commission determined that October 2, 2021, was the end of the Claimant’s benefit period, and that she could not get benefits after the benefit period ended. This meant that the Claimant did not get the maximum 15 weeks of maternity benefits or any parental benefits.

² See subsection 58(1) of the *Employment Insurance Act*.

³ See Record of Employment dated November 12, 2020, at GD3-16.

⁴ See Claimant’s application for benefits, filed on October 16, 2020, at GD3-12.

⁵ See Claimant’s application for benefits, filed on July 26, 2021, at GD3-36.

[11] The Claimant disputes capping her benefits. She says that she should get the full amount of maternity benefits and parental benefits for humanitarian and compassionate reasons.

Did the General Division have any jurisdiction to extend the benefit period on humanitarian and compassionate grounds?

[12] The Claimant argues that the General Division should have extended the benefit period for humanitarian and compassionate reasons. Being a new mother and having to live on a single income with skyrocketing cost of living has created enormous financial struggles. She says that ordinarily she would have continued working and would have been able to manage without having to rely on Employment Insurance benefits, but the pandemic upended things.

[13] Unfortunately for the Claimant, neither the General Division nor the Appeal Division have any power to extend the benefit period or grant extra weeks of benefits beyond the benefit period.⁶ Both the General Division and Appeal Division have to apply the provisions set out in the *Employment Insurance Act*.

[14] The General Division found that the Claimant's benefit period ended on October 2, 2021. The Claimant filed a new claim for benefits in July 2021, but she could not establish a new benefit period in relation to that claim because the prior benefit period had not ended.⁷ The *Employment Insurance Act* states that a benefit period shall not be established for a claimant if a prior benefit period has not ended.

[15] So, once the Claimant reached the end of her benefit period, she could not continue to receive benefits.⁸

⁶ Section 10(10) to (13.02) of the *Employment Insurance Act* provides limited circumstances for an extension of the benefit period. However, the Claimant's circumstances fall outside these provisions. She received regular benefits, so cannot rely on section 10(13) or (13.01). She did not receive parental benefits, so cannot rely on section 10(13.02).

⁷ Subsection 10(3) of the *Employment Insurance Act* states that a benefit period shall not be established for a claimant if a prior benefit period has not ended.

⁸ The Commission says that the Claimant could have filed a new claim after the benefit period ended, but she would have needed to have sufficient hours within her qualifying period. If she has sufficient hours, it may remain open to her to make a late claim for benefits. However, she would need to ask for an "antedate" or backdating of her application and to provide an explanation for why she was late.

Did the General Division make a factual error about when the Claimant's benefit period ended?

[16] The Commission accepts that the General Division based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it, when it calculated that the Claimant's benefit period ended on October 2, 2021.

[17] The Commission says that the evidence does not support the General Division's finding that the benefit period ended on October 2, 2021. I note that, at the General Division, the Commission had argued that the benefit period ended on October 2, 2021.⁹ It may be that the General Division simply rubber-stamped the Commission's arguments about the end date, without verifying the end date.

[18] The Commission now argues that the Claimant's benefit period ended on October 16, 2021.

[19] A benefit period begins on the later of

- (a) the Sunday of the week in which the interruption of earnings occurs, and
- (b) the Sunday of the week in which the initial claim for benefits is made.¹⁰

[20] Generally, the length of a benefit period is 52 weeks.¹¹

[21] The Claimant initially applied for benefits on October 16, 2020. According to her Record of Employment, she worked and was paid up to October 15, 2020.¹²

[22] Section 2(1) of the *Employment Insurance Act* states that an interruption of earnings means an interruption that occurs in the earnings of an insured person and in any circumstances determined by the Regulations.

⁹ There was a different representative for the Commission at the General Division.

¹⁰ See subsection 10(1) of the *Employment Insurance Act*, which defines when a benefit period begins.

¹¹ See subsection 10(2) of the *Employment Insurance Act*

¹² See Record of Employment issued November 12, 2020, at GD3-16.

[23] Subsections 14(1) and (2) of the *Employment Insurance Regulations* defines when an interruption of earnings occurs. Based on the definition of an interruption of earnings, the Sunday of the week in which the interruption of earnings occurred was October 18, 2020.

[24] The later of the two scenarios described in paragraph 19 means that the Claimant's benefit period began on October 18, 2020.

[25] The Commission notes that adjusting or changing the beginning of the benefit period effectively gives the Claimant two additional weeks of maternity benefits. This is because adjusting the beginning of the benefit period shifts the end date of the benefit period from October 2, 2021 to October 16, 2021. This is 52 weeks after the benefit period began.

[26] The General Division did not explain how it calculated the end date of the Claimant's benefit period. Even so, the evidence does not support the General Division's finding that the Claimant's benefit period ended on October 2, 2021. If the Claimant's benefit period had ended on October 2, 2021, this would have meant that her benefit period began before the interruption of earnings occurred, and before she made an initial claim for benefits.

Remedy

[27] Unless the outcome would have been the same, there are two remedies available to correct any errors: the Appeal Division can send the matter back to the General Division for reconsideration, or it can give the decision that the General Division should have made.¹³ If the Appeal Division substitutes its own decision, this means it may make findings of fact.¹⁴

[28] The parties do not dispute or challenge any of the evidence, and all of the evidence is available to allow me to come to my own decision. There are no issues that

¹³ Subsection 59(1) of the *Department of Employment and Social Development Act* lists the remedies available.

¹⁴ *Weatherly v Canada (Attorney General)*, 2021 FCA 58, at paras 49 and 53, and *Nelson v Canada (Attorney General)*, 2019 FCA 222, at para 17.

the parties did not get a fair hearing at the General Division, or that they did not have a chance to fairly address the evidence or argue the merits of their case. It is appropriate for me to give the decision that the General Division should have made.

[29] For the reasons I have set out above, the Claimant's benefit period ended on October 16, 2021 rather than on October 2, 2021. This gives her an additional two weeks of maternity benefits. No further benefits are available on this claim.

Conclusion

[30] The appeal is allowed in part. The General Division miscalculated when the Claimant's benefit period ended. The Claimant's benefit period ended on October 16, 2021.

Janet Lew
Member, Appeal Division