



Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 517

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** A. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 6, 2023  
(GE-23-47)

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**Tribunal member:** Solange Losier

**Decision date:** April 26, 2023

**File number:** AD-23-146

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] A. R. is the Claimant in this case. She had a baby on August 14, 2021, and took 6 weeks off from work. Her spouse was the first one to apply for Employment Insurance (EI) parental benefits. He elected (chose) the standard option in his application.<sup>1</sup> And the Canada Employment Insurance Commission (Commission) paid him around 10 weeks of parental benefits.

[3] The Claimant submitted her own application for parental benefits after her spouse, on October 12, 2022. She asked for 18 weeks of parental benefits, also electing the standard option in her application.

[4] The Commission decided that it could not pay the Claimant parental benefits because she applied more than 52 weeks after the birth of her child (the parental benefit window period).<sup>2</sup>

[5] The Claimant appealed that decision to the General Division. The General Division agreed with the Commission and dismissed her appeal. It decided that, under the standard option, she could not receive parental benefits outside of the 52-week parental benefit window period (August 8, 2021, to August 13, 2022). It also decided that the Claimant could not switch to the extended option, even though that would have lengthened the parental benefit window period.

[6] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>3</sup>

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<sup>1</sup> See section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an “election.” A Claimant has to elect for either standard or extended parental benefits.

<sup>2</sup> See reconsideration decision at GD3-30 to GD3-31. The Commission also decided that they would pay the Claimant 6 weeks of *maternity* benefits for the weeks she was off from work after having the baby (from August 15, 2021, to September 25, 2021).

<sup>3</sup> See application to the Appeal Division at AD1A-1 to AD1A-5.

[7] The Claimant's appeal has no reasonable chance of success. So, I cannot give her permission to appeal the General Division decision.

## Issue

[8] Could the General Division have based its decision on an important mistake about the facts or made an error of law when it decided that the Claimant was not entitled to parental benefits?

## I am not giving the Claimant permission to appeal

[9] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>4</sup>

[10] I must be satisfied that the appeal has a reasonable chance of success.<sup>5</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>6</sup>

[11] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (the relevant errors are also known as "grounds of appeal").<sup>7</sup>

[12] The possible grounds of appeal to the Appeal Division are that the General Division:

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law; or
- based its decision on an important error of fact.<sup>8</sup>

[13] For the appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.

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<sup>4</sup> See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>5</sup> See section 58(2) of the DESD Act.

<sup>6</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>7</sup> See section 58(1) of the DESD Act.

<sup>8</sup> See section 58(1) of the DESD Act.

– **The Claimant says that the General Division made an error of fact**

[14] In her application to the Appeal Division, the Claimant said that the General Division made an error of fact.<sup>9</sup> She did not refer to any specific facts that the General Division got wrong, but her written arguments say that the Commission should be responsible for the false and misleading information that it provided to her and that caused her a financial loss.<sup>10</sup>

[15] The Claimant also highlights how the Commission was able to retroactively pay her maternity benefits outside of the 17-week maternity window period in which they are payable.<sup>11</sup> Because of this, she says that the Commission should make an exception and pay her parental benefits outside of the 52-week parental benefit window period.

– **The General Division's decision**

[16] The General Division confirmed that the Claimant's child was born on August 14, 2021. It decided that the 52-week parental benefit window ran from August 8, 2021 to August 13, 2022.<sup>12</sup>

[17] The General Division said that the Claimant was bound by her spouse's election for the standard option because he had already been paid parental benefits for about 10 weeks.<sup>13</sup>

[18] The General Division determined that the Claimant had applied for parental benefits after her spouse, on October 12, 2022. It decided that her application was outside of the 52-week parental benefit window and that she could not change her election to the extended option.<sup>14</sup>

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<sup>9</sup> See AD1-5.

<sup>10</sup> See AD1-6.

<sup>11</sup> See section 22(2) of the EI Act. Pregnancy benefits are payable during the period that begins 12 weeks before the week that a person expects to or does give birth and ends 17 weeks later.

<sup>12</sup> This was the beginning of the week in which her child was born.

<sup>13</sup> See paragraph 15 of the General Division decision at AD1A-4.

<sup>14</sup> See paragraphs 13 and 15 of the General Division decision at AD1A-4.

[19] The General Division considered the Claimant's argument that she was misinformed by more than one Service Canada agent. It was sympathetic to the Claimant's situation but decided that the law could not be changed.<sup>15</sup>

– **There is no arguable case that the General Division made an error of fact or an error of law**

[20] The Claimant is arguing that the General Division made an error of fact, but the essential facts do not appear to be in dispute between the parties. I have also considered whether the General Division made an error of law, but there is no arguable case on that ground either.

[21] The Claimant's spouse was the first one to apply for parental benefits. He chose the standard option. The spouse received around 10 weeks of parental benefits. The Claimant applied for parental benefits later, also asking for the standard option. However, she applied outside of the 52-week parental benefit window period.<sup>16</sup> She asked the Commission to change the election from standard to extended, but that was only after her spouse had already received payment.<sup>17</sup>

[22] The General Division relied on the relevant sections of the law to support its decision. The law does not allow a person to change their election once parental benefits have been paid.<sup>18</sup> This means that, once the Claimant's spouse received payments under the standard option, the Claimant was bound by her spouse's choice and could not change to the extended option.

[23] The law is very clear that, regardless of any misinformation a person might have received, the election is the one they made on the application, and it cannot be changed once the Commission starts making payments.

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<sup>15</sup> The General Division referred to *Pannu v Canada (Attorney General)*, 2004 FCA 90 at paragraph 20 of its decision.

<sup>16</sup> See section 23(2)(b) of the EI Act.

<sup>17</sup> See supplementary record of claim at GD3-23.

<sup>18</sup> See sections 23(1.2) and 23(1.3) of the EI Act.

[24] In recent decisions, the Federal Court of Appeal has confirmed that neither the Commission nor the Tribunal can change a person's election, even if the Commission gave them bad or misleading information.<sup>19</sup>

[25] The Claimant's argument that she was misled into choosing the standard option has no reasonable chance of success.

[26] I reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.<sup>20</sup> I did not find relevant evidence that the General Division might have ignored or misinterpreted. As well, the General Division applied the relevant sections of the law.

## Conclusion

[27] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier  
Member, Appeal Division

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<sup>19</sup> See *Johnson v Canada (Attorney General)*, 2023 FCA 49; *Canada (Attorney General) v Hull*, 2022 FCA 82 and *Canada (Attorney General) v Pettinger*, 2023 FCA 51.

<sup>20</sup> The Federal Court recommends doing such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.