



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v JL and MG*, 2023 SST 859

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** A. Fricker

**Respondents:** J. L.  
M. G.

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**Decision under appeal:** General Division decision dated  
September 14, 2022 (GE-22-2281 and GE-22-2282)

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**Tribunal member:** Jude Samson

**Type of hearing:** Teleconference

**Hearing date:** March 7, 2023

**Hearing participants:** Appellant's representative  
Respondents

**Decision date:** June 28, 2023

**File numbers:** AD-22-698  
AD-22-699

## Decision

[1] I am allowing the appeals by the Canada Employment Insurance Commission (Commission). The General Division made an error of law. This error allows me to give the decision the General Division should have given.

[2] J. L. chose to receive parental benefits under the extended option. She could not change her choice to the standard option. This is because, when she made her request, she had already started receiving extended benefits. M. G. is bound by the option that J. L. selected.

## Overview

[3] First, J. L. applied to receive maternity benefits followed by parental benefits. On her application, she chose to receive extended parental benefits. Then, her partner, M. G., applied for standard parental benefits.

[4] The standard option offers a higher rate of benefits, payable for up to 35 weeks. The extended option offers a lower rate, payable for up to 61 weeks. The parental benefits are in addition to the 15 weeks of maternity benefits.

[5] The Commission paid J. L. extended parental benefits for 42 weeks, from April 2021 to February 2022. In May 2022, J. L. asked for standard parental benefits instead. The Commission denied this request, saying that the option can't be changed once it has started paying parental benefits.

[6] The Claimants appealed the Commission's decision to the Tribunal's General Division. The General Division allowed the appeals, saying that the partners had chosen the standard option, since it better matched with J. L.'s intentions of taking a year's leave.

[7] The Commission is now appealing the General Division decision to the Appeal Division. It argues, among other things, that the General Division made an error of law.

[8] I find that the Commission is correct. I am allowing its appeals.

## Issues

[9] The issues are as follows:

- a) Did the General Division make an error of law in finding that the option that the partners chose was the one that best matched their intentions?
- b) If so, what is the appropriate remedy?
- c) Were the partners entitled to standard parental benefits?

## Analysis

[10] The law allows me to intervene in this case if the General Division made an error of law.<sup>1</sup>

### **The General Division made an error of law**

[11] The General Division made an error of law in finding that the parental benefits option that the Claimants chose was the one that best matched their intentions.

[12] When you apply for Employment Insurance parental benefits, you have to choose between the standard and extended options.<sup>2</sup>

[13] On her application, J. L. selected the extended option.<sup>3</sup>

[14] However, J. L. says that she always intended to select the standard option, since the plan was to take only a year's leave. She says that the information she got from her employer and a certain language barrier resulted in confusion and led her to tick the wrong box on her application.

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<sup>1</sup> See section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> Claimants have to make this choice (election) under section 23(1.1) of the *Employment Insurance Act* (EI Act).

<sup>3</sup> See GD3-9 in J. L.'s appeal record.

[15] So, the issue before the General Division was whether the Claimants were entitled to standard parental benefits. On this point, the General Division said the following (in paragraph 17 of its decision):

The option that the Claimants meant to choose when they filled out their applications is important. At that moment, did they mean to choose the standard or extended option?

[16] The General Division was satisfied that J. L. had always intended to take a year's leave. So, it decided that J. L. had chosen the standard option, since it was more consistent with the length of her leave and was the best option financially.

[17] However, I find that the General Division made an error by not considering the Federal Court of Appeal's decision in *Hull*.<sup>4</sup> In that decision, which the General Division had to follow, the Court said that a person's choice is what they indicated on the application form, not what best matches their intentions.

[18] In addition, once a person has made their choice and the Commission has started paying them benefits, it is impossible to change the choice.<sup>5</sup>

[19] This means that the General Division made an error of law by giving more weight, in its decision, to J. L.'s intentions than to what she had indicated on her application form.

### **I will give the decision the General Division should have given**

[20] At the hearing, the parties agreed that the evidence is complete and that I am in a position to give the decision the General Division should have given. I have reached the same conclusion.<sup>6</sup>

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<sup>4</sup> See *Canada (Attorney General) v Hull*, 2022 FCA 82.

<sup>5</sup> See section 23(1.1) of the EI Act; *Hull* at para 64; and *Karval v Canada (Attorney General)*, 2021 FC 395 at para 16.

<sup>6</sup> Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16 to 18.

[21] J. L. and M. G. aren't arguing that they were prevented from presenting their case in any way. The main facts aren't in dispute, and the issue is a rather narrow one.

[22] This means that I can decide whether the Claimants were entitled to standard parental benefits.

### **The partners weren't entitled to standard parental benefits**

[23] J. L.'s application form clearly indicates that she chose to receive extended parental benefits.<sup>7</sup> She also asked for 52 weeks of benefits, which is impossible under the standard option.

[24] On May 2, 2022, the Commission received a request from the Claimants to change the type of parental benefits.

[25] However, the Commission could not change the type of benefits, since it had already started paying J. L. extended parental benefits. The payments started on April 30, 2021.<sup>8</sup>

[26] I acknowledge that M. G. applied for standard parental benefits.<sup>9</sup> But, he was bound by J. L.'s choice, since she made her choice first.<sup>10</sup>

[27] J. L. says that she made an innocent mistake by ticking the wrong box on her application form. I sympathize with the couple's situation. However, I have to follow the Federal Court of Appeal's decisions and respect the choice that J. L. made on her application form. In addition, I can't rewrite or circumvent the law, even in very sympathetic cases.

### **Conclusion**

[28] I am allowing the Commission's appeals.

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<sup>7</sup> See GD3-9 in J. L.'s appeal record.

<sup>8</sup> See GD3-21 in J. L.'s appeal record.

<sup>9</sup> See GD3-12 in M. G.'s appeal record.

<sup>10</sup> See section 23(1.3) of the EI Act.

[29] The General Division made an error of law in finding that the option that the partners chose was the one that best matched their intentions. The General Division's error allows me to give the decision the General Division should have given. Essentially, the partners aren't entitled to standard parental benefits.

Jude Samson  
Member, Appeal Division