



Citation: *MV v Canada Employment Insurance Commission*, 2023 SST 937

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: M. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 3, 2023
(GE-23-211)

Tribunal member: Melanie Petrunia

Decision date: July 19, 2023

File number: AD-23-417

Decision

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

Overview

[2] The Applicant, M. V. (Claimant), applied to receive five weeks of standard parental benefits, starting on October 23, 2022. His child was born on October 24, 2021. The Claimant and his spouse had decided to share the maximum number of weeks of standard parental benefits allowed under the Employment Insurance (EI) Act, which is 40 weeks.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), sent the Claimant a letter stating that it had approved his claim for five weeks of parental benefits, starting on October 23, 2022. However, the Commission only paid the Claimant one week of benefits.

[4] The Commission decided that the Claimant could not receive all five weeks of benefits because the parental benefit window ends 52 weeks after the date of birth of the Claimant's child and benefits can only be paid within that window. The Claimant requested a reconsideration and the Commission maintained its decision.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division but his appeal was dismissed. The General Division found that the Claimant can only receive parental benefits within the parental benefit window. It decided that the parental benefit window ended 52 weeks after his child's birth and only one of the weeks claimed fell within that period.

[6] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues the General Division made numerous errors.

[7] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise any reviewable error of the General Division upon which the appeal might succeed?

I am not giving the Claimant permission to appeal

[9] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[10] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).²

[11] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;³ or

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

² DESD Act, s 58(2).

³ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

d) made an error in law.⁴

[12] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

There is no arguable case that the General Division erred

[13] The period during which parental benefits may be paid is referred to as the parental benefit window. The EI Act says that the parental benefit window ends 52 weeks after the child was born.⁶ This period can be extended in certain circumstances.

[14] The EI Act also states that when two claimants make a claim for benefits for the same child, additional weeks of benefits can be shared by the claimants.⁷ When standard parental benefits are elected, the maximum number of weeks that can be divided between the claimants is 40 and when extended benefits are elected the maximum number of weeks is 69.

[15] The General Division reviewed the relevant sections of the legislation. It considered whether any of the circumstances that allow an extension of the parental benefit window applied to the Claimant.⁸ It found that the parental benefit window for the Claimant was the standard 52 weeks from the date of his child's birth.⁹

[16] Based on this clear wording of the legislation, the General Division found that the Claimant could only be paid benefits for one of the weeks that he claimed.¹⁰ The

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁶ Section 23(2)(b) of the Act.

⁷ Section 23(4) of the Act.

⁸ General Division decision at para 23.

⁹ General Division decision at para 21.

¹⁰ General Division decision at para 27.

remaining four weeks of benefits are outside the parental benefit window and therefore the Claimant is not entitled to them.

[17] The General Division went on to consider whether the Commission could be held accountable for its mistakes. It accepted that the Claimant took appropriate steps to inform himself about his entitlement to parental benefits.¹¹ The General Division found that the Claimant contacted Service Canada and was mistakenly told that he could take the additional weeks of benefits after his wife.¹²

[18] The General Division also accepted that the Claimant was then told that he would receive five weeks of benefits in a letter from the Commission dated October 28, 2022.¹³ This confirmed the Claimant's understanding of his entitlement. The Commission acknowledged that this letter should have said that he would only receive one week of benefits.¹⁴

[19] Despite its agreement that the Claimant was misinformed by the Commission, the General Division found that the Claimant is not entitled to the additional four weeks on benefits. It found that the law is clear and case law confirms that misinformation from the Commission does not entitle him to benefits that he is not otherwise entitled to.¹⁵ The General Division suggested that he could have recourse in a civil court.¹⁶

[20] The Claimant argues that the General Division erred in its decision. He says that the letter from the Commission dated October 28, 2022 was a legal notice. He says that he was informed he would be receiving five weeks of benefits and made decisions according to this understanding. He argues that he was required to follow this legal notice and the Tribunal should also follow it as a valid reason to grant him benefits.¹⁷

¹¹ General Division decision at paras 33 and 34.

¹² General Division decision at para 34.

¹³ General Division decision at para 36.

¹⁴ General Division decision at para 37.

¹⁵ General Division decision at para 42.

¹⁶ General Division decision at para 43.

¹⁷ AD1-7

[21] The Claimant argues that he should be entitled to rely on official communication from the Commission. If he had been told that he would only receive one weeks of benefits, he would have returned to work and not suffered financial losses.¹⁸

[22] The Claimant says that he and his wife researched and spoke with Service Canada agents and the HR representative from their workplaces. They believed that he would be entitled to all five additional weeks of benefits as long as his benefit period began within the parental benefit window. The Claimant argues that it is not lawful for the Commission to reverse its decision.¹⁹

[23] I find that the Claimant's arguments do not have a reasonable chance of success. The General Division considered and accepted that the Claimant was misinformed and misled by the Commission. It correctly acknowledged that it does not have the jurisdiction to order that benefits be paid based on this misinformation.²⁰

[24] The General Division properly interpreted and applied the law to the Claimant's circumstances. The Claimant could not be paid benefits outside of the parental benefit window. The length of the window was correctly determined by the General Division to be 52 weeks. It also was correct in law when it found that it cannot order the Commission to pay the Claimant benefits based on the misinformation provided by its agents.

[25] The Claimant indicated in the application for leave to appeal that the General Division made an error of jurisdiction, and error of law and based its decision on an important error of fact. He did not explain in his reasons for appeal how the General Division made these specific errors. However, I have considered his arguments in full and find that they do not demonstrate any potential errors of jurisdiction, law or fact.

¹⁸ AD1-7

¹⁹ AD1-7

²⁰ General Division decision at footnote 19 referencing *Canada (Attorney General) v. Shaw*, 2002 FCA 325 and *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

[26] Aside from the Claimant's arguments, I have also considered the other ground of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness.

[27] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

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

Melanie Petrunia
Member, Appeal Division