



Citation: *LS v Canada Employment Insurance Commission*, 2023 SST 1023

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: L. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 26, 2023
(GE-23-1117)

Tribunal member: Melanie Petrunia

Decision date: July 31, 2023

File number: AD-23-643

Decision

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

Overview

[2] The Applicant, L. S. (Claimant), applied for maternity and standard parental benefits on January 29, 2022. Her child was born on December 21, 2021, and she took vacation from work before applying for benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant's benefit period started January 16, 2022. However, it found that she could only be paid parental benefits until December 24, 2022. This meant that the Claimant received 33 weeks of parental benefits, instead of the 35 weeks she expected.

[4] The Claimant appealed to the Tribunal's General Division. The General Division dismissed her appeal. It found that the Claimant could only be paid benefits within her parental window, which ended December 24, 2022.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs leave (permission) for her appeal to move forward. The Claimant argues that the General Division based its decision on an important factual error.

[6] 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

[7] 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

[8] 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

[9] 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

[10] 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
- d) made an error in law.⁴

[11] 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 her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

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.

⁴ This paraphrases the grounds of appeal.

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

No arguable case the General Division erred

[12] The Claimant's child was born on December 21, 2021. She used vacation time and then applied for EI maternity and parental benefits on January 29, 2022, and her benefit period started January 16, 2022.⁶

[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.⁷ This period can be extended in certain circumstances.⁸

[14] The General Division found that the Claimant's parental benefit window began on December 19, 2021, the Sunday before her child was born. The window ended 52 weeks later, December 24, 2022.⁹ The General Division considered the circumstances that allow for an extension of the window and found that none applied to the Claimant.¹⁰

[15] In her application for leave to appeal, the Claimant argues that the General Division based its decision on an important error of fact. She says that her baby was born two weeks before her due date. She was induced into labour as a safety precaution. The Claimant says that she would be entitled to the additional weeks of benefits if the due date of January 2, 2022 was used.¹¹

[16] There is no arguable case that the General Division based its decision on a factual error. I have listened to the hearing before the General Division. The General Division asked if any of the circumstances that allow for an extension of the parental benefit window applied to the Claimant. When the member asked if the Claimant's child was hospitalized, she said he wasn't but that he was born two weeks earlier than expected.

⁶ General Division decision at para 10.

⁷ Section 23(2) of the *Employment Insurance Act* (the Act).

⁸ See sections 23(3), 23(3.01), 23(3.2), 23(3.21) and 23(3.22) of the Act.

⁹ General Division decision at para 13.

¹⁰ General Division decision at para 13.

¹¹ AD1-6

[17] I find that there is no arguable case that the General Division erred by not referring to this fact in its decision. The fact that the Claimant's due date was later than the date the child was born does not impact on the parental benefit window.

[18] A factual error must be material to the decision. This means that the fact would have impacted on the decision. There is no arguable case that this fact was material to the General Division's decision.

[19] The General Division properly applied the law when it determined that the Claimant's parental benefit window ended on December 24, 2022, and she did not meet any of the conditions that would allow the window to be extended.

[20] Aside from the Claimant's arguments, I have also considered the other grounds 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. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law by the General Division in its decision.

[21] 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

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

Melanie Petrunia
Member, Appeal Division