



Citation: *CV v Canada Employment Insurance Commission*, 2023 SST 1357

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. V.
Representative: K. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 6, 2023
(GE-23-2161)

Tribunal member: Melanie Petrunia
Decision date: October 9, 2023
File number: AD-23-891

Decision

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

Overview

[2] The Applicant, C. V. (Claimant), applied for and received Employment Insurance (EI) maternity benefits followed by parental benefits. She selected extended parental benefits on her application, which pays a lower rate of benefits over a longer period of time.

[3] The Claimant says that her circumstances have changed, and she wants to receive standard parental benefits. She was pressured by her partner to choose extended benefits but is now suffering financially with the reduced rate of benefits.

[4] The Claimant contacted the Respondent, the Canada Employment Insurance Commission (Commission) and asked to switch from extended parental benefits to the standard benefit option.

[5] The Commission refused the Claimant's request. It said that it was too late to change after parental benefits had been paid. The Claimant requested a reconsideration, and the Commission maintained its decision.

[6] The Claimant appealed to the General Division of the Tribunal. Her appeal was dismissed. The General Division found that the Claimant chose extended parental benefits and her choice was irrevocable.

[7] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward.

[8] 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

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

Analysis

[10] 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

[11] 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

[12] 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

[13] 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

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.

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

Background

[14] There are two types of parental benefits:

- Standard parental benefits – the benefit rate is 55% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits is payable to one parent.
- Extended parental benefits - the benefit rate is 33% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits is payable to one parent.

[15] The *Employment Insurance Act* (EI Act) says that a claimant must elect standard or extended benefits when they make a claim for parental benefits and that the election is irrevocable once benefits are paid.⁶

[16] The Claimant’s partner made an application for maternity and parental benefits on her behalf. In the application, her partner chose extended parental benefits. She received her first payment of parental benefits on May 14, 2023. On June 19, 2023, she contacted the Commission and asked to change her election.

[17] The Commission refused the Claimant’s request. The Commission said that it was too late for the Claimant to change options because she had already received parental benefits. The Claimant made a request for reconsideration, but the Commission maintained its decision.

– The General Division decision

[18] At the General Division, the Claimant argued that her partner had told her to choose extended parental benefits and said that he would support her. When she

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

⁶ See Section 23(1.2) of the EI Act.

began to receive the lower benefit rate, her partner refused to help. She is now on her own and struggling financially.

[19] The General Division found that the Claimant elected to received extended parental benefits on her application form.⁷ It considered the Claimant's testimony and accepted that this choice was causing her financial hardship. The General Division acknowledged that the Claimant's circumstances are sympathetic but found that it has to apply the law.⁸

[20] The General Division considered recent case law from the Federal Court of Appeal which made it clear that a claimant's election cannot be changed once benefits have been paid.⁹ It found that the Claimant asked to change to the standard parental benefit option after she received parental benefits. Because benefits had been paid, the General Division found that the Claimant's election could not be changed.¹⁰

There is no reviewable error of the General Division upon which the appeal might succeed

[21] The Claimant says that the General Division did not follow procedural fairness. She argues that she was not aware that the Tribunal was entirely bound by the law and unable to take her unfortunate circumstances into consideration.¹¹

[22] The Claimant says that she was pressured into choosing extended benefits at a time when she was not of sound mind. She was under the impression that the Tribunal would be able to take these factors into consideration.¹²

[23] I find that the Claimant's arguments do not have a reasonable chance of success. The Claimant argued before the General Division that she is suffering

⁷ General Division decision at para 15.

⁸ General Division decision at para 17.

⁹ See General Division decision at para 14 referencing *Canada (Attorney General) v Hull*, 2022 FCA 82.

¹⁰ General Division decision at para 15.

¹¹ AD1-3

¹² AD1-3

financially and was placed in this situation by an abusive partner. The General Division decision acknowledges these arguments.¹³

[24] The General Division refers to a recent decision from the Federal Court of Appeal in *Canada (Attorney General) v. Hull* (Hull). In that case, the Court found that once payment of parental benefits has started the election cannot be revoked, by the claimant, the Commission, or the Tribunal.¹⁴

[25] There is no arguable case that the General Division failed to consider the Claimant's arguments about the circumstances surrounding her election and her financial hardship. The Claimant's argument that she was unaware that the Tribunal can only apply the law is unfortunate but does not amount to a reviewable error. The General Division was required to apply the law, which it did.

[26] Aside from the Claimant's arguments, I have also considered other grounds of appeal. The Claimant has not pointed to any factual errors on the part of the General Division, and I see no evidence such errors. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law.

[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

¹³ General Division decision at paras 11 and 12.

¹⁴ See *Hull* at para 64.