



Citation: *WC v Canada Employment Insurance Commission*, 2023 SST 1355

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: W. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 17, 2023
(GE-23-1302)

Tribunal member: Melanie Petrunia

Decision date: October 8, 2023

File number: AD-23-712

Decision

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

Overview

[2] The Applicant, W. C. (Claimant), applied to receive 35 weeks of standard parental benefits. His child was born on January 14, 2022, and he filed his application for benefits on November 28, 2022.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), approved the Claimant's claim for benefits but it stopped paying him benefits on January 13, 2023. It decided that the Claimant could only be paid benefits within the parental benefit window, which ended 52 weeks after the date of birth of the Claimant's child.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division and his appeal was dismissed. The General Division found that the Claimant can only receive parental benefits within the parental benefit window. It also decided that the Claimant could not change his election from standard to extended parental benefits because it was too late to make the change.

[5] 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 based its decision on important factual errors.

[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.

Issues

[7] The issues are:

- a) Is there arguable case that the General Division err by failing to consider that the Claimant would have changed his election before the first payment of benefits was issued, but he was misled by the Commission?
- b) Is there arguable case that the General Division err by failing to consider that the online application form did not mention that the end date for standard benefits was 52 weeks from the child's date of birth?
- c) Is there arguable case that the General Division based its decision on a factual error by saying that the total amount of benefits paid would be the same under either the standard or extended options?

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;

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).

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 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

[12] 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. When a claimant elects to receive extended parental benefits, the period is extended by 26 weeks.⁷

[13] The General Division reviewed the relevant sections of the legislation, the date of birth of the Claimant's child and the date that he applied for standard parental benefits. It found that the parental benefit window for the Claimant was the standard 52 weeks from the date of his child's birth.⁸

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.

⁶ Section 23(2)(b) of the Act.

⁷ Section 23(3.21) extends the period by 26 weeks when no regular or other special benefits are paid to a claimant. Section 23(3.2) extends the period when a claimant was not paid regular benefits but was paid other special benefits.

⁸ General Division decision at para 10.

[14] The Claimant had requested, on March 14, 2023, to change his election from standard to extended parental benefits.⁹ This would have extended the parental benefit window and allowed the Claimant to be paid benefits for a longer period of time.

[15] The General Division considered whether the Claimant could change his election. It reviewed the legislation and recent case law from the Federal Court of Appeal. The General Division found that the law is clear that a claimant cannot change their election once benefits have been paid.¹⁰ This meant that the Claimant could not change his election to extended parental benefits.

[16] In his application for leave to appeal, the Claimant argues that the General failed to consider that he was misled by the Commission about when his claim would end. If he had been told that his benefits would end in January 2023, he could have changed his election to extended parental benefits before they were paid. The Claimant says that his claim document showed that his claim would end on November 25, 2023.¹¹

[17] The Claimant also argues that the online application did not show or explain that the period when standard parental benefits could be paid was 52 weeks from the date of the child's birth. He says that the application is poorly designed and doesn't properly present the two parental benefit options.¹²

[18] I find that there is no arguable case that the General Division relied on any factual errors. The General Division considered the Claimant's arguments that he was misled by the communication from the Commission into believing that his claim would end in November 2023.¹³ It found that this miscommunication was unfortunate but the law is clear and the Tribunal has to apply the law, even when the circumstances are sympathetic.¹⁴

⁹ General Division decision at para 16.

¹⁰ General Division decision at paras 18 to 22.

¹¹ AD1-8.

¹² AD1-8.

¹³ General Division decision at para 11.

¹⁴ General Division decision at para 12.

[19] The General Division cited and applied leading case law from the Federal Court and the Federal Court of Appeal concerning the election of parental benefits. Claimants in these cases also argued that they were misled and the application form lacked information about the parental benefit window.¹⁵

[20] The Federal Court has found that the absence of information on the application form does not constitute misleading information.¹⁶ It also found that the onus is on claimants to seek additional information when applying for benefits and the Service Canada website provides the necessary information about the parental benefit window.¹⁷

[21] The Federal Court and Federal Court of Appeal have confirmed that, once payment has started, a claimant's election (the choice on the application form) cannot be changed.¹⁸ These decisions are binding. The General Division did not fail to consider any relevant facts or arguments in its decision.

[22] The Claimant also argues that the General Division, during the hearing, referred to the Claimant receiving the same amount of benefits overall, whether he chose standard or extended benefits. He argues that this is untrue and he would receive more benefits under the extended option. The Claimant says that this is a fact that needs to be taken into consideration.

[23] There is no arguable case that the General Division erred by failing to consider that the Claimant would have received more benefits overall. The General Division did not base its decision on the value of benefits that the Claimant would receive. This fact is not relevant to the decision.

¹⁵ See General Division decision at paras 18 to 22 referencing *Canada (Attorney General) v. Variola*, 2022 FC 1402 (*Variola*) and *Canada (Attorney General) v. Johnson*, 2023 FCA 49.

¹⁶ *Variola* at para 26.

¹⁷ *Variola* at paras 27 and 29.

¹⁸ See *Hull*; *Karval v Canada (Attorney General)*, 2021 FC 395; *Canada (Attorney General) v De Leon*, 2022 FC 527; and, *Variola*.

[24] The General Division applied the proper legal test and took into consideration all relevant evidence. There is no arguable case that it based its decision on a factual error.

[25] Aside from the Claimant's arguments, I have also considered the other ground of appeal. The Claimant has not pointed to any errors of jurisdiction and I see no evidence of such errors. There is no arguable case that the General Division made any errors of law or failed to follow procedural fairness.

[26] 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

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

Melanie Petrunia
Member, Appeal Division