



Citation: *AB v Canada Employment Insurance Commission*, 2024 SST 238

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 20, 2023
(GE-23-2871)

Tribunal member: Melanie Petrunia

Decision date: March 9, 2024

File number: AD-23-1133

Decision

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

Overview

[2] The Applicant, A. B. (Claimant), and his spouse decided to share 40 weeks of employment insurance (EI) standard parental benefits after their child had been placed with them for the purposes of adoption on May 3, 2022.

[3] The Claimant's spouse applied for and received benefits from October 16, 2022 to May 6, 2023. The Claimant then applied to receive 10 weeks of parental benefits beginning May 21, 2023.

[4] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant could only be paid benefits within the parental benefit window, which ended 52 weeks after the date that the Claimant's child was placed with him. This meant that he was not eligible for the parental benefits he requested.

[5] 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 benefits within the parental benefit window, that the window could not be extended and that the Claimant could not change his election from standard to extended parental benefits.

[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 several errors of law in its decision.

[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.

Issues

[8] The issues are:

- a) Is there arguable case that the General Division made an error of law by failing to consider that he was misled by the Commission?
- b) Is there arguable case that the General Division erred in law by failing to consider that the application of other legislation because the information on parental benefits is unreasonably vague and ambiguous?
- c) Is there arguable case that the General Division erred in law by failing to consider whether his application for benefits could have been antedated because he was misled by the Commission?

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;

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

[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

– The General Division decision

[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 a claimant's child is born or placed for the purposes of adoption.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

[14] The General Division reviewed the relevant sections of the legislation.⁸ It then considered when the Claimant's parental benefit window began. He argued at the General Division that the parental benefit window should not start at the date of placement. The birth mother of the Claimant's child had 21 days in which to change her

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 paras 16 to 20.

mind about the adoption. The Claimant said that the window should begin after this period passed.⁹

[15] The General Division acknowledged this argument but found that the Claimant's child was placed with him for the purposes of adoption on May 3, 2022. In making this finding, it considered and interpreted the legislation governing adoptions in the province in which the Claimant resides.¹⁰

[16] The General Division found that none of the circumstances that allow for an extension of the parental benefit window applied to the Claimant. It found that the Claimant elected to receive standard parental benefits and the parental benefit window ended 52 weeks after the date his child was placed with him, which was May 6, 2023.¹¹

[17] The Claimant had argued that there were a number of other factors which should allow the parental benefit window to be extended in his case, so that benefits could be paid. The General Division summarized these points as well as the Claimant's alternative argument that he and his spouse should be allowed to change their election to extended parental benefits so that additional weeks could be paid.¹²

[18] The General Division found the Claimant and his wife credible and accepted their evidence.¹³ It noted that the Claimant's situation is sympathetic but found that he was not entitled to benefits outside of the parental window.

[19] Finally, the General Division looked at whether the Claimant could change his election from standard to extended parental benefits. It found that the election of standard parental benefits became irrevocable once benefits were paid.¹⁴

⁹ General Division decision at para 31.

¹⁰ General Division decision at paras 33 to 44.

¹¹ General Division decision at para 20.

¹² General Division decision at paras 50 to 52.

¹³ General Division decision at para 54.

¹⁴ General Division decision at paras 72 and 73.

No arguable case that the General Division made an error of law

[20] The Claimant relies on comments in the General Division decision acknowledging that the legislation and available information is unclear and often confusing for parents and others. He says that these comments suggest it was unreasonable to expect him to properly inform himself of his rights.¹⁵

[21] The Claimant also raises an argument that the *Consumer Protection Act* may be applicable in his circumstances, given ambiguities in the legislation and in descriptions of benefits offered by the Commission.¹⁶

[22] The General Division acknowledged the Claimant's arguments with respect to the conduct of the Commission and the lack of clear information.¹⁷ It correctly recognized that the Commission cannot be held responsible for not proactively providing clear information. There is no arguable case that the General Division made an error of law.

[23] Concerning the Claimant's argument regarding the *Consumer Protection Act*, the General Division was required to apply the *Employment Insurance Act*. Its jurisdiction is limited to considering whether the Claimant is entitled to benefits under the provisions of that Act. The Claimant did not raise the *Consumer Protection Act*, and it is not applicable in these circumstances. The General Division did not make an error of law by not considering or applying this legislation.

[24] The Claimant argues that the General Division should have followed a decision of the Appeal Division which found that a claimant was misled by the Commission's application form and therefore did not make a clear election for standard or extended parental benefits.¹⁸

¹⁵ AD1-69

¹⁶ AD1-69 to 70.

¹⁷ General Division decision at paras 63 to 66.

¹⁸ See AD1-71 referencing *Canada Employment Insurance Commission v KD*, 2021 SST 335.

[25] The decision that the Claimant relies on was successfully appealed to the Federal Court of Appeal.¹⁹ The Federal Court of Appeal found that both the General Division and the Appeal Division had made an error of law in the interpretation of the legislation.

[26] The General Division cited and followed binding decisions from the Federal Court and the Federal Court of Appeal when it found that the Claimant's election could not be changed, despite a lack of clear information on the application form.²⁰

[27] The Claimant also references a decision concerning antedating, or backdating, an application for benefits. He says that, as in that case, he and his wife had good cause for the delay in applying for benefits because they were misled. The Claimant suggests that the General Division should have taken this into consideration.²¹

[28] The issue before the General Division was whether the Claimant was entitled to benefits outside of the parental benefit window. There is nothing to suggest that the Claimant had requested an antedate or that the Commission had made a decision on this issue. It was not an issue for the General Division to decide and there is no arguable case that it made an error of law by not considering whether the Claimant could antedate his application.

[29] The General Division took all of the Claimant evidence and arguments into consideration. It followed binding case law and applied the proper legal test to the Claimant's circumstances. There is no arguable case that the General Division made any errors of law.

[30] Aside from the Claimant's arguments, I have also considered the other grounds 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 failed to follow procedural fairness or based its decision on any factual errors.

¹⁹ See *Canada (Attorney General) v. De Leon*, 2022 FC 527.

²⁰ General Division decision at para 75.

²¹ AD1-72

[31] 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

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

Melanie Petrunia
Member, Appeal Division