



Citation: *DT v Canada Employment Insurance Commission*, 2024 SST 120

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 29, 2024
(GE-24-274)

Tribunal member: Stephen Bergen

Decision date: February 9, 2024

File number: AD-24-101

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] D. T. is the Applicant I will call him the Claimant because he made a claim for parental benefits.

[3] The Claimant applied for the extended parental benefit. After he started to receive the benefit, he realized that he made a mistake. He says that the extended benefit was not enough to live on and that he had meant to apply for the standard benefit. The Claimant asked the Respondent, the Canada Employment Insurance Commission (Commission) to change his benefit to the standard benefit but it refused. He asked it to reconsider but it would not change its decision.

[4] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division agreed with the Commission and dismissed his appeal. Now he is asking the Appeal Division for leave to appeal.

[5] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made any error that I may consider.

[6] The Claimant did not identify which ground (or grounds) of appeal he intended to argue, or how his arguments fit within those grounds. The Claimant repeated his argument that he made a mistake and that he had accidentally chosen extended parental benefits and said that the General division decision was not fair.

[7] The Claimant did not suggest that the General Division misunderstood or ignored any of the evidence, and it is clear on the face of the decision that it understood the Claimant's evidence that he could not afford to live on the extended parental benefit and that he made a mistake in completing the application for benefits.

[8] I will consider whether the General Division may have made an error of law. The Claimant also said the decision was not fair, so I will also consider whether the General Division made an error of procedural fairness.

[9] I am following the lead of the Federal Court, which says I need to be cautious at the leave to appeal stage. I should not refuse to hear appeals from unrepresented applicants, just because they have not expressed their reasons for appealing in the best way possible.¹

Issues

[10] The issues in this appeal are

- a) Is there an arguable case that the General Division made an error of law?
- b) Is there an arguable case that the General Division acted unfairly?

I am not giving the Claimant permission to appeal

General Principles

[11] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[12] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.²

¹ See the Federal Court decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

² This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

[13] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”³

Error of law

[14] The General Division said that the Claimant elected the extended parental benefit because he chose the extended benefit when he completed his application. It also found that it was too late to change his election after he began receiving benefits.

[15] There is no arguable case that the General Division made an error of law.

[16] The *Employment Insurance Act* (EI Act) says that a claimant must elect to receive either the standard benefit (for 35 weeks) or the reduced extended benefit (for 61 weeks).⁴ It also says that a claimant cannot change their election, once they have made it.⁵

[17] The EI Act is law, but what the Federal Court of Appeal says is also the law. The Commission, the General Division, and the Appeal Division must all follow the direction of the Federal Court of Appeal.

[18] The Federal Court of Appeal said that a claimant elects the parental benefit that they selected on the application form. It rejected the notion that a claimant can have elected something different because they had intended to elect something different. The Court also confirmed that it is impossible for the claimant, the Commission, the General Division, or the Appeal Division to revoke, alter or change the election once payments of those benefits have started.⁶

³ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

⁴ See sections 23(1.1) and 12(3)(b) of the EI Act.

⁵ See section 23(1.2) of the EI Act.

⁶ See the decision in *Canada (Attorney General) v. Hull*, 2022 FCA 82 *Canada*, followed by later Federal Court of Appeal Decisions in *Canada (Attorney General) v. Johnson*, 2023 FCA 49 *Canada*; *(Attorney General) v. Pettinger*, 2023 FCA 51, and *Canada (Attorney General) v. Jeffers*, 2022 FCA 82

Procedural Fairness

[19] The Claimant has not made out an arguable case that the General Division acted unfairly.

[20] It appears that he is most concerned about the decision **result**. He did not mean to choose the extended benefit and he cannot live on the extended benefit, so he feels the decision result was unfair.

[21] However, I may only consider errors of procedural fairness. Procedural fairness is not concerned with whether a party feels that the decision result is fair. Procedural fairness is concerned with the fairness of the **process**.

[22] Parties before the General Division have a right to certain procedural protections. These include a party's right to be heard and to know the case against them, and the right to an unbiased decision-maker.

[23] The Claimant has not argued that the General Division did not give him a fair chance to prepare for the hearing or that he did not know what was going on in the hearing. He has not suggested that he did not have a fair chance to present his case at the hearing or to respond to the Commission's case. He has not complained that the General Division member was biased or had prejudged the matter before hearing from him.

[24] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that resulted in an unfair process.

[25] The Claimant has no reasonable chance of success.

Conclusion

[26] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division