



Citation: *RA v Canada Employment Insurance Commission*, 2024 SST 454

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: R. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 5, 2024
(GE-24-717)

Tribunal member: Stephen Bergen

Decision date: **April 30, 2024**

File number: AD-24-271

Decision

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

Overview

[2] R. A. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) parental benefits.

[3] The Claimant's child was born on December 7, 2023. He applied for the parental benefits on November 27, 2023, and elected the standard benefit. Because he had delayed his application for almost a year, he only received one week of benefits in the 52-week window in which the standard benefit can be paid. At the time he applied, the Claimant did not know that the window could have been extended by another 26 weeks if he had chosen the extended benefit. When he realized his mistake, he asked the Respondent, the Canada Employment Insurance Commission (Commission), to change his election to the extended benefit.

[4] The Commission informed the Claimant that it could not change his election, and it would not change its decision when the Claimant asked it to reconsider. The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), but the General Division dismissed his appeal. Now he is asking for permission to appeal to the Appeal Division.

[5] I am refusing permission to appeal. There is no arguable case that the General Division made an error of law.

Issue

[6] Is there an arguable case that the General Division made an error of law when it said that the Claimant could not change his election?

I am not giving the Claimant permission to appeal

General Principles

[7] 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.

[8] 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.¹

[9] 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."²

Error of law

[10] The Claimant argued that the General Division made an error of law. He argued that the General Division misapplied the decisions of the Federal Court and Federal Court of Appeal that it cited. He suggests that the facts are more similar in a General Division decision with file number GE-21-2341, which the Commission appealed to the Appeal Division (file number AD-22-815).³

¹ 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).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ This citation for the Appeal Division decision is *Canada Employment Insurance Commission v FV*, 2023 SST 815.

[11] The General Division acknowledged that the Tribunal has previously overturned some Commission decisions regarding the election of parental benefits.⁴ The Claimant raised one of those cases, where the General Division allowed that the claimant's initial election of standard benefits was invalid. When the Commission appealed, the Appeal Division refused to consider the appeal and it allowed the General Division decision to stand.

[12] The facts of the Tribunal case to which the Claimant referred are similar to the facts of his own situation, as he noted. However, this does not help with this appeal.

[13] In the decision to which the Claimant referred, the Commission further appealed the Appeal Division's refusal to the Federal Court. The Federal Court found that the Claimant could not change his election and said that the Appeal Division's decision was unreasonable.

[14] The Federal Court returned the matter to the Appeal Division to reconsider. This time, the Appeal Division allowed the appeal and found that the General Division made a mistake. It confirmed that the Claimant could not change his election from standard to extended parental benefits.

[15] I also note that the Federal Court decision that sent the matter back to the Appeal Division was *Canada (Attorney General) v Variola*. *Variola* is one of the three decisions that the General Division relied on in this case.⁵ The facts in *Variola* are exactly the same facts as those in the Tribunal case cited by the Claimant.

[16] Regardless, the decisions in *Variola*, *Karval*, and *Hull* all stand for the principle that a claimant cannot change their election from one type of parental benefit to the other, after they have received their first payment.⁶ As set out in section 23(1.2) of the *Employment Insurance Act*, the election becomes irrevocable at this point.

⁴ See para 23 of the General Division decision.

⁵ *Canada (Attorney General) v Variola*, 2022 FC 1402.

⁶ *Karval v Canada (Attorney General)*, 2021 FC 395; *Canada (Attorney General) v Hull*, 2022 FCA 82.

[17] The Federal Court and Federal Court of Appeal decisions are binding on both the General Division and the Appeal Division of the Social Security Tribunal. The law requires the Tribunal to follow the lead of the courts.

[18] I appreciate that the Claimant would have made a different choice of benefit if he had more information when he made his election. However, the law is now very clear. When a claimant chooses a parental benefit type on their application, that is their election.⁷ Once they receive the first parental benefit payment, there is no way that the Commission or this Tribunal can change the benefit that they elected.⁸

[19] There is no arguable case that the General Division made an error of law. The Claimant's appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁷ See *Canada (Attorney General) v Hull*, 2022 FCA 82, at para 47.

⁸ See section 23(1.1) of the *Employment Insurance Act*.