



Citation: *LA v Canada Employment Insurance Commission*, 2024 SST 623

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 8, 2024 (GE-24-1182)

Tribunal member: Glenn Betteridge

Decision date: May 31, 2024

File number: AD-24-370

Decision

[1] I am not giving L. A. permission to appeal. This means his appeal won't go ahead. So, the General Division decision stands unchanged.

Overview

[2] L. A. is the Claimant in this case. He made a claim for parental benefits. On his application form, he elected (in other words, chose) to apply for standard parental benefits.

[3] But before the Claimant applied, his spouse applied for extended parental benefits.

[4] The Commission paid the Claimant six weeks of standard parental benefits. The weekly benefit rate for standard parental benefits is higher than the weekly rate for extended parental benefits.

[5] Later on, the Commission reconsidered the Claimant's case. The law says both parents have to choose the same type of parental benefit—standard or extended.¹ Because his spouse applied first, and chose extended, the Commission said he was only entitled to extended parental benefits. This meant he received more benefits than he was entitled to get. So, the Commission created an overpayment and sent him a notice of debt.

[6] The Claimant asked the Commission to reconsider its decision. The Commission maintained its decision. Then the Claimant appealed to this Tribunal's General Division. The General Division dismissed his appeal.

[7] The Claimant has now asked for permission to appeal the General Division decision.

¹ Section 23 of the *Employment Insurance Act* (EI Act) sets out the law about parental benefits.

Issues

[8] I have to decide two issues:

- Is there an arguable case the General Division used an unfair process to make its decision?
- Is there an arguable case the General Division made another type of error I can consider?

I am not giving the Claimant permission to appeal

The test for getting permission to appeal is easy to meet

[9] I can give a claimant permission to appeal if they can show there is an arguable case the General Division made one of the following errors:

- It used an unfair process or was biased.
- It missed an issue it should have decided, or decided an issue it should not have decided.
- It based its decision on an important factual error.
- It made a legal error.²

[10] An arguable case means the same thing as a reasonable chance of success. This test is easy to meet.³

² These are the grounds of appeal in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Section 58(2) of the DESD Act says that I have to give permission to appeal if the appeal has a reasonable chance of success. This is the same as having an “arguable case” on one of the grounds of appeal. See *O’Rourke v Canada (Attorney General)*, 2018 FC 498.

³ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

There isn't an arguable case the General Division used an unfair process

[11] On his appeal form, the Claimant checked the box that says the General Division didn't follow procedural fairness. The Claimant didn't point to anything specific that was unfair. He wrote one sentence to explain why he was appealing: "The decision is absolutely unfair and not happy with this decision and I would like to submit my complaint to the federal court as well."⁴

[12] The General Division makes an error if it uses an unfair process or is biased. These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had an opportunity to respond to that case, and had an impartial decision-maker consider their case fully and fairly.⁵

[13] I reviewed the General Division appeal file and read the General Division decision.⁶ The Tribunal emailed the Claimant the Commission's reconsideration file (GD3) and written argument (GD4) about three weeks before the hearing.

[14] I listened to the recording of the General Division hearing. The Claimant said he wanted to go ahead with the hearing without an interpreter. (He confirmed this in an email to the Tribunal.) The General Division:

- identified and explained the legal issue in the case—standard versus extended parental benefits—and what the law says about that
- gave him an opportunity to present his case
- asked him relevant questions
- paraphrased the Commission's argument (from GD4) and gave him an opportunity to respond to it

⁴ See AD1-3.

⁵ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

⁶ I read GD2, GD3, GD4, and GD5.

[15] Near the end of the hearing, the Claimant told the General Division he had said everything he wanted to say.⁷

[16] Nothing in the General Division file or the hearing recording shows me there is an arguable case the Claimant didn't know the case he had to meet or that the General Division didn't give him an opportunity to respond to that case.

[17] Nothing in the General Division appeal file, its decision, or the hearing recording shows me there is an arguable case the member prejudged his case or didn't consider his case fully and fairly.

[18] So, the Claimant hasn't shown there is an arguable case the General Division failed to follow procedural fairness.

[19] At the General Division, the Claimant argued the overpayment was the Commission's fault and he can't afford to pay it back. The General Division decision confirmed the overpayment. His reason for appealing suggests he is arguing this outcome is unfair. But the law doesn't let me consider the unfairness of the General Division decision for the Claimant. That's not a ground of appeal.

There is no other reason I can give the Claimant permission to appeal

[20] The Claimant is representing himself. So, I looked beyond the argument he made to see if there was an arguable case the General Division made other errors.⁸ I reviewed the General Division appeal file, listened to the hearing, and read the General Division decision.

[21] The General Division correctly identified the legal issue it had to decide—the Claimant's entitlement to parental benefits. It used the law it had to use to decide that

⁷ Listen to the General Division hearing recording at 29:14.

⁸ Where a self-represented claimant is asking for permission to appeal a General Division decision, I should not apply the permission to appeal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

issue. And it didn't ignore or misunderstand any relevant evidence when it made its decision.

[22] And at paragraph 45, the General Division correctly stated that it didn't have the power to reduce or erase the Claimant's overpayment.⁹

[23] This means there isn't an arguable case the General Division made any other error I can consider. In other words, the Claimant's appeal doesn't have a reasonable chance of success.

Conclusion

[24] I can't give the Claimant permission to appeal. His appeal won't go ahead. And the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division

⁹ See section 112.1 of the EI Act.