



Citation: *Canada Employment Insurance Commission v RK*, 2024 SST 582

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission (Commission)  
**Representative:** Daniel McRoberts

**Respondent:** R. K.

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**Decision under appeal:** General Division decision dated November 16, 2023  
(GE-23-2090)

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**Tribunal member:** Solange Losier

**Type of hearing:** Videoconference

**Hearing date:** March 26, 2024

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** May 23, 2024

**File number:** AD-23-1121

## Decision

[1] The Commission's appeal is allowed. The General Division made an error of law and ignored some important evidence. So, I will give the decision the General Division should have made.

[2] The Claimant elected for Employment Insurance (EI) extended parental benefits. Her election became irrevocable once parental benefits were paid. This means that she cannot change her election to the standard parental benefit option.

## Overview

[3] R. K. is the Claimant in this case. She applied for EI maternity and parental benefits. In her application form, she elected for the extended parental benefit option and identified that she wanted 55 weeks of parental benefits. After she started receiving parental benefit payments, she asked the Commission to change it to the standard option because she made an error in her application.

[4] The Commission refused to change it from the extended to the standard option. It said parental benefits were already paid under the extended option, so according to the law her election was irrevocable.<sup>1</sup> The Claimant appealed the Commission's decision to the General Division.

[5] The General Division allowed the Claimant's appeal.<sup>2</sup> It found that the Claimant's election for extended parental benefits was not deliberate. Because of that, it said she was entitled to amend her application form to clarify her election and confirm that she elected to get the standard option.

[6] The Commission appealed the General Division's decision to the Appeal Division.<sup>3</sup> It says that the General Division made errors of law and errors of fact.

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<sup>1</sup> See Commission's reconsideration decision at page GD3-29.

<sup>2</sup> See General Division decision at pages AD1-10 to AD1-21.

<sup>3</sup> See Application to the Appeal Division at pages AD1-1 to AD1-21.

[7] I have found that the General Division made an error of law and ignored some important evidence.

## Issues

[8] The issues in this appeal are:

- a) Did the General Division make an error of law by misinterpreting the *Canada (Attorney General) v Hull*, 2022 FCA 82 decision and by ignoring other relevant case law from the Federal Court and Federal Court of Appeal involving parental benefit elections?
- b) Did the General Division ignore some important evidence, specifically the validation section on the application form?
- c) Did the General Division make an important error of fact when it concluded that the Claimant requested a total of 55 weeks of EI benefits coinciding with her return to work date?
- d) If so, how should the error or errors be fixed?

## Analysis

[9] An error of law happens when the General Division does not apply the correct law, or uses the correct law but misunderstands what it means or how to apply it.<sup>4</sup>

[10] An error of fact happens when the General Division bases its decision on an “erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.”<sup>5</sup>

[11] Any of these types of errors would allow me to intervene in the General Division decision.<sup>6</sup>

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<sup>4</sup> See section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>5</sup> See section 58(1)(c) of the DESD Act.

<sup>6</sup> See section 59(1) of the DESD Act.

– **Background Information**

[12] The Claimant submitted an online application for maternity and parental benefits on January 10, 2023.<sup>7</sup> She requested to receive parental benefits immediately after maternity benefits.<sup>8</sup> She wrote that she expected to return to work on December 27, 2023.<sup>9</sup>

[13] The application identifies that there are two types of parental benefits available:<sup>10</sup>

Standard parental benefits—the benefit rate is 55% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits is payable to one parent.

Extended parental benefits—the benefit rate is 33% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits is payable to one parent.

[14] The Claimant picked the extended option for parental benefits. Using a drop-down list in the application, she selected 55 weeks.<sup>11</sup>

[15] The Claimant then received 15 weeks of maternity benefits, followed by extended parental benefits at the reduced rate.<sup>12</sup>

[16] A few weeks after she started receiving extended parental benefits, the Claimant contacted the Commission to ask them to switch it to the standard option.<sup>13</sup>

[17] The Commission refused her request, so the Claimant appealed to the General Division of the Tribunal.

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<sup>7</sup> See application for benefits at pages GD3-3 to GD3-19. A benefit period was established effective on December 18, 2022.

<sup>8</sup> See page GD3-9.

<sup>9</sup> See page GD3-6.

<sup>10</sup> See page GD3-9.

<sup>11</sup> See page GD3-10.

<sup>12</sup> See payment chart at page GD3-31 and section 12(3)(a) of the *Employment Insurance Act* (EI Act)—15 weeks is the maximum number of weeks you can get for maternity benefits.

<sup>13</sup> See page GD3-25.

– **The Commission’s appeal to the Appeal Division**

[18] The Commission argues that the General Division made the following errors of law and errors of fact.<sup>14</sup>

[19] First, the Commission says that the General Division erred by ignoring the conclusions from the *Hull* decision, instead distinguishing it on two minor factual differences.

[20] Second, the Commission argues that the General Division erred by focusing only on the *Hull* decision. It says that the General Division failed to consider other relevant decisions from the Federal Court and Federal Court of Appeal. More specifically, it says that the General Division did not consider the following relevant Court decisions:

- *Canada (Attorney General) v Johnson*, 2023 FCA 49
- *Canada (Attorney General) v De Leon*, 2022 FC 527
- *Karval v Canada (Attorney General)*, 2021 FC 395

[21] Third, the Commission says that the General Division ignored some important and relevant evidence, specifically the validation section on the application form.

[22] And finally, the Commission says that the General Division made an important error of fact when it erroneously concluded that the Claimant had intended to select and receive 55 weeks of benefits because this matched with the leave period she arranged with her employer. Instead, it says that the Claimant requested 55 weeks of EI parental benefits, and not 55 weeks of total benefits.

– **The Claimant says that the General Division didn’t make any errors**

[23] First, the Claimant argues that the General Division didn’t make any errors in its decision and didn’t err in its interpretation of the *Hull* decision.<sup>15</sup>

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<sup>14</sup> See Commission’s arguments at pages AD3-1 to AD3-6.

<sup>15</sup> See Claimant’s arguments at pages AD5-1 to AD5-4.

[24] She explains that she picked the incorrect box on the application form and never intended to take 18 months for “maternity leave”.

[25] Second, she submits that the word “elect” must be considered in its entirety and a simple oversight with one question cannot subvert her intended election. As well, she says that any ambiguity in the application form relating to an election, should be construed in favour of the elector.

[26] Third, she submits that there was other important information on the application form that was not consistent with her election for 55 weeks of extended parental benefits (i.e., she wrote that her return to work date was December 27, 2023 in the application).

[27] Lastly, there was no confirmation received after the application form was submitted that confirms what was selected. She submits that there is no way an applicant would notice there was an issue with the information submitted until lower payments are received. She says this problem could be fixed by making it possible to change the election, or set up an automatic confirmation email confirming the option selected as suggested in the *Hull* decision.<sup>16</sup>

– **The General Division allowed the Claimant’s appeal**

[28] The General Division agreed with the Claimant and allowed her appeal.<sup>17</sup> It found that the Claimant’s election for extended parental benefits was not deliberate.

[29] The General Division concluded that the application form did not clearly show that the Claimant elected to receive extended parental benefits. Because of that, it said that the Claimant could amend her application to clarify her election and confirm that she elected to receive standard parental benefits instead.

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<sup>16</sup> See *Canada (Attorney General) v Hull*, 2022 FCA 82, at paragraph 25.

<sup>17</sup> See General Division decision at pages AD1-10 to AD1-21.

[30] The General Division’s decision and analysis focused solely on the *Hull* decision. It found that there were two key facts from the *Hull* decision that were distinguishable from the facts in this case.<sup>18</sup>

[31] Namely, it noted that the Claimant in this case delayed only a few weeks and did not delay nine months (as Ms. Hull did) before contacting the Commission to clarify her election.<sup>19</sup> Also, Ms. Hull was “confused” by the information on the application form, but the Claimant in this case works as a paralegal and is familiar with legal forms and applications, including EI parental benefits.<sup>20</sup>

[32] The General Division then reviewed in detail the Court’s analysis in *Hull*.<sup>21</sup> After doing so, the General Division concluded that the Claimant did not elect to receive extended parental benefits. Based on the contents of the application form, it could not find that the Claimant deliberately chose or elected to receive extended parental benefits.<sup>22</sup> Instead, it found that the Claimant deliberately chose to receive standard parental benefits, but accidentally checked off the wrong box on the application form.

[33] The General Division considered that the Claimant had clearly indicated her return to work date (December 27, 2023) in the application and found the number of weeks she selected (55) corresponded with that date.<sup>23</sup>

[34] The General Division found that the Commission had the responsibility to effectively review the completed application form to evaluate the Claimant’s intention and determine their election, particularly since the Claimant had indicated a return to work date in the application.<sup>24</sup>

[35] And, it noted that the law requires a Claimant to provide, “.. Such other information as the Commission may require.”<sup>25</sup> Because of that, it found that the

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<sup>18</sup> See paragraphs 13–15 of the General Division decision.

<sup>19</sup> See paragraph 13 of the General Division decision.

<sup>20</sup> See paragraph 14 of the General Division decision.

<sup>21</sup> See paragraphs 16–31 of the General Division decision.

<sup>22</sup> See paragraph 18 of the General Division decision.

<sup>23</sup> See paragraph 20 of the General Division decision.

<sup>24</sup> See paragraphs 20 and 23 of the General Division decision.

<sup>25</sup> See paragraph 24 of the General Division decision and section 48(2) of the EI Act.

Commission should have asked questions during the decision-making process, since there was information in the application that conflicted with information provided by the Claimant.

– **The General Division made an error of law**

[36] I find that the General Division erred in law for two reasons. It misinterpreted the *Hull* decision and did not consider other relevant Court decisions about parental benefit elections that are binding on the Tribunal.

[37] I accept that there were some factual differences in this case and in the *Hull* decision. However, these factual differences were minor and don't make the conclusions in the *Hull* decision not applicable.

[38] There were some important facts in this case and the *Hull* decision that were exactly the same. For example, the Claimant in this case and Ms. Hull both elected for extended parental benefits in the application form. They both asked the Commission to change the election from the extended option to the standard option only after parental benefits were paid.

[39] The *Employment Insurance Act* (EI Act) requires claimants to elect either standard or extended benefits in their claim for parental benefits.<sup>26</sup> The law says that your choice is irrevocable once parental benefits are paid.<sup>27</sup>

[40] The term “elect” is not defined in the EI Act, but the Court in *Hull* has interpreted it. The Court considered the text, context and purpose of sections 23(1.1) and 23(1.2) of the EI Act and determined that there is only one reasonable interpretation of the section.<sup>28</sup> That is, the election is the choice of the parental benefit you make on the application form.

[41] The Court in *Hull* confirms that there is no provision that allows the Commission to initiate a change on the application form. Its mandate is to review the application and

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<sup>26</sup> See section 23(1.1) of the EI Act.

<sup>27</sup> See section 23(1.2) of the EI Act.

<sup>28</sup> See *Hull*, at paragraphs 62–63.



make a decision as to whether a claimant qualifies for benefits based on the information provided by the claimant.<sup>29</sup>

[42] The Court in *Hull* also states that it is not up to the Commission to determine whether a claimant has made the “right” choice. Rather, it is the Claimant that has the onus to select the parental benefit option they want and a number of weeks based on their particular circumstances.<sup>30</sup>

[43] In another decision called *Johnson*, the Court rejected a similar argument raised by the Claimant in this case. Ms. Johnson also argued that she intended to choose standard parental benefits based on the one year leave period she had arranged with her employer. Similarly, she picked extended parental benefits and asked for 54 weeks. The Court stated that under the governing legislation, neither the Commission nor the Tribunal has the jurisdiction to decide an election is invalid or to change an election after it is made and parental benefits have been paid.<sup>31</sup>

[44] In another case, Ms. De Leon asked the Commission for extended parental benefits and requested 48 weeks. Similarly, her return to work date was inconsistent with the 48 weeks of parental benefits she asked for in the application form.

[45] The Court in the *De Leon* cited the *Karval* decision, noting that “fundamentally it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions ... had she read the application, she would have understood that the parental payments would be reduced. She would also have appreciated that once parental benefits were paid her election was irrevocable. These things are clearly stated on the application....”<sup>32</sup>

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<sup>29</sup> See section 48(3) of the EI Act and *Hull*, at paragraph 56.

<sup>30</sup> See *Hull*, at paragraph 56.

<sup>31</sup> See *Canada (Attorney General) v Johnson*, 2023 FCA 49, at paragraph 15. Also see, *Canada (Attorney General) v Pettinger*, 2023 FCA 51, at paragraph 12. The facts of this case were slightly different, as the Court looked at the “parental benefit window” period and a request to change the election made.

<sup>32</sup> See *Canada (Attorney General) v De Leon*, 2022 FCA 527, at paragraph 31.

[46] The Court acknowledged in *De Leon* there were some minor factual differences, but found there was a strong argument that the *Karval* decision still applied despite the factual differences.

[47] The same applies here. All of these parental benefit election cases have some minor factual differences, but all the claimants in the above cases wanted to do the same thing: namely, to change their election after parental benefits were paid. Some claimants were confused by the application form, and some simply made an error by picking the wrong parental benefit option.

[48] To summarize, the Court has told us that the parental benefit election is the one you make in your application form. The information on the application form has been determined to be clear and not confusing. It is the Claimant's responsibility to carefully read the application and pick the option based on her circumstances. The Commission is not required to determine whether she made the right choice in the application, even when the information provided by the Claimant is inconsistent.

[49] The General Division erred in law by concluding that the Claimant could change her election after parental benefits were paid.<sup>33</sup> This is prohibited by law. The conclusions in the *Hull* decision and other relevant Court decisions confirm that the Commission and the Tribunal do not have the authority to decide an election is invalid or change it after parental benefits are paid. Parental benefits were paid in this case, so the Claimant's election was irrevocable.

– **The General Division ignored some important evidence**

[50] I find that the General Division ignored some important evidence, specifically the **validation section** of the application form.<sup>34</sup>

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<sup>33</sup> See section 58(1)(b) of the DESD Act.

<sup>34</sup> See section 58(1)(c) of the DESD Act.

[51] There is a lengthy explanation in the application form that explains how parental benefits work depending on what option you pick.<sup>35</sup> There is also a validation section of the application form that provides a summary.

[52] The following is a snapshot of the validation section from the Claimant's application.<sup>36</sup>

### **Validation of maternity/parental benefits information**

Review the information you provided. If the information is correct, click "Continue". If you want to make any changes, click "Previous".

**Benefit type requested** Maternity benefits followed by parental benefits

#### **Maternity**

**Maximum weeks of maternity benefits** Up to 15 weeks paid at a rate of 55% of your weekly insurable earnings

#### **Parental**

**Parental benefits to start immediately after maternity benefits** Yes

### **Type of parental benefits**

Extended benefit: You've chosen to receive benefits at a reduced rate of 33% of your weekly insurable earnings (up to a maximum amount) each week for 55 weeks.

The payable period for extended parental benefits begins the week in which the child is born or placed with you for the purpose of adoption and ends 78 weeks later.

**Number of parental weeks selected** 55 weeks paid at a reduced rate of 33% of your weekly insurable earnings

**Maternity and parental weeks** Up to 15 weeks of maternity benefits paid at a rate of 55% of your weekly insurable earnings, followed

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<sup>35</sup> See pages GD3-9 to GD3-11.

<sup>36</sup> See pages GD3-10 to GD3-11.

by 55 weeks of parental benefits paid at a reduced rate of 33% of your weekly insurable earnings

**Reminder:** You can't change your selection (standard or extended) once you've started receiving parental benefits.

[53] As noted above, the validation section says that the Claimant was going to get 15 weeks of maternity benefits at 55% and based on her election for extended, that would follow by 55 weeks of parental benefits at a reduced rate of 33%. It also says that you can't change your election once you start receiving parental benefits.

[54] The General Division did not refer to this evidence in its decision or at the hearing. The validation section of the application form provides an important summary of what the Claimant elected before her application was submitted. It would have been important to establish whether the Claimant read and understood the validation section of the application, particularly since it clearly shows that she was going to get 15 weeks of maternity benefits and 55 weeks of parental benefits. This was important evidence that was ignored by the General Division.

[55] Since I have already found errors, it is not necessary to consider the other alleged errors.

### **Fixing the error**

[56] There are two options for fixing the error. I can either return the matter to the General Division for reconsideration, or I can give the decision that the General Division should have given.<sup>37</sup>

[57] The Commission says that the record is complete and I should make the General Division should have made in accordance with relevant case law.

[58] The Claimant says that the appeal should be returned to the General Division for a new hearing.

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<sup>37</sup> See section 59(1) of the DESD Act.

– **I will make the decision the General Division should have**

[59] I find that it is appropriate for me to substitute with my own decision in this case. In doing so, I can make any necessary findings of fact.<sup>38</sup> The parties have had a full and fair opportunity to make their case at the General Division. As well, the record is complete.

– **The Claimant elected for extended parental benefits and that election was irrevocable**

[60] The election is the one you make in your application form.<sup>39</sup> The application form shows that the Claimant elected for extended parental benefits for 55 weeks.<sup>40</sup>

[61] I find that the Claimant elected for the extended option when she applied for parental benefits and asked for 55 weeks.

[62] In my view, the Claimant's choice for extended parental benefits was a deliberate choice. I have considered her testimony from the General Division hearing where she stated that "*I was looking at the maternity and thinking well that's not long enough so I think I need the extended and that's why I selected the extended there, meaning I just want more than the maternity leave they were showing me, I thought I was taking a year off.*"<sup>41</sup>

[63] The election for extended benefits is irrevocable after parental benefits have been paid.<sup>42</sup>

[64] A payment chart in the file shows that the Claimant started receiving parental benefits in April 2023.<sup>43</sup> The first parental benefit payment was processed by the Commission on April 21, 2023 (for the biweekly period from April 9, 2023, to April 22, 2023).

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<sup>38</sup> See section 64(1) of the EI Act.

<sup>39</sup> See *Hull*, at paragraph 56.

<sup>40</sup> See page GD3-10.

<sup>41</sup> See General Division audio recording at 17:32 to 17:59.

<sup>42</sup> See section 23(1.2) of the EI Act.

<sup>43</sup> See payment chart at pages GD3-31.

[65] The Claimant contacted the Commission on May 30, 2023, to ask them to amend the parental benefit option from extended to standard.<sup>44</sup>

[66] I find the Claimant cannot change her election from extended to standard because she only asked the Commission after she started receiving parental benefits, so it was irrevocable.

[67] I acknowledge that the Claimant tried to change her election promptly, but it became irrevocable once she started receiving parental benefits under the extended option in April 2023.<sup>45</sup>

[68] I don't agree with the Claimant when she says that the Commission ought to have realized that she incorrectly picked extended benefits because it was not consistent with her return to work date in her application. It is not the Commission's responsibility to verify that her election was the right choice.<sup>46</sup>

[69] It is the Claimant's responsibility to read the application form and to carefully select the parental benefits she wants.<sup>47</sup> The validation section of the application form summarized what she picked. It shows that she would get 15 weeks of maternity benefits and 55 weeks of extended parental benefits at a reduced rate (this totals 70 weeks of combined benefits).

[70] I accept that the Claimant made a genuine mistake when she selected the extended option. The consequences of that error might seem harsh, but I have no authority or discretion to revoke her election or change it.<sup>48</sup> I have to apply the law and I can't rewrite it or interpret it in a manner contrary to its plain meaning.<sup>49</sup>

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<sup>44</sup> See summary of call at GD3-25.

<sup>45</sup> See *Karval*, at paragraph 8.

<sup>46</sup> See *Hull*, at paragraph 56.

<sup>47</sup> See *Karval*, at paragraph 14 and *De Leon*, at paragraph 31.

<sup>48</sup> See *Hull*, at paragraph 55 and *Johnson*, at paragraph 15.

<sup>49</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301, at paragraph 9.

[71] For these reasons, I find that the Claimant elected for extended parental benefits and asked for 55 weeks. She cannot amend her election because it became irrevocable once parental benefits were paid.

## **Conclusion**

[72] The Commission's appeal is allowed. The General Division made an error of law and ignored some important evidence.

[73] I have decided that the Claimant made an election for extended parental benefits. That election became irrevocable once parental benefits were paid. This means that she cannot change her parental benefit election from extended to standard.

Solange Losier  
Member, Appeal Division