



Citation: *Canada Employment Insurance Commission v JR*, 2024 SST 893

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Daniel McRoberts

Respondent: J. R.

Decision under appeal: General Division decision dated February 11, 2024
(GE-23-2490)

Tribunal member: Melanie Petrunia

Type of hearing: Videoconference

Hearing date: June 26, 2024

Hearing participants: Appellant's representative
Respondent

Decision date: July 30, 2024

File number: AD-24-165

Decision

[1] The appeal is allowed. I have made the decision that the General Division should have made. The Claimant cannot be paid parental benefits.

Overview

[2] The Appellant, J. R. (Claimant), applied for eight weeks of employment insurance (EI) extended parental benefits beginning the week of April 16, 2023. His child was born on July 9, 2021 and the Claimant's partner applied for and received 27 weeks of family caregiver benefits, followed by 61 weeks of extended parental benefits.

[3] The Commission decided that the Claimant could not be paid benefits more than 78 weeks after the birth of his child and denied his claim. The Claimant asked to have his claim antedated so that the weeks of benefits he was claiming were within the 78-week period after his child's birth. The Commission denied this request because he didn't have an interruption of earnings at the earlier date.

[4] The Claimant appealed this decision to the Tribunal's General Division. The General Division found that the claim could not be antedated. It also found that it had the jurisdiction to consider whether the Claimant could receive benefits outside of the 78-week period following his child's birth. It found that the Claimant could receive benefits because the parental benefit window had been extended for his spouse and the same window applied to him.

[5] The Commission says that the General Division exceeded its jurisdiction by deciding whether the Claimant's parental benefits window could be extended. It also argues that the General Division made an error of law in its interpretation of the legislation.

[6] I have decided that the General Division erred in law. I have also decided to give the decision that the General Division should have given, which is that the Claimant cannot be paid benefits because he applied outside of his parental benefit window.

Issues

[7] The issues in this appeal are:

- a) Did the General Division exceed its jurisdiction when it made a decision about the Claimant's entitlement to parental benefits?
- b) Did the General Division err in law when it found that the Claimant and his spouse had to have the same parental benefit window?
- c) If so, how should the error be fixed?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

¹ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

Background

[9] There are two types of parental benefits:

- 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.

[10] 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 the child was born.² This period can be extended in certain circumstances. When a claimant elects to receive extended parental benefits, the period is extended by 26 weeks.³ When two claimants share parental benefits, they have a maximum of 40 or 69 weeks of benefits to share, depending on whether they chose standard or extended.⁴

[11] The Claimant's child was born on July 9, 2021. He applied for benefits on April 14, 2023, requesting eight weeks of extended parental benefits.⁵ The Commission wrote to the Claimant on May 3, 2023, denying payment of benefits because the Claimant applied more than 78 weeks after his child's date of birth.⁶ It said that it could not pay benefits outside of the parental benefit window.

[12] The Claimant had 30 days to request reconsideration of the Commission's decision. On June 13, 2023, he contacted the Commission and explained that his child had been hospitalized when he was born, and his spouse received both parental and

² Section 23(2)(b) of the Act.

³ 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.

⁴ Section 23(4) of the Act.

⁵ GD3-3 to GD3-19

⁶ GD3-22

family caregiver benefits. They were told that he could received parental benefits if he applied before April 14, 2023.⁷

[13] The Claimant was told by a Service Canada agent to request an antedate of his claim to the period within the parental benefit window. This request was denied because the Claimant did not have an interruption of earnings at an earlier date.⁸ On July 7, 2023, the Claimant submitted a request for reconsideration. The request was denied on August 11, 2023.

The General Division did not exceed its jurisdiction

[14] In its decision, the General Division considered whether it had the jurisdiction to decide two issues: whether the Claimant was entitled to an antedate, and the Claimant's entitlement to parental benefits. It wrote to both parties to request submissions on whether it had jurisdiction to consider the Claimant's parental benefit entitlement. The Commission did not make any submissions.⁹

[15] The General Division noted that the Tribunal takes a broad approach to its jurisdiction in order to manage appeals fairly and efficiently, within the limits of the law.¹⁰ Because the reconsideration decisions rarely have detailed reasons, it can be necessary to look at the underlying requests and decisions in order to determine the scope of the reconsideration decision.¹¹

[16] The General Division found that it was necessary in this case to look at the underlying issues in dispute. It determined that the crux of the issue was whether the Claimant was entitled to receive benefits more than 78 weeks after the birth of his child.¹²

⁷ GD3-24

⁸ GD3-25

⁹ GD5

¹⁰ General Division decision at para 21.

¹¹ *DS v Canada Employment Insurance Commission*, 2020 SST 773; *MS v. Canada Employment Insurance Commission*, 2022 SST 933.

¹² General Division decision at para 22.

[17] I find that the General Division did not exceed its jurisdiction. The record shows the following:

- The Claimant contacted the Commission after the initial decision that he could not be paid benefits outside of the parental benefit window.¹³
- The Claimant requested an antedate by phone on June 29, 2023. Later that day, he was notified by telephone that his claim could not be antedated. There is no written decision concerning the antedate request.¹⁴
- On July 7, 2023, the Claimant submitted a written request for reconsideration. In the request he indicates that he is requesting reconsideration of the decision in the letter dated May 3, 2023. He specifically notes that the decision that he would like to be reconsidered is the decision not to pay him EI benefits because he applied more than 78 weeks after the birth of his child.¹⁵
- The Claimant explained in his request for reconsideration why the request is late, having been made more than 30 days after May 3, 2023.
- In his explanation of why the request was late, the Claimant explained that an agent told him to request an antedate. Ninety minutes later, he was notified that the claim could not be antedated. The agent told him to gather letters of support and other information as part of his request for reconsideration.¹⁶
- An agent contacted the Claimant to obtain more information about his request for reconsideration. He explained why he applied for benefits when he did and that he had been told by other agents that he had to apply before his spouse was finished his parental benefits.¹⁷

¹³ GD3-24

¹⁴ GD3-24

¹⁵ GD3-30

¹⁶ GD3-33

¹⁷ GD3-41

- The Claimant was notified by phone of the reconsideration decision. The notes from that call state:

Communicated the decision as follows: Went over the facts on file and confirm they are complete. Explained the decision and rationale in detail in context of the legislation and policies. Explained the time frame and process to appeal this reconsideration under EIA 112 decision to the SST (or other recourses available if an appeal to the SST is not applicable). Advised the party that a notice of decision will be sent by mail. The claimant was upset and hung up.¹⁸

- The decision letter dated August 11, 2023, states “Issue: Antedate. We are maintaining our decision on this issue.”¹⁹

[18] When considering the underlying requests and decisions in this matter, it is clear that the Claimant requested reconsideration of the decision dated May 3, 2023, concerning his entitlement to parental benefits. The notes from the call to the Claimant only indicate that the decision was communicated to him, and that the Claimant was upset. The notes do not specify that only a decision on the antedate issue was communicated to him at that time.

[19] While the decision letter refers only to the antedate issue, it does not provide detailed reasons. It also references the Claimant’s request for reconsideration of a decision dated June 30, 2023. It is clear from the Claimant’s request for reconsideration that this was not the decision that he was requesting reconsideration of.

[20] The General Division invited the Commission to make submissions about whether or not it had the jurisdiction to consider the issue of the parental benefit window, but it chose not to. Taking a broad approach to the Tribunal’s jurisdiction, I find that the General Division had the jurisdiction to consider the issue of the Claimant’s entitlement to parental benefits.

¹⁸ GD3-43

¹⁹ GD3-44

The General Division misinterpreted the parental benefit sections of the EI Act

[21] In its decision, the General Division reviewed the sections of the EI Act that concern the parental benefit window and the circumstances that allow it to be extended.²⁰ It noted that the Commission correctly extended the window for the Claimant's spouse to May 20, 2023, because he did not collect regular benefits and received more than one type of special benefit (family caregiver and parental).²¹

[22] The General Division then found that two parents sharing parental benefits cannot have differing parental benefit windows. For this reason, it found that the Claimant could collect benefits until May 20, 2023. The General Division did not provide any reasons for its determination that both parents had to have the same parental benefit window, but it referenced section 23(4) in a footnote.²²

[23] The General Division is not required to conduct a statutory analysis in all cases, however, when interpreting legislation, its interpretation must be consistent with the text, context and purpose of the legislation.²³ Where the text is clear, the words used play a dominant role in the interpretation.²⁴

– The wording of sections 23(2) and 23(4)

[24] The parental benefit window is set out in section 23(2) of the EI Act:

(2) Weeks for which benefits may be paid - Subject to section 12, benefits under this section are payable for each week of unemployment in the period

(a) that begins with the week in which the child or children of the claimant are born or the child or children are actually placed with the claimant for the purpose of adoption; and

²⁰ General Division decision at paras 54 to 61.

²¹ General Division decision at para 62.

²² General Division decision at para 66.

²³ See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*) at paragraph 121 where the Court held that “the administrative decision maker’s task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue.”

²⁴ See *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 (*Canada Trustco*) at para 10.

(b) that ends 52 weeks after the week in which the child or children of the claimant are born or the child or children are actually placed with the claimant for the purpose of adoption.

[25] The EI Act then outlines certain circumstances in which the parental benefit window can be extended:

- when the child is hospitalized
- when a claimant is deployed
- when a claimant receives multiple special benefits
- where a claimant elects to receive extended parental benefits
- when there are certain combinations of regular and special benefits²⁵

[26] In 2018, the EI Act was amended to add the section that allows two claimants to share up to 40 weeks of standard parental benefits or 69 weeks of extended parental benefits.²⁶ This section allows for an extra five weeks of standard or eight weeks of extended benefits to be paid when shared. Section 23(4) reads:

Division of weeks of benefits

(4) If two claimants each make a claim for benefits under this section — or if one claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.05 — in respect of the same child or children, the weeks of benefits payable under this section, under section 152.05 or under both those sections, may be divided between them up to a maximum of 40, if the maximum number of weeks that has been elected under subsection (1.1) or 152.05(1.1) is established under subparagraph 12(3)(b)(i) or 152.14(1)(b)(i), or up to a maximum of 69, if that number of weeks is established under subparagraph 12(3)(b)(ii) or 152.14(1)(b)(ii). If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules.

²⁵ See sections 23(3) to 23(3.4) of the EI Act.

²⁶ See the *Budget Implementation Act*, 2018, No. 2 (S.C. 2018, c. 27), sections 303 to 306.

[27] The amendments also say that an individual claimant cannot receive more than 35 or 61 weeks of benefits. Section 23(4.11) reads:

(4.11) Even if the weeks of benefits payable are divided in accordance with subsections (4) and (4.1), the maximum number of weeks for which benefits may be paid to a claimant is 35 or 61 weeks, in accordance with the election made under subsection (1.1) or 152.05(1.1).

[28] The opening words to section 23(2) are: “[s]ubject to section 12, **benefits under this section** are payable for each week of unemployment in the period ...” [emphasis added]. The additional weeks of shared benefits are set out in section 23(4), which makes them benefits under section 23.

[29] The plain wording of section 23 is that the benefits payable under section 23 are limited to the parental benefit window set out in section 23(2). There is nothing in the legislation to suggest the additional weeks of shared parental benefits are not benefits under section 23. There is nothing in the wording of this section that suggests the two claimants sharing parental benefits must have the same parental benefit window.

[30] With respect to the length of the parental benefit window, there are a number of circumstances in which the window can be extended. Some of these apply to both claimants. If the child is hospitalized, the window is extended by the number of weeks the child is in the hospital. When extended parental benefits are chosen, the window is extended by 26 weeks for both claimants.

[31] There are additional extensions that specifically refer to the circumstances of the individual claimant. If a claimant is a member of the Canadian Forces and has their parental leave deferred, or they have to return to duty early, their window is extended. Similarly, if a claimant is paid more than one type of special benefit in their benefit period, their window can be extended to allow benefits to be paid. The wording of these sections specifically refers to “a claimant” or “the claimant.”

[32] The Claimant argues that the fact that the election for standard or extended benefits is irrevocable and binding on both parents demonstrates that the windows are

intended to be the same.²⁷ I find that the language does not support this interpretation. As discussed above, when extended benefits are chosen, the window is extended for both claimants. However, this does not mean that the other extensions also apply to both claimants.

[33] The Claimant also relies on the extension in section 23(3) for the weeks or partial weeks in which a child is hospitalized. He says that his child was hospitalized for five weeks, following which a medical certificate was issued and his spouse received 27 weeks of family caregiver benefits.²⁸ The Claimant argues that his parental benefit window should be extended under section 23(3) for all of these weeks.

[34] I find that the extension is limited to the weeks in which the child is hospitalized. Unfortunately for the Claimant, this means that the additional weeks in which his child was receiving care at home with his spouse do extend his parental benefit window.

[35] I find that the language of section 23 is clear. Benefits are payable to a claimant during the parental benefit window. This period can be extended as provided for in the legislation. Some of the extensions will apply to both claimants and some only to an individual claimant. The length of the parental benefit window is not required by section 23(4) to be the same for both parents.

– **Context and purpose of the parental benefit provisions**

[36] The opening words in section 23(2) are “[s]ubject to section 12”. Section 12 of the EI Act sets out the maximum number of weeks of benefits that can be paid to a claimant. Section 12(1) reads:

12 (1) If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

²⁷ AD6-7

²⁸ AD6-8

[37] Section 12(4) refers to the additional weeks of shared parental benefits. It reads:

(4) The maximum number of weeks for which benefits may be paid

(a) for a single pregnancy is 15; and

(b) for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is,

(i) if the maximum number of weeks that has been elected under subsection 23(1.1) is established under subparagraph (3)(b)(i), 35 **or, if the weeks for which benefits may be paid are divided in accordance with section 23, 40,** or

(ii) if the maximum number of weeks that has been elected under subsection 23(1.1) is established under subparagraph (3)(b)(ii), 61 **or, if the weeks for which benefits may be paid are divided in accordance with section 23, 69.**²⁹

[emphasis added]

[38] These sections set out the maximum weeks of benefits that can be paid within a benefit period. Section 10 of the EI Act concerns the commencement, length, and termination of the benefit period. This period begins when a claimant has an interruption of earnings. A claimant has to have established a benefit period to receive benefits.

[39] The parental benefit window defines when parental benefits may be paid. The parental benefit window extensions allowed by the EI Act have corresponding extensions to the benefit period in section 10.³⁰ This means that a claimant who is entitled to an extension to their parental benefit window will also see an extension to their benefit period, so that they can receive benefits.

²⁹ This section was also amended by the *Budget Implementation Act, 2018, No. 2* to include reference to the additional weeks of shared parental benefits.

³⁰ See sections 10(10) to 10(15) of the EI Act.

[40] The payment of parental benefits is dependent on the parental benefit window and not just the benefit period. The Federal Court of Appeal has stated:

Although there can be no doubt that the benefit period established pursuant to sections 9 and 10 of the *Act* is specific to a claimant, the period in which parental benefits may be paid under subsection 23(2) is not. That period is tied to the birth of a child or children (see: subsection 23(2)). Therefore, even though two claimants can make a claim for parental benefits for the care of one or more children and each claimant must separately establish his or her own benefit period, the parental benefits that will be paid can only be paid during the period set out in subsection 23(2), regardless of when a claimant's benefit period commences and ends.³¹

[41] This means that parental benefits cannot be paid outside of the parental benefit window even if a claimant's benefit period has not ended.

[42] The purpose of parental benefits is to compensate eligible parents who have an interruption of earnings when they care for a newborn or adopted child or children. These provisions are not driven by the needs of the parents. The purpose of the legislation is to provide these parents with income replacement for a limited time.³²

[43] I find that the General Division misinterpreted the legislation when it found that section 23(4) of the EI Act requires that two claimants sharing parental benefits must have the same parental benefit window. While this interpretation is not inconsistent with the purpose of parental benefits, it is not supported by the language of the sections. The language is clear. Certain extensions to the parental benefit window are only applicable to an individual claimant.

Remedy

[44] The General Division based its decision on a misinterpretation of the legislation, which is an error of law. This means that I can substitute my own decision, or I can refer

³¹ See *Martin v Canada (Attorney General)*, 2013 FCA 15 (*Martin*) at para 75.

³² See *Martin* at para 66 where the Court states: "Consequently, the purpose of the parental benefits is to compensate parents for the interruption of earnings which occurs when they cease to work or reduce their work to care for a child or children. The scheme is clearly not driven by the needs of the parents or the number of children resulting from a pregnancy. The purpose thereof is clearly to compensate parents for the interruption of their earnings resulting from their taking time off to care for a child or children."

the matter back to the General Division for reconsideration.³³ I can decide any question of law or fact that is needed to resolve the Claimant's appeal.³⁴

[45] In this case, I find that it is appropriate for me to substitute my own decision. The record is complete, and the parties had a full opportunity to make their case at the General Division.³⁵

The Claimant cannot be paid parental benefits

[46] As discussed above, the law is clear that parental benefits are only payable within the parental benefit window. The legislation provides for certain extensions to that window. For the Claimant, his window was extended by 26 weeks because extended parental benefits were chosen and by the five weeks that his child was hospitalized, for a total window of 83 weeks. Unlike his spouse, the Claimant did not receive any other type of special benefit and he does not meet any of the other circumstances that would allow for a further extension of his window.

[47] I understand that the Claimant and his spouse received incorrect information from Service Canada agents, during a stressful and difficult period in their lives. I appreciate that their experience has been frustrating and that they were depending on the Claimant receiving parental benefits. I am very sympathetic to their circumstances; however, I have to interpret and apply the law, and I cannot re-write legislation.³⁶

[48] The Claimant's parental benefit window began the week that his child was born on July 9, 2021, and ended 83 weeks later, the week of February 10, 2023. The Claimant did not have an interruption of earnings and make his application for benefits until April 14, 2023, which was outside of the parental benefit window.

³³ Section 59(1) of the DESD Act sets out my powers to fix an error.

³⁴ See section 64(1) of the DESD Act.

³⁵ *Canada Employment Insurance Commission v Lu*, 2021 SST 619 at paras 34-36; *X v Canada Employment Insurance Commission*, 2019 SST 351 at para 18.

³⁶ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.

Conclusion

[49] The appeal is allowed. I have made the decision that the General Division should have made. The Claimant cannot be paid parental benefits.

Melanie Petrunia
Member, Appeal Division