

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230308

Docket: A-85-22

Citation: 2023 FCA 52

**CORAM: LASKIN J.A.
MACTAVISH J.A.
MONAGHAN J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JANINE JEFFERS

Respondent

Heard by online video conference hosted by the Registry on March 7, 2023.

Judgment delivered at Ottawa, Ontario, on March 8, 2023.

REASONS FOR JUDGMENT BY:

MONAGHAN J.A.

CONCURRED IN BY:

**LASKIN J.A.
MACTAVISH J.A.**

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REASONS FOR JUDGMENT

MONAGHAN J.A.

[1] Janine Jeffers applied for both maternity benefits and parental benefits under the *Employment Insurance Act*, S.C. 1996, c. 23. Her child was born on March 31, 2021 and her parental benefits commenced July 25, 2021.

[2] The *Employment Insurance Act* states that a claimant for parental benefits “shall elect” the maximum number of weeks of benefits, being 35 weeks for standard and 61 weeks for extended parental benefits, and that the election is irrevocable once benefits are paid: subsections 23(1.1) and (1.2). Ms. Jeffers chose standard parental benefits in her application.

[3] In October 2021, Ms. Jeffers contacted the Canada Employment Insurance Commission (Commission) and asked to change her choice to extended parental benefits. The Commission refused that request and advised her that the election is irrevocable once benefits are paid. Ms. Jeffers asked the Commission to reconsider, but it maintained its decision.

[4] Ms. Jeffers successfully appealed that decision to the Social Security Tribunal General Division. It decided that her election of standard parental benefits at the time she made her application was a “placeholder” and that she made her choice five months later when she finally decided on extended leave and called the Commission to change her election.

[5] The Commission appealed that decision to the Appeal Division of the Tribunal, arguing that the General Division made errors of law in not applying subsection 23(1.2) of the *Employment Insurance Act* and that it exceeded its jurisdiction in changing Ms. Jeffers’ election after benefits had been paid.

[6] The Appeal Division agreed that the General Division made a serious mistake when it found the election Ms. Jeffers made in her application was a placeholder. It found that her “application form clearly communicates to the Commission that she was choosing the standard

option.” However, Ms. Jeffers had asserted that in April 2021 the Commission had told her that her she could change her election at any time.

[7] The Appeal Division concluded Ms. Jeffers’ election was invalid because she made it based on misleading information provided by the Commission. Thus, said the Appeal Division, Ms. Jeffers could now choose between the standard and extended options. As she had made clear in the proceedings she wanted the extended option, the Appeal Decision, in a decision dated March 25, 2022 (file number AD-21-437), rescinded the Commission’s decision to pay standard parental benefits and dismissed the appeal.

[8] The Attorney General of Canada now seeks judicial review of that decision. The question before us is whether the Appeal Division’s decision is reasonable: *Stavropoulos v. Canada (Attorney General)*, 2020 FCA 109 at para. 11; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 83 and 86 [*Vavilov*]; *Stojanovic v. Canada (Attorney General)*, 2020 FCA 6 at para. 34. If it is, we must dismiss the application for judicial review.

[9] Although the notice of application and other materials were served on Ms. Jeffers in accordance with the *Federal Courts Rules*, S.O.R./98-106, she did not file a notice of appearance or participate in the judicial review hearing.

[10] To be reasonable, a decision must be “defensible in respect of the facts and law”; the “governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority”: *Vavilov* at paras. 86 and 68.

[11] This Court has held that subsections 23(1.1) and 23(1.2) of the *Employment Insurance Act* allow for only one interpretation. The word “elect” means “what a claimant indicates as their choice on the application form” and “once payments of those benefits have started, it is impossible for the claimant, the Commission, the General Division or the Appeal Division to revoke, alter or change the election”: *Canada (Attorney General) v. Hull*, 2022 FCA 82 at paragraphs 62-64 [*Hull*].

[12] Although the Appeal Division delivered its decision before this Court’s decision in *Hull*, that decision is nonetheless unreasonable for the reasons given in *Hull*. Had Ms. Jeffers asked to change her election following her April call with the Commission but before payment of parental benefits commenced, the Commission had the power to make the change. However, once payment of parental benefits commenced, the governing statutory scheme precluded her, the Commission, or the Social Security Tribunal from changing her election.

[13] Accordingly, I would allow the Attorney General of Canada’s application for judicial review. Although courts should generally respect Parliament’s intention to entrust matters to administrative decision-makers, it may be appropriate to decline to remit a matter to an administrative decision-maker where it is evident to the Court that a particular outcome is inevitable: *Canada (Attorney General) v. Burke*, 2022 FCA 44 at paras. 115-117.

[14] In my view, given the law and the findings of fact in this case, no useful purpose would be served by remitting the matter back to the Social Security Tribunal (Appeal Division) for redetermination because only one reasonable conclusion would be open to it. Counsel for the applicant agrees. Accordingly, I would set aside the decision of the Social Security Tribunal (Appeal Division) dated March 25, 2022 and, giving the order it should have given, allow the Commission's appeal of the decision of the Social Security Tribunal (General Division), all without costs.

"K.A. Siobhan Monaghan"

J.A.

"I agree
J.B. Laskin J.A."

"I agree
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF THE LEAVE TO APPEAL
DECISION OF THE SOCIAL SECURITY TRIBUNAL'S APPEAL DIVISION DATED
MARCH 25, 2022, NO. AD-21-437**

DOCKET: A-85-22

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. JANINE JEFFERS

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: MARCH 7, 2023

REASONS FOR JUDGMENT BY: MONAGHAN J.A.

CONCURRED IN BY: LASKIN J.A.
MACTAVISH J.A.

DATED: MARCH 8, 2023

APPEARANCES:

Marcus Dirnberger FOR THE APPLICANT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef FOR THE APPLICANT
Deputy Attorney General of Canada