



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. N. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 47

Tribunal File Number: GE-15-3484

BETWEEN:

K. N.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Paul Demers

HEARD ON: March 3, 2016

DATE OF DECISION: April 6, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant participated in the hearing.

INTRODUCTION

[1] The Appellant applied for employment insurance parental benefits and took a leave from his employer on July 17, 2015. The child for whom the parental benefits were requested was born on September 5, 2014.

[2] After receiving 5 weeks of parental benefits, the Appellant was advised by the Respondent that under subsection 23(2) of the *Employment Insurance Act* (the Act) he was not able to receive all 35 weeks of parental benefits due to the ending of the parental window.

[3] On September 22, 2015 the Appellant filed a request for reconsideration of the decision.

[4] Following the reconsideration process, the Respondent maintained their original decision on October 10, 2015.

[5] Then on October 20, 2015 the Appellant appealed the decision to the Social Security Tribunal (the Tribunal).

[6] The hearing was held by Teleconference for the following reasons:

- a) The fact that the credibility is not anticipated to be a prevailing issue.
- b) The fact that the appellant will be the only party in attendance.
- c) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[7] The Appellant is appealing the Respondent's decision regarding the number of entitlement weeks during the benefit period pursuant to subsection 23(2) of the Act.

THE LAW

[8] Subsection 23(2) of the Act:

Subject to section 12, benefits under this section are payable for each week of unemployment in the period that begins with the week in which

(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

(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.

[9] Subsection 23(3) of the Act:

If the child or children referred to in subsection (1) are hospitalized during the period referred to in subsection (2), the period is extended by the number of weeks during which the child or children are hospitalized.

EVIDENCE

[10] The Appellant's child was born on September 5, 2014.

[11] After the birth of the baby, the Appellant was estranged from his wife and child until he returned home in July of 2015.

[12] The child was not hospitalized.

[13] The Appellant left his employment on a paternal leave as of July 17, 2015. His claim was processed and he collected 5 weeks of parental benefits before the parental window ended.

SUBMISSIONS

[14] The Appellant submitted that after the child was born the mother began suffering from postpartum depression and stopped him from having any contact with the baby. After she began to receive the help she needed to cope with her depression, he was allowed in July of 2015 to move back in the family home. Having been 10 months without any contact with his child he wanted to access parental benefits in order to establish a bond with the baby and rebuild his family. Since circumstances were beyond his control, he explained that the child was not able to be permanently placed with him until July 19, 2015. He noted that the mother never took any parental leave and requests that an extension be granted in order for him to receive all 35 weeks of parental leave.

[15] The Respondent submitted that subsection 23(2) of the Act does not allow payment of benefits beyond the 52 week period after the week in which the child of the claimant was born. They explained that since the child was not hospitalized during the parental window they could not extend the benefit period beyond September 5, 2015 under subsection 23(3) of the Act.

ANALYSIS

[16] The law in this instance is clear. Subsection 23(2) of the Act states that parental benefits are payable during a period that begins with the week in which the child of the claimant is born or actually placed with the claimant for the purpose of adoption, and ends 52 weeks after that week.

[17] In this case the child was born on September 5, 2014 which means that the parental benefits were available until September 5, 2015. Since the child was not hospitalized the benefit period cannot be extended by the Tribunal under subsection 23(3) of the Act.

[18] The Appellant explained that his circumstance could be interpreted as being similar to an adoption since he did not get to be with the child until 10 months after it was born. Unfortunately, this is not a case of adoption since he is the biological father and the argument cannot be applied to the law.

[19] The same relates to his argument that his circumstances were similar to those in the military who cannot take their parental leave because of circumstance beyond their control. Without the Appellant actually being in the military that section of the Act simply cannot be considered.

[20] While sympathetic to the Appellant's circumstances, subsection 23(2) of the Act clearly does not allow payment of benefits beyond the 52 week period after the child is born.

[21] The Act in his case is specific and the Tribunal does not have the authority to circumvent or rewrite the legislation. The Federal Court of Appeal re-affirmed the principle that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning (*Canada (AG) v. Knee*, 2011 FCA 301).

[22] Based on the information submitted and the law, the Tribunal has no choice but to maintain the decision made under subsection 23(2) of the Act in which the Appellant is not payable parental benefits beyond the 52 week period after the birth of his child.

CONCLUSION

[23] The appeal is dismissed.

Paul J. Demers

Member, General Division - Employment Insurance Section