



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. C. v Canada Employment Insurance Commission*, 2019 SST 461

Tribunal File Number: GE-19-1400

BETWEEN:

**J. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Solange Losier

HEARD ON: April 8, 2019

DATE OF DECISION: April 9, 2019

## **DECISION**

[1] The appeal is dismissed. The Appellant's election for extended parental benefits cannot be revoked once benefits have already been paid at the extended rate based on subsection 23(1.2) of the *Employment Insurance Act* (Act).

## **OVERVIEW**

[2] The Appellant gave birth to her child on May X, 2018 and applied for maternity and parental benefits on May 23, 2018 (GD3-3 to GD3-15). The Appellant elected to receive the extended parental benefit option, which provides 61 weeks of benefits at a rate of 33% of her weekly insurable earnings up-to a maximum amount. In response to the division of the 61 weeks, the Appellant requested 40 weeks and identified that the other parent will claim 0 weeks (GD3-7). The Appellant was paid maternity benefits at \$479.00 per week at the 55% rate until September 1, 2018, which followed by payment of the extended parental benefit rate at \$312.00 per week at the 33% rate (GD3-16). The Appellant contacted the Canada Employment Insurance Commission (Respondent) when she received the reduced payment and requested to revoke her request for extended parental benefits and to switch to the standard entitlement parental rate. The Appellant said that she erred when she selected the extended benefits option because she thought she was only selecting 40 weeks. The Appellant submits that her selection error should be reversible. The Appellant also submitted that she had extenuating circumstances after the birth of her child and at the time when she was completing her application for benefits. On reconsideration, the Respondent determined that the switch to standard benefit rate could not occur because the election for extended parental benefits was irrevocable as benefits were already paid at the extended rate when she made the request.

## **ISSUES**

[3] Issue 1: Can the Appellant revoke her election to request the extended parental benefit option because it was selected in error?

## ANALYSIS

[4] Subsection 23(1.1) and (1.2) of the Act states:

(1.1) In a claim for benefits made under this section, a claimant shall elect the maximum number of weeks referred to in either subparagraph 12(3)(b)(i) or (ii) for which benefits may be paid.

(1.2) The election is irrevocable once benefits are paid under this section or under section 152.05 in respect of the same child or children.

[5] **Issue 1: Can the Appellant revoke her election to request the extended parental benefit option because it was selected in error?**

[6] No, I find that the Appellant's election to request for the extended parental benefit option for 61 weeks is irrevocable based on subsection 23(1.2) of the Act.

[7] The Appellant testified that she made an error when she completed her application for benefits as she thought that she could request 40 weeks of parental benefits. The Appellant noted that her employer had also approved a 13-month leave of absence from her employment.

[8] The Appellant did not speak with Service Canada before or shortly after her application for benefits to verify if she could request 40 weeks of parental benefits. The Appellant first contacted Service Canada in September 2018 when she received a deposit of her first parental benefit payment in her account for \$312.00. The Appellant said that the reduced payment triggered her to contact Service Canada to inquire. A copy of the payment chart in the file indicates that parental benefit report week commenced from September 2, 2018 to September 8, 2018 and was processed on September 14, 2018 (GD3-16).

[9] Subsection 23(1.2) of the Act states that the decision is irrevocable once benefits were paid. There is no legislative flexibility or discretion to revoke her previous selection for extended parental benefits. The Appellant agreed that she made an error when she selected the extended parental benefit option and only contacted Service Canada after the parental benefit was already

paid to her. The application for benefits also states that “once parental benefits have been paid on the claim, the choice between standard and extended parental benefits is irrevocable” (GD3-7).

[10] The Appellant also presented persuasive compassionate and financial circumstances, including what led to the error and how it has impacted her family. However, I am not permitted to re-write legislation, nor to interpret it in a manner that is contrary to its plain meaning despite the Appellant’s particular circumstances (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

**CONCLUSION**

[11] The appeal is dismissed.

Solange Losier  
Member, General Division - Employment Insurance Section

HEARD ON:	April 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. C., Appellant