



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. G. v Canada Employment Insurance Commission*, 2019 SST 848

Tribunal File Number: GE-19-2124

BETWEEN:

C. G.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: June 20, 2019

DATE OF DECISION: June 26, 2019

DECISION

[1] The appeal is dismissed. The Claimant is unable to change the election of the parental benefit term.

OVERVIEW

[2] The Appellant, who I shall refer to as the Claimant, established a claim for Employment Insurance (EI) maternity and parental benefits on December 2, 2018. When she completed the application for EI, she elected to be paid parental benefits up to 61 weeks and indicated that she wished to claim 40 weeks of parental benefits. When the Claimant received the first of the EI parental benefits and noticed the reduced amount of benefits she contacted the Respondent, the Canada Employment Insurance Commission (Commission), and requested that the election of parental benefits be changed to 35 weeks. The Commission told the Claimant that because she had received parental benefits her election of parental benefits could not be changed. The Claimant requested a reconsideration of that decision and the Commission upheld its decision. The Claimant appeals to the Social Security Tribunal (Tribunal).

ISSUE

Can the Claimant's election of extended parental benefits be changed to standard parental benefits?

ANALYSIS

[3] Parental benefits are payable to a claimant to care for their newborn child.¹ A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be paid.² A claimant's election of the maximum number of weeks for which parental benefits may be paid cannot be changed once parental benefits are paid.³

¹ *Employment Insurance Act*, subsection 23(1)

² The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is found in subsection 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks for which parental benefits may be paid is found in paragraph 12(3)(b) of the *Employment Insurance Act*, based on the election the claimant makes under section 23.

³ *Employment Insurance Act*, Subsection 23(1.2)

[4] In the section of the application form for EI parental benefits, a claimant must select between two options for parental benefits: standard or extended. The standard option is followed by the text, “up to 35 weeks of benefits at a benefit rate of 55% of your weekly insurable earnings up to a maximum amount.” The extended option is followed by the text, “up to 61 weeks of benefits at a benefit rate of 33% of your weekly insurable earnings up to a maximum amount.” Above the section requiring the selection of standard versus extended benefits, the application form reads, “Once parental benefits have been paid on a claim, the choice between standard and extended parental benefits is irrevocable.”

[5] The Claimant made an initial claim for maternity and parental benefits on November 30, 2018. On this application, she chose to receive parental benefits immediately following her maternity benefits. She then elected to receive up to 61 weeks of parental benefits (which I will call “extended parental benefits”) and stated that she wanted to claim 40 weeks of extended parental benefits. The Claimant indicated on her claim that the child’s other parent wished to claim zero weeks’ extended parental benefits.

[6] The Claimant testified that she chose the extended option of up to 61 weeks because the only way to get 40 weeks is to select 61 weeks. She had been informed by her employer’s human resources department that she could choose between 12 and 18 months. The Claimant stated that for an extra few weeks leave her entire parental leave was reduced to 33% which was impossible for her family to live on. The Claimant agreed that she received parental benefits on April 5, 2019. The Claimant provided a screen capture of the Commission’s web-site that detailed her benefits. The screen capture shows 1 week of benefits paid and the last report processed was dated December 9, 2018, to December 15, 2018. The screen capture shows, in part, the start date of the claim was December 2, 2018; the type of benefit is Maternity/Parental (*sic*) benefits; the benefit rate is \$488; and, the end date of the claim is November 30, 2019. The Claimant testified that she had to submit this information to her employer to establish the top-up amount provided to her while she received EI maternity benefits. The Claimant submitted that she chose the 61 weeks without fully understanding it. It would be impossible for her to know that she did not make the correct choice until the first parental benefit payment was received. She could not request a change if she did not know the impact of her selection. The Claimant

testified the reduction in benefits has put her family under horrible financial stress for making an error which was not her intention to receive reduced EI benefits.

[7] A Witness, affirmed to give evidence, testified that he is a Pay and Benefits Manager with the Claimant's employer. He testified that the changes to the parental benefits were not well communicated. Once the Claimant told them what had happened to her parental benefits all payroll staff have been advised to tell employees about the reduction in benefits when the 61 weeks is chosen. The Witness testified that employees are topped up to 93% salary when receiving EI maternity benefits. There is no top-up while receiving EI parental benefits so it became very apparent to the Claimant what she was not receiving when the parental benefits began. The Witness thought that the parental benefits would be pro-rated by the amount of the extension. In this case, it was a three week extension that reduced the entire parental benefits paid by 22%. The Witness stated that prior to the 61 weeks option employees would take an unpaid leave of absence if they wanted extended leave. The Witness submitted that there was a need for more humanity, the reduced benefits have caused huge financial stress on the Claimant's family. The Witness submitted had she been advised properly, she would have made a different decision.

[8] The Commission submitted the Claimant was informed on the application for parental benefits of the difference between standard parental benefits and extended parental benefits and elected to receive extended parental benefits. The Claimant was also informed the selection was irrevocable once parental benefits were paid. The Commission noted the first payment for parental benefits was issued on April 5, 2019, and that on April 25, 2019, the Claimant requested that the claim be changed to standard parental benefits. The Commission submitted the Claimant's election became irrevocable as of April 5, 2019, pursuant to section 23(1.2) of the *Employment Insurance Act*.

[9] I find as fact that the Claimant selected the extended option for her parental benefits and that the Claimant was paid EI parental benefits as of April 5, 2019. Further, I find that the payment of EI parental benefits on April 5, 2019, made the election of the maximum number of weeks for which parental benefits may be paid, in this case 61 weeks, irrevocable. Accordingly,

I find that the Claimant is not able to change the election of the maximum number of weeks for which parental benefits may be paid.

[10] The information on the EI application explains the difference between the standard and the extended parental benefits option. The difference relates both to the length of the benefit period and the weekly amount of benefits that will be received. The onus is on a claimant to read the information provided. The Claimant was initially provided with information from the Commission that her maternity/parental benefit rate was \$488. There is no indication in the information that she was provided to show that the benefit rate would vary over the life of her claim. While I recognize that the Claimant may have understood this to mean she would receive the same amount of weekly benefits throughout her benefit period, regardless of the type of benefit being paid, I must apply the legislation as it is written. It is clear that a claimant's choice between standard parental benefits and extended parental benefits is irrevocable once any parental benefits have been paid.

[11] I acknowledge the unfortunate and difficult situation that this has created for the Claimant and her family but as tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.⁴ I must follow the law and render decisions based on the relevant Act, Regulations, and precedents set by the courts.

[12] For these reasons, I find the Claimant's election cannot be changed from extended parental benefits to standard parental benefits because a payment of parental benefits was made prior to her request to change the election, and her election became irrevocable upon the payment of those parental benefits.

CONCLUSION

[13] The appeal is dismissed.

Raelene R. Thomas
Member, General Division - Employment Insurance Section

⁴ *Canada (Attorney General) v. Kneé*, 2011 FCA 301

HEARD ON:	June 20, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. G., Appellant