



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. C. v Canada Employment Insurance Commission*, 2019 SST 1552

Tribunal File Number: GE-19-2091

BETWEEN:

**R. 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: Teresa M. Day

DATE OF DECISION: July 2, 2019

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Appellant established a claim for employment insurance parental benefits (parental benefits) effective December 2, 2018. On his application for parental benefits, he was asked to elect between the standard option for parental benefits, namely 35 weeks of benefits at 55% of his weekly insurable earnings up to the maximum entitlement – or the extended option, namely 61 weeks of benefits at 33% of his weekly insurable earnings up to the maximum entitlement. The Appellant elected the standard option and his first parental benefits payment was paid to him on December 24, 2018.

[2] On March 18, 2019, the Appellant asked to convert his claim to the extended option. The Respondent, the Canada Employment Insurance Commission declined his request. The Appellant then asked the Commission to reconsider his request because he did not understand that the 35 weeks for the standard option had to fall within 12 months of the birth of his child. His son was born on February XX, 2018 and if he had selected the extended option, he could have received parental benefits to August 2019 instead of having them end in February 2019. The Commission maintained its original decision because subsection 23(1.2) of the Employment Insurance Act (EI Act) provides that the election between standard or extended parental benefits is irrevocable once the benefits are paid. The Appellant appealed to the General Division of the Social Security Tribunal (Tribunal).

[3] The Appellant was advised in writing of the Tribunal's intention to summarily dismiss his appeal because he elected the standard parental benefits option and there is no discretion to vary the election after benefits payments have commenced. The Appellant was given an opportunity to make further submissions, which he did on June 21, 2019 (GD6). The Commission filed responding submissions on June 25, 2019 (GD7) and the Appellant filed a Reply on June 28, 2019 (GD8).

### **ISSUE**

[4] The Tribunal must decide whether the appeal should be summarily dismissed.

## **THE LAW**

[5] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[6] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[7] For a child born or adopted after December 3, 2017, a claimant must elect between standard parental benefits (up to 35 weeks at a benefit rate of 55% of their weekly insurable earnings up to the maximum entitlement) **or** extended parental benefits (up to 61 weeks at a reduced benefit rate of 33% of weekly insurable earnings up to the maximum entitlement): paragraph 12(3)(b) of the EI Act and subsection 14(1) of the EI Act).

[8] The election becomes irrevocable once parental benefits are paid on the claim related to that specific child: subsection 23(1.2) of the EI Act.

## **EVIDENCE**

[9] The Appellant applied for parental benefits on December 6, 2018. On his application, he declared that his child was born on February XX, 2018, and he elected to receive the standard option, namely up to 35 weeks of benefits at a benefit rate of 55% of his weekly insurable earnings up to a maximum amount.

[10] He received his first parental benefits payment on December 24, 2018, and the payments continued until the last payment on February 24, 2019 (see GD3-22).

[11] On March 18, 2019, he contacted the Commission and asked to modify his claim to the extended option, but his request was denied because parental benefits had already been paid (see GD3-20).

[12] He asked the Commission to reconsider his request because he did not understand that the 35 weeks for the standard option all had to fall within 12 months of the birth of his son. In his

case, his son was born on February XX, 2018 but he did not start his parental leave until December 2018. If he had selected the extended option, he could have received parental benefits to the end of his parental leave in August 2019 instead of having them cut-off in February 2019.

[13] The Commission denied his request to change to the extended option because once even a week of parental benefits have been paid, the election between standard and extended options is irrevocable (see GD3-24).

## **SUBMISSIONS**

[14] In his responding materials at GD6 and GD8, the Appellant submitted that:

- a) He is not necessarily asking to switch from the standard option to the extended option for parental benefits. Rather, he wants to continue receiving parental benefits under the standard option for a full 35 weeks from the date he applied in December 2018, which would take him to August 2019, some 78 weeks after his son was born.
- b) There was not enough information provided in the application process for him to select the appropriate option for his situation. His son was born in February 2018. His wife is self-employed and unable to receive EI benefits. They decided to wait until December 2018 to apply for EI benefits, and wanted to receive benefits for the next 35 weeks – until August 2019.
- c) The Commission has a responsibility to ensure there are enough details provided so that claimants can make appropriate choices. The Commission failed to meet this responsibility. Nowhere in the application process is it explained that the window for parental benefits under the standard option ends when the actual date of confinement plus 52 weeks has been reached.
- d) He was not able to make an informed decision because important information was “left out” during the application process. It is unfair for him to be penalized by receiving less than 35 weeks of parental benefits because of the Commission’s failure to provide all relevant information to claimants.

[15] The Commission submitted that the Appellant's election as between standard or extended parental benefits became irrevocable after his parental benefits commenced in December 2018. He cannot be paid the remainder of the 35 weeks of parental benefits because the parental window under the standard option ends when the actual date of confinement plus 52 weeks has been reached. The Appellant's son was born in the week of February 18, 2018 (the actual date of confinement in his case). Adding 52 weeks to the actual date of confinement takes the parental window to the week of February 17, 2019. The Appellant has been paid to the week of February 17, 2019 and no further parental benefits can be paid.

### **ANALYSIS**

[16] Subsection 53(1) of the DESDA Act states that the General Division of the Tribunal must summarily dismiss an appeal if it is satisfied the appeal has no reasonable chance of success.

[17] Subsection 23(1.1) of the EI Act requires a claimant seeking parental benefits to elect between the 2 possible benefit periods established under paragraph 12(3)(b) of the EI Act – 35 weeks or 61 weeks. Subsection 14(1) of the EI Act stipulates how their weekly benefit rate will be calculated depending on their election – 55% of weekly insurable earnings or 33% of weekly insurable earnings respectively, to a maximum entitlement.

[18] Unless a claimant elects the extended 61-week benefit period, subsection 23(2) of the EI Act provides that parental benefits are subject to a 52-week benefit period limitation period. That is, they may only be paid for the period commencing from the week in which the child is born and ending 52 weeks later.

[19] Subsection 23(1.2) of the EI Act states that the election between 35 weeks and 61 weeks is irrevocable once parental benefits are paid in respect of the particular child.

[20] The Tribunal finds that the Appellant's election of a 35-week benefit period for his claim cannot be changed because he has already been paid parental benefits on this claim.

[21] The Tribunal further finds that the Commission correctly calculated the parental benefits window in the Appellant's case when it determined that, based on the 35-week benefit period he elected, he could only be paid parental benefits between the week of his son's birth on February

XX, 2018 and the termination 52 weeks later in the week of February 17, 2019. The fact that the Appellant waited until December 2018 to apply for parental benefits does not change the 52-week limitation period that applies to the 35-week benefit period.

[22] The Tribunal therefore finds that the Commission correctly terminated the Appellant's parental benefits during the week of February 17, 2019.

[23] The Tribunal acknowledges the Appellant's disappointment at not being able to receive the 35 weeks of parental benefits he applied for. However, the EI Act does not allow any discretion with respect to the irrevocability of the 35-week benefit period election he made or the 52-week benefit period limitation applicable to the 35-week benefit period.

[24] The Tribunal also acknowledges the Appellant's strongly-held view that the Commission could do a better job of communicating the rules around the benefit period election to claimants. However, the Tribunal has no discretion to vary the clear wording in the legislation, no matter how compelling the circumstances.

[25] The Federal Court of Appeal confirmed the principle that benefit period limitations and other qualifying requirements set out in the EI Act are not in the discretion of the decision maker to vary. In the case of *Attorney General (Canada) v. Lévesque*, 2001 FCA 304, a claimant was short only one (1) hour of insurable employment to qualify for benefits, but the court held that the EI Act does not allow any discretion to remove such a defect from her claim. The Tribunal is sympathetic to the Appellant's circumstances and, in particular, the plans he made to be off work on parental leave until August 2019 (see GD3-7). His frustration at the situation he finds himself in is palpable. However, this principle applies no matter how compelling the circumstances (*Pannu* 2004 FCA 90). The Tribunal is further supported in its analysis by the Supreme Court of Canada's statement in *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141, that a judge is bound by the law and cannot refuse to apply it, even on grounds of equity.

[26] The Appellant may wish to continue to raise this issue with his local Member of Parliament with a view to improving the information the Commission provides to claimants during the application process. Unfortunately, the Tribunal cannot give him the remedy he

wants, namely to be paid the balance of the 35 weeks of benefits he was seeking when he applied for parental benefits on December 6, 2018.

[27] The Tribunal finds that the Appellant elected the 35-week benefit period and, because his son was born on February XX, 2018, he cannot be paid parental benefits after the week of February 17, 2019. The Tribunal has no jurisdiction to alter or vary that limitation period. Therefore, the Appellant cannot be paid any further benefits his claim for parental benefits for the child born on February XX, 2018.

[28] In the present case, the failure of the appeal is pre-ordained no matter what evidence or arguments might be presented at a hearing and must be summarily dismissed pursuant to subsection 53(1) of the DESD Act.

## **CONCLUSION**

[29] The Tribunal finds that the appeal has no reasonable chance of success. Therefore, the appeal is summarily dismissed

**Teresa M. Day**

**Member, General Division - Employment Insurance Section**