



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. J. v Canada Employment Insurance Commission*, 2019 SST 884

Tribunal File Number: GE-19-2346

BETWEEN:

**J. J.**

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: Suzanne Graves

HEARD ON: July 8, 2019

DATE OF DECISION: July 9, 2019

## **DECISION**

[1] I am dismissing the Claimant's appeal. He cannot receive parental benefits after March 30, 2019, because it is more than 52 weeks after his child's birth.

## **OVERVIEW**

[2] The Claimant's child was born in Europe on March 26, 2018. His wife brought the baby to Canada about three months later. The Claimant talked to staff at a local Service Canada office about claiming parental benefits. The agent told him he could claim 35 weeks of parental benefits but did not say that he must claim those benefits within 52 weeks of the baby's birth. He claimed standard parental benefits on August 31, 2018, and asked for 35 weeks of benefits.

[3] The Commission decided that the Claimant's parental benefits cannot be paid more than 52 weeks after the birth of his baby. His parental benefits stopped on March 30, 2019. This is one year after his child's birth. The Claimant asked the Commission to reconsider its decision. He explained that he delayed his parental benefits claim based on advice given to him by a government agent. The Commission did not change its decision. The Claimant now appeals to the Social Security Tribunal. He is asking to receive the full 35 weeks of benefits.

## **ISSUE**

[4] Can the Claimant receive parental benefits after March 30, 2019?

## **ANALYSIS**

[5] The maximum number of weeks of standard parental benefits for the care of a newborn baby is 35 weeks.<sup>1</sup> A claimant can receive parental benefits up to 52 weeks after a baby is born. The 52-week time-period begins with the week in which the claimant's child is born. The period ends 52 weeks after the week in which the child is born.<sup>2</sup>

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<sup>1</sup> The maximum number of weeks of benefits is set out in s. 12(3) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> This rule is set out in s. 23(2) of the EI Act. The 52-week period for standard parental benefits can be extended in situations when the child is hospitalized (s. 23(3)), or when the parent is a member of the armed forces and their parental leave is deferred or they are directed to return to duty (s. 23(3.01)).

**Can the Claimant receive parental benefits after March 30, 2019?**

[6] No. The Claimant cannot continue to receive benefits after March 30, 2019. His parental benefits are limited to the 52-week period after his child was born.

[7] The Claimant's baby was born overseas on March 26, 2018.<sup>3</sup> After the birth, the Claimant and his wife needed to get travel documents, including a passport for their new baby. His wife and child arrived in Canada about three months later, on July 2, 2018.

[8] The Claimant said that he went to his local Service Canada office many times to get information he needed to claim parental benefits. He testified that an agent told him he could claim 35 weeks of parental benefits but never mentioned a 52-week time limit. Based on that advice, he gave his employer two months' notice and told them he would be off work for 35 weeks. He claimed parental benefits starting on August 31, 2018. He was very surprised when his benefits stopped at the end of March 2019.

[9] The Claimant called Service Canada to ask why he was no longer getting benefits. The Commission told him that parental benefits cannot be paid more than 52 weeks after his baby was born. The Claimant said that this was the first time he heard about the 52-week limit. He did not see this rule on the claim form. He said that if he had known about the 52-week rule, he would have stopped working and claimed benefits before August 31, 2018.

[10] The Commission apologized for not telling the Claimant that benefits were only payable within one year of a child's birth. However, the Claimant's window for standard parental leave benefits was from March 26, 2018, to March 30, 2019. The Claimant's request for parental benefits after March 30, 2019, was therefore outside of the 52 weeks allowed under the *Employment Insurance Act* (EI Act).

[11] The Claimant argued that, as a first-time parent, he did not know about the 52-week rule. He had to rely on the Commission's advice. He asked that I consider the impact of incorrect

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<sup>3</sup> In his Notice of Appeal (GD2), the Claimant stated that his child was born on May 26, 2018. At the hearing, he confirmed that the correct date of his baby's birth is March 26, 2018.

information he got from the Commission. He said that the Commission's actions caused anxiety and serious financial issues for his family. He would have applied earlier for parental benefits if he had known about the 52-week limit. Since his employer did not expect him to be at work until May 2019, he had no income at all for several weeks.

[12] I have sympathy for the Claimant's situation and his financial hardship. I accept his evidence that he delayed his claim for parental benefits based on incomplete information he received from the Commission. Unfortunately, I cannot take into account any incorrect or incomplete advice given by the Commission<sup>4</sup> or the Claimant's financial hardship.<sup>5</sup> I have to follow the clear rules set out in the EI Act.

[13] I find that the Commission correctly determined that the Claimant cannot claim parental benefits after March 30, 2019. The Claimant's baby was born on March 26, 2018, and the time for receiving parental benefits under the EI Act closes 52 weeks after the child's birth.

[14] The Claimant does not meet any of the conditions to extend the 52-week period.<sup>6</sup> As a result, no further parental benefits can be paid on his claim after March 30, 2019.

## CONCLUSION

[15] The appeal is dismissed.

Suzanne Graves

Member, General Division - Employment Insurance Section

HEARD ON:	July 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. J., Appellant/Claimant

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<sup>4</sup> In *Canada (Attorney General) v. Shaw*, 2002 FCA 325, the Federal Court of Appeal held that that misinformation by the Commission is no basis for relief from the operation of the Act. Similarly, in *Robinson v. Canada (Attorney General)*, 2013 FCA 255, the Court held that the law must be followed even if the Commission made errors.

<sup>5</sup> In *Canada (Attorney General) v. Levesque*, 2001 FCA 304, the Federal Court of Appeal held that the personal circumstances of the claimant are not a relevant factor.

<sup>6</sup> The exceptions are set out in s. 23 of the EI Act. At the hearing, the Claimant confirmed that his situation did not fall within one of the exceptions.

