



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. L. v Canada Employment Insurance Commission*, 2019 SST 1606

Tribunal File Number: GE-19-3196

BETWEEN:

M. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: September 26, 2019

DATE OF DECISION: September 26, 2019

DECISION

[1] The appeal is dismissed. I find the Claimant's election of his parental benefit term cannot be changed and he is not entitled to further parental EI benefits under this claim.

OVERVIEW

[2] The Claimant established a benefit period for parental employment insurance (EI) benefits when his child was nearly one year old. On the initial claim form, the Claimant had to choose whether he wanted to receive standard or extended parental benefits. The Claimant chose to receive standard parental benefits for 35 weeks. The initial EI claim form stated the standard option pays a higher rate of EI benefits for a shorter period of time. The Claimant was paid for three weeks of EI benefits, before his entitlement ended. The Claimant requested the Canada Employment Insurance Commission (Commission) reconsider its decision to pay him for only three weeks, because he stated he would not have selected the standard parental option if he had known he would only receive three weeks. The Commission upheld its decision. The Claimant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

ISSUES

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

[4] Does the Claimant have any additional entitlement to parental EI benefits?

ANALYSIS

[5] 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

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

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

[6] On the initial claim form, the Claimant must select between two options for parental benefits: standard or extended. The standard option is defined as allowing up to 35 weeks of benefits at a benefit rate of 55% of the Claimant's weekly insurable earnings, up to a maximum amount. The extended option is defined as allowing up to 61 weeks of benefits at a benefit rate of 33% of the Claimant's weekly insurable earnings, up to a maximum amount. The initial claim form also states that the choice between standard and extended parental benefits is irrevocable once benefits have been paid on the claim.

Issue 1: Can the Claimant's election of standard parental benefits be changed to extended parental benefits?

[7] I find the Claimant's election of standard parental benefits cannot be changed.

[8] The Claimant made an initial claim for parental EI benefits on May 3, 2019. He stated he is the biological parent of a child born on June 1, 2018. At the hearing, the Claimant testified that he waited to apply for EI benefits until his child was almost a year old because his wife spent the first year with the child and when she went back to work, he made a claim for EI benefits so he could care for the child.

[9] The Claimant testified that at the time he made the claim for parental EI benefits, he did not understand the difference between standard and extended parental benefits and may not have read the initial claim form instructions. Despite this, the Claimant selected to receive standard parental benefits for 35 weeks. The Claimant submitted to the Commission, and testified, that he looked at the application form and it said his claim ended on May 2020, so he did not realize that his election of standard benefits meant he would receive only three weeks of EI benefits. The Claimant testified that he figured he would choose both standard and extended and see which

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 Subsection 23(1.2) of the *Employment Insurance Act*.

option gave him a better outcome. He stated that he chose standard and saw that it gave him an open claim until May 2020, so he did not bother choosing extended. I asked the Claimant where on the application form it showed him that he would have an open claim until May 2020, and after a few minutes of review he stated that the form did not include that information. Instead, the Claimant stated that perhaps he looked at his My Service Canada account after he filed the initial claim form and saw that the benefit period ran until May 2020, so he did not have reason to contact the Commission and ask any questions about his election

[10] The Commission submitted that the Claimant's parental benefits were processed on May 17, 2019, and that he received three weeks of EI benefits. The Commission included a full text screen breakdown of payments, which shows the Claimant served a waiting period from May 5, 2019, until May 11, 2019, and was paid benefits in the weeks of May 12, 2019, May 19, 2019, and May 26, 2019.

[11] The Claimant testified that in late June 2019, he noticed he had not received any EI payments for some time, so he contacted the Commission. He stated that the first agent he spoke with told him that perhaps the benefits were delayed because of the Canada Day holiday, and recommended he wait and see if the benefits came through after the holiday. The Claimant waited, and no benefits were paid, so he again contacted the Commission. The Claimant's evidence is that in this second call, the Commission told him that he was only eligible for three weeks of EI benefits and said those benefits had already been paid. The Claimant filed a request for reconsideration on July 18, 2019, stating he wanted to change his election from standard to extended parental benefits because the EI system did not guide him properly and led him to believe the end of his claim was May 2, 2020. He also stated that he made a claim in the month his baby turned one, thought the EI system would provide him the best option in his circumstances, and would not have chosen the standard parental benefit option if he had known he would only receive three weeks of EI benefits.

[12] The Commission issued a reconsideration decision on August 30, 2019, upholding its previous decision to find the Claimant was only eligible for three weeks of parental EI benefit payments, and was not able to change his benefit election from standard to extended. The Claimant filed a Notice of Appeal on September 7, 2019, stating the information on his account was wrong,

because it showed his claim as ending on May 2, 2020, which he found misleading. He also stated that he would have taken immediate action to address the issue if he had known.

[13] The Claimant submitted a print out of his My Service Canada account, stating it did not take into consideration his son's birth date. The print out states the start date of the claim is May 5, 2019, and that the end date is May 2, 2020.

[14] The Commission argues the Claimant elected to receive standard parental benefits and that this election is irrevocable once parental benefits were paid to him on May 12, 2019. Because his request to change his election from standard benefits to extended benefits was made after the first payment of standard parental benefits, he cannot change his election to now receive extended parental benefits.

[15] As the facts are undisputed, I accept that the Claimant elected to be paid standard parental EI benefits for a maximum of 35 weeks. I also accept the Claimant was paid parental benefits as of May 12, 2019. Further, I find this payment of parental benefits made the election of his maximum number of weeks for which parental benefits may be paid irrevocable.⁴ Therefore, I conclude the Claimant is not able to change the election from standard to extended.

[16] The Claimant testified that he did not know the difference between standard and extended parental benefits when he made a claim for EI benefits. He submitted that he saw the claim period ended on May 2, 2020, and thought it meant he would be eligible to receive EI benefits until that date. I find the onus was on the Claimant to ensure that he understood the differences between standard and extended parental benefits when he made his initial claim. The Claimant made no efforts to contact the Commission to clarify his understanding before this issue arose.

[17] The Claimant submitted that the EI application process should have recognized that he wanted to be paid 35 weeks of EI benefits, and should have chosen the best option for him. There is no provision within the EI legislation or regulations which obligate the Commission or the Tribunal to correct a claimant's choice if it was made in error. The Commission has no legal obligation to question the Claimant's election of parental benefits. Rather, the information provided on the initial EI claim form explains the difference between the extended and parental

⁴ Section 23(1.2) of the *Employment Insurance Act* states the election is irrevocable once benefits are paid.

benefit options. The onus is on the Claimant to read the information provided and make a decision about the benefits he is seeking. While I understand the Claimant's argument, I find I cannot override the legislation, which is clear that a claimant's choice between standard and parental benefits is irrevocable once benefits have been paid. I am bound to apply the law as it is written. I have no jurisdiction to change the law nor its application no matter how sympathetic the circumstances.⁵

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

Issue 2: Does the Claimant have any additional entitlement to parental EI benefits?

[19] The Commission submitted that a secondary issue, aside from the election of standard parental benefits, contributed to the lack of further payments of parental benefits. It admitted that this other issue was not communicated to the Claimant, because the Commission could not reach the Claimant during the reconsideration process and had no opportunity to speak with him. While the Claimant appears to believe he was paid only three weeks of EI benefits because of his selection of standard instead of extended parental benefits, there is another situation preventing payment to the Claimant.

[20] The *Employment Insurance Act* contains a provision stating that parental benefits are payable for each week of unemployment in the period that begins with the week in which the child is born, and ends 52 weeks after the week in which the child was born. While the Claimant's claim for parental EI benefits was established from May 5, 2019, until May 2, 2020, his parental benefit window was only three weeks long because his child was born in June 1, 2018, and he waited almost 52 weeks to make an initial claim. Because the window for parental benefits is only 52 weeks in length, the Claimant's delay in making a claim for EI benefits means that he had only three weeks left in his benefit period.

⁵ *Canada (Attorney General) v. Kneé*, 2011 FCA 301

[21] I find the information provided by Service Canada is not incorrect, because the Claimant's claim was established from May 5, 2019, until May 2, 2020, and the latter date refers to the last renewable week within the claim and is considered the end of his benefit period. This period is determined by the date the claim was established, May 5, 2019, and is the actual 52-week period where benefits are payable if the Claimant is entitled to them. I further find that the length of the claim and the number of weeks the Claimant is qualified to receive EI benefits are not the same issue. I find the Commission has properly calculated the number of weeks of EI benefits the Claimant is entitled to receive, based on the date of his initial claim and the birth date of his child. Because the child was born on June 1, 2018, the Claimant was eligible to receive parental EI benefits only until the week ending June 1, 2019.

[22] The Commission submitted that it recognized the confusion and frustration experienced by the Claimant, and states it is empathetic so the situation. Similarly, I am sympathetic to the Claimant's situation, but there is no legal basis for me to change the Claimant's election, or order that he may receive more than three weeks of EI benefits. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has found:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, 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.⁶

CONCLUSION

[23] The appeal is dismissed.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	September 26, 2019
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⁶ *Canada (Attorney General) v. Knee*, 2011 FCA 301

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. L., Appellant