



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. I. v Canada Employment Insurance Commission*, 2019 SST 1569

Tribunal File Number: GE-19-3266

BETWEEN:

S. I.

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: October 4, 2019

DATE OF DECISION: October 7, 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 November 25, 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 46 weeks of parental benefits and the child's other parent would be claiming 4 weeks. Approximately 10 months after her child was born the Claimant returned to work in a new job. In addition, the child's other parent was unable to get leave from his job. The Claimant contacted the Respondent, the Canada Employment Insurance Commission (Commission), and requested that the election of parental benefits be changed to 36 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

¹ *Employment Insurance Act*, subsection 23(1). This is how I refer to the legislation that applies to this appeal.

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.

[4] 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

[5] 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."

[6] The Claimant completed the application for maternity and parental benefits on November 11, 2018. In her 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 indicated that she wanted to claim 46 weeks of extended parental benefits. The Claimant also indicated on her claim that the child's other parent wished to claim four weeks' extended parental benefits.

[7] The Claimant testified that she chose the extended benefit option because she was calculating the amount of time that she could spend with her child, that the child's other parent would be able to take off work and the cost of day care for her child. The Claimant said that she had worked in a position that required her to commute 120 km daily. Had she remained in that position she would have to get up at 4:00 a.m. to drive to work and return home at 10:00 p.m. which would not allow her any time with her child. Approximately 10 months after her child was born the Claimant accepted and returned to work in a new job. Her new job is located nearer to her residence and she no longer has a long commute to work. The Claimant testified that the child's other parent was not able to get time off work and so he did not avail of the 4 weeks' parental benefits that she indicated would be used in her application for EI parental benefits. The Claimant said that she thought that her benefits would be prorated over the period of 50 weeks that she had chosen for extended parental benefits. She testified that she had seven

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

weeks of annual leave available from her former employer that, had she known that the amount of EI she received would be reduced she would have only claimed for 35 weeks and used her annual leave to make up the remainder of her time off work.

[8] The Claimant submitted that because her circumstances changed she was not able to avail of the extended or regular EI parental benefits. She said that all she was asking was to have the same entitlement as other parents who received a full year of EI benefits after the birth of a child. She felt that because she only received 10 months of EI benefits that her circumstances should be considered and her benefit selection should be changed. The Claimant recognizes that her assumption of the amount of benefits she received would be prorated was not the case.

[9] 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 March 29, 2019, and that on August 16, 2019, the Claimant requested that the claim be changed to standard parental benefits. The Commission submitted the Claimant's election became irrevocable as of March 29, 2019, pursuant to section 23(1.2) of the *Employment Insurance Act*.

[10] 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 March 29, 2019. Further, I find that the payment of EI parental benefits on March 29, 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.

[11] 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. While I recognize that the Claimant may have thought that her benefits would be prorated based on the number of weeks she selected, regardless of the type of parental 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.

[12] I acknowledge the unfortunate and difficult situation that this has created for the Claimant and her family given the change in her circumstances 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.

[13] 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

[14] The appeal is dismissed.

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

HEARD ON:	October 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. I., Appellant

⁴ *Canada (Attorney General) v. Kneé*, 2011 FCA 301. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal.