



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. C. v Canada Employment Insurance Commission*, 2020 SST 179

Tribunal File Number: GE-20-320

BETWEEN:

R. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: February 12, 2020

DATE OF DECISION: February 17, 2020

DECISION

[1] I am dismissing the Claimant's appeal.

OVERVIEW

[2] The Claimant and his wife both applied for parental benefits. The Claimant asked the Canada Employment Insurance Commission (Commission) to defer his waiting period because he thought that his wife was going to serve the waiting period. The Commission paid parental benefits to the Claimant. After a few months, the Commission reviewed the Claimant's benefits. The Commission decided that the Claimant could not defer his waiting period. The Commission asked the Claimant to repay one week of benefits to cover the one-week waiting period. The Claimant asked the Commission to reconsider its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] I am dismissing the Claimant's appeal. The Claimant has to serve a waiting period. He cannot defer his waiting period because his wife did not serve a waiting period. The Commission paid the Claimant more benefits than he was entitled to receive. The Claimant must repay the benefits he was not entitled to receive.

ISSUES

[4] Issue 1: Can the Claimant defer his waiting period?

[5] Issue 2: Does the Claimant have to repay benefits to the Commission?

ANALYSIS

Issue 1: Can the Claimant defer his waiting period?

[6] The Claimant cannot defer his waiting period. His wife did not serve a waiting period, and so he must serve a waiting period before he can collect parental benefits.

[7] Most people have to serve a waiting period before they can collect employment insurance benefits. Serving a waiting period is not the same thing as waiting for the Commission to process your employment insurance application.

[8] When you qualify for benefits and start a benefit period, the Commission does not pay any benefits for the first week that you would otherwise be eligible to receive benefits.¹ This is the waiting period. It is similar to a deductible in other insurance plans.

[9] When two parents apply for parental benefits to take care of the same child, only one parent has to serve a waiting period. If one parent has already served the waiting period, the other parent can ask the Commission to defer their waiting period.² This means that the second parent does not have to serve a waiting period until they ask for a different kind of benefits. You can only defer your waiting period if the other parent is going to serve the waiting period.

[10] The Commission argues that the Claimant cannot defer his waiting period because his wife did not serve a waiting period. The Commission says that the Claimant's wife met special conditions to waive her waiting period.³ According to the Commission, she did not serve a waiting period at all.

[11] The Commission provided a pay summary of the Claimant's wife's benefits. According to the summary, the Commission started her benefit period on August 11, 2019 and immediately began paying benefits. The pay summary does not show that the Claimant's wife served a waiting period.

[12] The Claimant has not provided any information to contradict the Commission's evidence. At the hearing, he said that he was not sure if his wife served a waiting period.

[13] I find the Commission's evidence more convincing than the Claimant's statements. I think that it is likely that the Claimant's wife did not serve a waiting period.

[14] The Claimant and his wife both asked for parental benefits to care for the same child. He could only defer his waiting period if his wife served the waiting period. His wife did not serve a

¹ Section 13 of the *Employment Insurance Act*.

² Section 23(5) of the *Employment Insurance Act*.

³ The Commission explains that they waived her waiting period because her employer paid sick leave after she stopped working. The authority to waive the waiting period in this circumstance comes from section 40(6) of the *Employment Insurance Regulations*.

waiting period, and so the Claimant must serve a waiting period before collecting parental benefits. He cannot defer his waiting period.

Issue 2: Does the Claimant have to repay benefits to the Commission?

[15] The Claimant received benefits he was not entitled to receive. He must repay those benefits to the Commission.

[16] According to a summary of benefits, the Commission paid four weeks of parental benefits to the Claimant, starting with the week of August 11, 2019. I accept the Commission's evidence. I find that the Commission paid four weeks of benefits without making the Claimant serve a waiting period.

[17] The Claimant could not defer his waiting period. He had to serve a one-week waiting period. The Commission paid the Claimant more benefits than he was entitled to receive because they did not withhold benefits for the waiting period.

[18] The Claimant must repay the benefits he was not entitled to receive.⁴ I do not have the authority to waive the Claimant's obligation to repay any overpayment.⁵ Furthermore, I do not have the authority to order the Commission to write off the Claimant's overpayment.⁶

[19] The Claimant argues that the Commission gave him and his wife misleading information. He says that the Commission did not tell his wife that they were going to waive her waiting period. The Commission did not tell him that he could not defer his waiting period. At the hearing, he said that he would have served his waiting period if the Commission had explained it to him before paying benefits. He argues that the Commission's error should excuse him from having to repay benefits.

[20] I accept that the Claimant did not understand the law about waiting periods. I accept that he and his wife might have done things differently if they understood more about the waiting period.

⁴ Section 43 of the *Employment Insurance Act*.

⁵ The Federal Court of Appeal says this in its decision *Canada (Attorney General) v. Buors*, 2002 FCA 372.

⁶ The Federal Court of Appeal says this in its decision *Canada (Attorney General) v. Woods*, 2002 FCA 91.

[21] Sometimes Commission agents give people misleading information about their benefits. However, this does not mean that the Commission can ignore the law. Even if a Commission agent makes a mistake, the Commission can only pay benefits if the law allows them to pay benefits. A Commission agent's mistake does not override the Commission's obligation to follow the law.⁷

[22] The Claimant did not serve his waiting period. He received benefits he was not entitled to receive. He must repay those benefits.

CONCLUSION

[23] I am dismissing the Claimant's appeal.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	February 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. C., Appellant

⁷ In *Canada (Attorney General) v. Shaw*, 2002 FCA 325, the Federal Court of Appeal explains that misinformation from the Commission does not give a claimant relief from the provisions of the *Employment Insurance Act*. Similarly, in *Granger v. Canada Employment Insurance Commission*, A-684-85, the Federal Court of Appeal explains that Commission agents do not have the power to amend the law. An individual Commission agent cannot promise to pay benefits in a way that is contrary to the law.