



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. H. v Canada Employment Insurance Commission*, 2020 SST 488

Tribunal File Number: GE-20-206

BETWEEN:

J. H.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: February 13, 2020

DATE OF DECISION: February 21, 2020

DECISION

[1] The appeal is allowed. The Commission incorrectly denied the Claimant's request to change his election of the maximum number of weeks of parental benefits from 61 weeks to 35 weeks.

OVERVIEW

[2] The Claimant's benefits representative from work applied for parental benefits on his behalf. In the application, the benefits representative selected the extended option for parental benefits in which the Claimant would receive up to 61 weeks of benefits at a benefit rate of 33% of his weekly insurable earnings. The application identified the Claimant's last day of work, the date he intended to return to work, and that he wished to claim seven weeks of parental benefits. After he started to receive parental benefits, the Claimant contacted the Commission to request to change the option selected. The Commission denied the Claimant's request because they had already paid him parental benefits.

ISSUE

[3] Did the Commission correctly deny the Claimant's request to change his election of the maximum number of weeks of parental benefits from 61 weeks to 35 weeks?

ANALYSIS

Issue: Did the Commission correctly deny the Claimant's request to change his election of the maximum number of weeks of parental benefits from 61 weeks to 35 weeks?

[4] I find that the Commission incorrectly denied the Claimant's request to change his election of the maximum number of weeks of parental benefits from 61 weeks to 35 weeks.

[5] Parental benefits are payable to a claimant to care for a newborn child of the claimant.¹ A claimant must elect the maximum number of weeks for which benefits can be paid.² This

¹ Subsection 23(1) of the *Employment Insurance Act*.

² Subsection 23(1.1) of the *Employment Insurance Act*.

election is irrevocable once benefits are paid.³ The maximum number of weeks for which parental benefits can be paid in a benefit period is 35 or 61.⁴

[6] The application for benefits explains two options for parental benefits available to claimants as of December 3, 2017. In the first, standard option, a claimant can receive up to 35 weeks of benefits at a benefit rate of 55% of their weekly insurable earnings up to a maximum amount. In the second, extended option, a claimant can receive up to 61 weeks of benefits at a benefit rate of 33% of their weekly insurable earnings up to a maximum amount. The Claimant, through his benefits representative, selected the extended option, and said that he wished to claim seven weeks of parental benefits.

[7] The Claimant explained to the Commission that his benefits representative, completed the application applied for extended parental benefits instead of standard parental benefits. The Commission told the Claimant that he could not change the option for parental benefits selected because they had already paid him benefits.

[8] In his request for reconsideration of the Commission's decision, the Claimant said that his benefits representative at work selected the wrong option. He explained to the Commission that he had originally asked for five weeks off work, but his baby arrived a couple weeks early. The Claimant said that his benefits representative amended the application before submitting it to show that he wanted seven weeks of parental benefits. He stated that the representative must have also changed the option to extended parental benefits in error. He said that he realized the mistake when he got his first payment.

[9] The Claimant's benefits representative testified at the hearing. He said that the Claimant contacted him by phone to say that he needed to extend his claim for parental benefits by two weeks. He stated that he misinterpreted what the Claimant said and completed the EI benefits application on his behalf, selecting the extended option.

[10] The Claimant testified that four weeks before the date his baby's expected birth date, he requested five weeks off work. He said that he and his wife agreed that he would take leave up

³ Subsection 23(1.2) of the *Employment Insurance Act*.

⁴ Paragraph 12(3)(b) of the *Employment Insurance Act*.

to Christmas, since the baby came two weeks early, and she would take the remaining time. The Claimant said that he knew the difference between the standard and extended options for parental benefits. He testified that he selected the standard option because he could not afford the extended option.

[11] The representative for the Claimant submitted four documents at the hearing. The first is an excerpt from the Commission's website. The representative highlighted the section that defines what a mistake is. The second is an employer form with details of the Claimant's application for benefits, including his benefit rate, type of benefits claimed and number of weeks the Claimant would collect benefits.

[12] The third is a document details what to do to apply for EI benefits, and what to do after applying. The fourth is an "Employment Insurance Confirmation Notice" form used by the employer to send information to Service Canada. The form, which the Claimant signed, shows his last day worked and return to work date. It identifies that the Claimant is requesting parental/adoption leave.

[13] Based on the testimony at the hearing, and the documents submitted by the Claimant's representative, I find that the Claimant intended to select the standard option for parental benefits. I find that the Claimant's benefits representative made a mistake when he completed the Claimant's application for benefits.

[14] The application for benefits shows that the Claimant's last day worked was November 1, 2019, and his return to work date was December 23, 2019. The Claimant confirmed this at the hearing. The dates are also consistent with those identified on the fourth form his representative submitted at the hearing. I find that the Claimant intended to take seven weeks off work and therefore claim seven weeks of parental benefits.

[15] The Claimant testified that his first payment of parental benefits was \$642. However, the next payment was approximately \$300. He said that the benefit rate he selected was \$562. He said he did not do anything after he got the first payment because he thought it was the normal pay. He testified that when he got the second payment, he called his benefits representative to find out why it was so low.

[16] Although the Claimant told the Commission that he realized the mistake related to the parental benefits option when he got his first payment, I give more weight to his testimony. The Commission spoke to the Claimant's benefits representative the day after the Claimant asked to change the option. The Commission confirmed to the benefits representative that this was not possible the Claimant had received four weeks of payments. I find that this supports the Claimant's testimony that he got one payment of \$642 and a second of approximately \$300.

[17] I find that the Claimant's testimony that he expected more than \$300 parental benefits payments supports his evidence that he intended to apply for and receive standard parental benefits. Again, I find that the Claimant's benefits representative made a mistake by selecting the extended option on the Claimant's behalf.

[18] I find that the Claimant intended to select the standard option for parental benefits. Because his benefits representative selected the extended option by mistake, I find that the Commission incorrectly denied the Claimant's request to change his election of the maximum number of weeks of parental benefits from 61 weeks to 35 weeks.

CONCLUSION

[19] The appeal is allowed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	February 13, 2020
METHOD OF PROCEEDING:	In person
APPEARANCES:	J. H., Claimant Dean Lindsay, Representative for the Claimant