



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. B. v Canada Employment Insurance Commission*, 2020 SST 559

Tribunal File Number: GE-20-1084

BETWEEN:

**A. B.**

Appellant/Claimant

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: Catherine Shaw

HEARD ON: April 21, 2020

DATE OF DECISION: April 22, 2020

## **Decision**

[1] I am dismissing the appeal. The Claimant can only be paid benefits during his parental window. Even if he received incorrect advice from his employer, it does not mean he can receive benefits if the law does not allow it.

## **Overview**

[2] The Claimant's children were born on July 11, 2018. He consulted his employer's Human Resources (HR) department about the timing of his parental leave and the HR representative told him he had until January 15, 2020, to claim employment insurance (EI) parental benefits. The Claimant applied for EI parental benefits on January 14, 2020 and chose to be paid extended parental benefits.

[3] Parental benefits can only be paid for a certain period of time after the date of the child's birth.<sup>1</sup> This is referred to as the "parental window." The Commission looked at the date of the child's birth and told the Claimant that he could be paid parental benefits until January 11, 2020. In other words, his parental window ended before he applied for benefits. The Claimant wants to be paid the parental benefits that he was entitled to receive. He is appealing because the HR representative gave him incorrect information. If he had been given the correct information, he would have applied for benefits sooner.

## **What I must decide**

[4] Can the Claimant be paid parental benefits after January 11, 2020?

## **Reasons for my decision**

[5] Parental benefits are intended to support you while you take time off work to care for your newborn child.<sup>2</sup> Parental benefits can only be paid within a specified period of time, called a parental window. The parental window starts the week in which the child is born and ends 52

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<sup>1</sup> The parental window starts at either the week of the child's birth or the week of the child's placement with a claimant for the purpose of adoption. This is set out in subsection 23(2) of the *Employment Insurance Act*.

<sup>2</sup> This is set out in section 23(1) of the *Employment Insurance Act*

weeks later. If a claimant elects to be paid extended parental benefits, their parental window is extended by a further 26 weeks.

[6] The Claimant's children were born on July 13, 2018. He contacted the HR department for his employer on November 5, 2019, and asked what the latest date was that he could begin his parental leave and the maximum amount of time that he could take. The HR representative responded that the Claimant could claim either 35 or 61 weeks of parental leave, and that he could begin his parental leave no later than 78 weeks after the child's birth date. He said that according to his calculations that would be January 15, 2020.

[7] At the hearing, the Claimant said that he also attempted to contact Service Canada near the end of November 2019. He was unable to speak with someone over the phone due to the long wait times. Instead, he and his spouse checked online for information about parental benefits. He said, to their understanding, the information they found on the website confirmed that he had 78 weeks to start his claim for parental benefits.

[8] The Claimant arranged to take parental leave from work starting January 13, 2020, to April 5, 2021. He signed the leave agreement on December 7, 2019. The Claimant applied for EI parental benefits on January 14, 2020, and chose to receive extended parental benefits.

[9] The Commission says the Claimant's parental window starts the week after the child's arrival and ends 79-weeks later, since the Claimant elected to receive extended parental benefits. This means his parental window starts July 13, 2018, and ends on January 11, 2020.

[10] In some cases, a claimant's parental window can be extended.<sup>3</sup> At the hearing, the Claimant confirmed that he did not meet any of the conditions for a longer parental window.

[11] The Claimant says that he believed he had followed the guidelines for claiming his parental benefits correctly because he relied on information from the HR representative. He thought the representative should know how these benefits worked. He did everything that he was supposed to do, and it is not his fault that he applied for benefits after the parental window ended. He argues that he should not lose his parental benefits because of someone else's error.

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<sup>3</sup> The criteria for an extension to the parental window are set out in sections 23(3) and 23(3.01) of the *Employment Insurance Act*.

[12] I recognize that the Claimant acted in good faith and had the best intentions. He attempted to contact Service Canada to ensure he knew his entitlement to benefits. When he could not contact them by phone, he visited their website to get the information. He acted carefully by asking the HR representative for advice. He had a genuine belief that he had done everything correctly to receive his full entitlement to parental benefits. I accept that the HR representative's advice was misleading. However, this does not mean that the Claimant can receive benefits. The Claimant can only be paid benefits if the law allows him to be paid benefits.

[13] I find the Commission has correctly calculated the Claimant's parental window. The Claimant's parental window starts the week that his children were born and ends 78 weeks after the children's birth. In this case, the Claimant's parental window ended on January 11, 2020.

[14] I sympathize with the Claimant's circumstances, but I am bound to apply the law as it is written. I have no ability to change the law or interpret it in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>4</sup>

[15] The Claimant is only able to be paid parental benefits within the parental window. The Claimant's parental window ended on January 11, 2020. Therefore, the Claimant cannot be paid parental benefits after this date.

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<sup>4</sup> This principle is stated in *Canada (Attorney General) v. Kneé*, 2011 FCA 301

**Conclusion**

[16] The Claimant's parental window ends on January 11, 2020. He can only be paid parental benefits during his parental window, so he cannot receive parental benefits after January 11, 2020. This means the appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	April 21, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. B., Appellant