



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. I. v Canada Employment Insurance Commission*, 2020 SST 517

Tribunal File Number: GE-20-1207

BETWEEN:

**R. I.**

Appellant

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: Angela Ryan Bourgeois

HEARD ON: May 4, 2020

DATE OF DECISION: May 21, 2020

## **DECISION**

[1] The appeal is allowed. The Appellant (Claimant) elected standard parental benefits.

## **OVERVIEW**

[2] When you apply for parental benefits under the *Employment Insurance Act*, you have to decide whether you want standard or extended benefits. Compared to standard benefits, you can get more weeks of extended benefits but you get less money per week. After you start to receive parental benefits, you cannot change your election.<sup>1</sup>

[3] The Claimant applied for sickness, maternity and parental benefits. She planned to take a year's leave after her baby's birth. Since her baby had not been born when she applied for benefits, she did not put a return to work date on her application form. Similarly, since her employer issued her record of employment before she had the baby, there was no return to work date on her record of employment.

[4] Her baby was born on November X, 2019. Shortly after, she asked her employer for a year's leave, from November X, 2019, to November X, 2020.

[5] A year's leave is consistent with the standard parental benefits option. However, on her application for benefits she selected extended benefits. She says she called the Canada Employment Insurance Commission (Commission) to make sure she had properly completed the form for a year's leave. The person she talked to assured her she had. The Commission says it has no record of this call.

[6] When she received her first parental benefit payment, she realized that she had made a mistake on her application form. She called the Commission. The Commission told her she could not switch to standard parental benefits because it had already paid her parental benefits under the extended option.

[7] The Claimant says she only wanted to take a year's leave. She believes that since she called the Commission to make sure she had made the right selection she should be able to

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<sup>1</sup> *Employment Insurance Act*, s 23 (1.1) and s 23 (1.2).

change it.

[8] I have to decide what type of benefits the Claimant chose.<sup>2</sup>

### **POST-HEARING DOCUMENTS**

[9] I gave the Claimant a few days after the hearing to provide documents to support her claim that she intended to take a year's leave. Since she provided relevant documents within the allowed time, I accepted the documents into evidence. The documents (GD6) were sent to the Commission, and I gave it time to send a response.

[10] After the hearing, I asked the Commission to provide me with a complete copy of the Claimant's application form, relevant records of employment and records of communication about her maternity and parental benefits. The Commission provided these documents (GD7) to the Tribunal. As the documents were relevant, I accepted them into evidence. The Tribunal sent the documents to the Claimant, and I have her time to send a response.

[11] Since the response deadlines have passed and neither party provided a response, I am going ahead with my decision.

### **ISSUE**

Did the Claimant choose standard or extended parental benefits?

### **ANALYSIS**

[12] Claimants wanting parental benefits can choose to receive either standard or extended parental benefits.<sup>3</sup> If a claimant chooses standard parental benefits, they can receive up to 35 weeks of parental benefits at 55% of their weekly insurable earnings. Claimants who choose extended parental benefits can receive up to 61 weeks of parental benefits at 33% of their weekly insurable earnings.<sup>4</sup>

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<sup>2</sup> The Tribunal's Appeal Division says the General Division has the authority to decide what kind of parental benefits a claimant elected to receive, considering all the relevant evidence. See *Canada Employment Insurance Commission v T.B.*, 2019 SST 823.

<sup>3</sup> The two options are explained in ss 12(3)(b) and 14(1) of the *Employment Insurance Act*.

<sup>4</sup> *Employment Insurance Act*, s 14(1).

[13] The law says a claimant cannot change their election after the Commission pays them parental benefits.<sup>5</sup>

[14] Since the Claimant has been paid parental benefits, her election cannot be changed.<sup>6</sup>

[15] The Commission says the Claimant elected extended parental benefits because that was her choice on her application form.

[16] Decisions from the Tribunal's Appeal Division have held that a claimant's choice of standard or extended parental benefits on the application form does not necessarily represent the claimant's election. According to the Appeal Division, I have to look at any circumstances that cast doubt on the claimant's choice.<sup>7</sup>

[17] The Appeal Division says:

Parliament explicitly made the election irrevocable. However, it did not define "election", or state that a claimant's selection on the application form must be conclusively deemed to be his or her election. In my view, the purpose of making the election irrevocable is to prevent claimants from changing their minds as their circumstances change and they reassess which type of benefit would be most advantageous. *Its purpose is not to punish claimants for provable slips or objectively reasonable misunderstandings at the time that they complete their applications.*<sup>8</sup>  
[emphasis mine]

[18] The Claimant says she meant to select standard parental benefits because she only wanted a year's leave, which she confirmed when she called the Commission after she applied for benefits. The Commission does not have a record of the Claimant's call.

### **Did the Claimant elect the standard or extended parental benefits?**

[19] I find the Claimant intended to elect standard parental benefits even though she picked extended on her application form. I find the Claimant's choice on her application form does not represent her election because:

- a) she intended to take a year's leave, which is consistent with the standard option;

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<sup>5</sup> *Employment Insurance Act*, s. 23(1.2)

<sup>6</sup> There is no dispute that she has been paid parental benefits.

<sup>7</sup> *V. V. v Canada Employment Insurance Commission*, 2020 SST 274 at para 10.

<sup>8</sup> *V. V. v Canada Employment Insurance Commission*, 2020 SST 274 at para 11.

- b) she made a mistake on her application form when she picked 53 weeks of parental benefits;
- c) she could not have reasonably known of her mistake until after she was paid parental benefits; and
- d) she promptly called the Commission when she realized she was not receiving standard parental benefits.

[20] I find the Claimant intended to take a year's leave for these reasons:

- a) She has consistently said she intended to take a year's leave from work.
- b) Her request for time off work supports her consistent statements about wanting a year's leave. She completed that form shortly after she had her baby. The form shows she planned to take a year's leave from her baby's birth date.
- c) In her reconsideration request, in her notice of appeal, and during her testimony she says she called the Commission the day after she applied for benefits to make sure she had made the correct choice to receive a year's leave. According to her, the agent confirmed that she had made the correct selection. The Commission says there is no record of that call. I prefer the Claimant's statements to the Commission's records because her statements are consistent and her testimony was sincere, direct, and detailed.

[21] I find the Claimant made a mistake on her application for benefits when she selected 53 weeks of parental benefits on top of 15 weeks of maternity benefits. This is why:

- a) First, I accept her explanation that she picked 53 weeks because she looked on-line to find out how many weeks were in a year. She found there were 52 weeks and a few days, so she rounded to 53 weeks. I find this explanation plausible since she only wanted a year's leave.
- b) Secondly, since she only asked her employer for a year off, it is unlikely that she would ask for benefits for more than a year.

- c) It was reasonable for her to interpret the question as asking about total weeks of benefits, not just parental benefits. The question is simply: How many weeks do you wish to claim? Since it does not specify parental benefits, it was reasonable for her to think the question was about total benefits, not just parental.

[22] I find she could not have reasonably known about her mistake until after she received her first payment of parental benefits. Since the Commission's agent assured her that she had made the right choice for a year's leave, she could not have reasonably known about her mistake until she received her first payment of parental benefits.

[23] I find the Claimant contacted the Commission as soon as she realized she was not receiving standard parental benefits. The Claimant received her first payment of parental benefits on or about Tuesday, and she called the Commission after she checked her bank account on Friday.

[24] Of all the circumstances, I am most persuaded that she intended to elect standard parental benefits because her employer's leave form proves she only wanted a year's leave, and a year's leave is consistent with receiving standard parental benefits. Also, I am strongly influenced by the fact she called the Commission to ensure she had made the correct selections the day after she applied for benefits.

[25] I agree with the Commission that the Claimant's election cannot be changed. However, considering all the circumstances, I find it more likely she elected standard parental benefits, not extended.

## **CONCLUSION**

[26] I find the Claimant elected standard parental benefits. I am allowing the appeal.

Angela Ryan Bourgeois  
Member, General Division - Employment Insurance Section

HEARD ON:	May 4, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. I., Appellant