



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CF v Canada Employment Insurance Commission*, 2020 SST 784

Tribunal File Number: GE-20-1779

BETWEEN:

C. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: August 12, 2020

DATE OF DECISION: August 17, 2020

DECISION

[1] The appeal is allowed in part. C. F. (the “Claimant”) is entitled to parental benefits for the week of May 31, 2020 to June 6, 2020.

OVERVIEW

[2] The Claimant’s spouse gave birth to a son on May 27, 2019. She and her spouse decided to share a combined 40 weeks of standard parental benefits. The Claimant’s spouse received maternity benefits followed by 35 weeks of employment insurance (EI) standard parental benefits, which ended on May 30, 2020. On May 27, 2019, the Claimant applied for five weeks of parental benefits to follow his spouse’s parental benefits. The Canada Employment Insurance Commission (the “Commission”) decided the Claimant was not entitled to any parental benefits because he had applied for those benefits after the one-year parental benefit window in which those benefits could be claimed, had ended.

[3] The Claimant says that he and his spouse were both told by the Commission that he could take five weeks of parental benefits after his wife’s parental benefits ended. He says they were not told about the parental benefit window. The Claimant says it is unfair and unlawful for the Commission to deny him his parental benefits.

[4] I have decided, for the reasons set out below, that the Claimant is entitled to parental benefits for the week of May 31, 2020 to June 6, 2020 because the Claimant meets a condition to extend his parental benefit window by one week. The Claimant is not entitled to the other four weeks of parental benefits he is seeking, as he claimed those outside the parental benefit window.

PRELIMINARY MATTERS

[5] The Claimant did not attend the hearing. The Claimant’s spouse, who was authorized by the Claimant to act as his representative, attended on his behalf. The Claimant’s spouse wished to also provide evidence. I permitted the Claimant’s spouse to act both as a representative and to provide evidence, as she had direct knowledge of the matter in issue.

ISSUE

[6] Can the Claimant receive any parental benefits?

ANALYSIS

Can the Claimant receive any parental benefits?

[7] The Claimant is entitled to parental benefits in the week of May 31, 2020 to June 6, 2020 but not thereafter.

[8] Since December 2017, claimants must choose, or “elect,” one of two options for parental benefits. ¹They must choose between standard and extended parental benefits.

[9] Standard parental benefits are paid to an individual claimant for up to 35 weeks at a benefit rate of 55% of weekly insurable earnings up to a maximum amount. ² If a claimant chooses to share standard parental benefits with another parent, an additional 5 weeks of benefits can be claimed. ³

[10] Extended parental benefits are paid to an individual claimant for up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings up to a maximum amount. If a claimant chooses to share extended parental benefits with another parent, 8 additional weeks of extended parental benefits can be claimed. ⁴

[11] An election for either standard or extended parental benefits cannot be changed once a parental benefit payment has been made. ⁵ Parents who decide to share parental benefits must choose the same type of parental benefits.

¹ Subsection 23(1.1) of the *Employment Insurance Act*.

² Subparagraph 12(3)(b)(i) of the *Employment Insurance Act*.

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

⁴ Subparagraph 12(4)(b)(ii) of the *Employment Insurance Act*.

⁵ Subsection 23(1.2) of the *Employment Insurance Act*.

[12] When parents are sharing parental benefits, they can receive the parental benefits at the same time or one after the other, but they must claim those benefits within the “parental benefit window”. Parental benefits cannot be collected outside the parental benefit window.⁶

[13] The parental benefit window for extended parental benefits begins with the week the child is born or placed for adoption and ends 78 weeks after the week the child is born or placed for adoption.⁷

[14] The parental benefit window for standard parental benefits begins with the week the child is born or placed for adoption⁸ and ends 52 weeks after the week the child is born or placed for adoption.⁹

[15] The Claimant and his spouse elected standard parental benefits so the standard parental benefit window applies in his situation.

[16] There are very limited reasons the 52-week standard parental benefit window can be extended. One reason is if a newborn or adopted child is hospitalized during the parental window. In that case, the window can be extended for the number of weeks the child is hospitalized during the parental benefit window.¹⁰ Also, if a member of the Canadian Forces has the start date of their parental leave deferred or they are directed to return to duty, the parental benefit window can be extended.¹¹ The parental benefit window can also be extended if a claimant has collected more than one kind of special benefits (which are: maternity benefits, parental benefits, benefits for illness or quarantine, compassionate care, and benefits to care for a critically ill adult or child), the maximum total number of weeks established for those reasons are greater than 50 weeks, and parental benefits were paid for fewer than the applicable maximum number of weeks.¹²

⁶ Subsection 22(2) of the *Employment Insurance Act*.

⁷ Subsection 23(3.21) of the *Employment Insurance Act*.

⁸ Paragraph 23(2)(a) of the *Employment Insurance Act*.

⁹ Paragraph 23(2)(b) of the *Employment Insurance Act*.

¹⁰ Subsection 23(3) of the *Employment Insurance Act*.

¹¹ Subsection 23(3.01) of the *Employment Insurance Act*.

¹² Subsection 23(3.2) of the *Employment Insurance Act*.

[17] The Claimant and his spouse's son was born on May 27, 2019. His spouse received 35 weeks of parental benefits, which she says ended on May 31, 2020. EI benefit weeks go from Sunday to Saturday. As such, the Claimant's spouse's parental benefits would have ended on May 30, 2020. The Claimant's last day of work before his parental leave began was on May 29, 2019 and he applied for five weeks of parental benefits that day. His benefit period was established by the Commission to begin on the Sunday of that week, which was May 31, 2020.

[18] The Commission says that the Claimant is not entitled to any parental benefits as he claimed the benefits outside the parental window. The Commission says the Claimant's child was born on May 27, 2019 and he requested parental benefits effective May 31, 2020, which was more than 52 weeks after the week in which the child was born. The Commission imposed a disentitlement effective June 1, 2020.

[19] The Claimant says in his documentation that both he and his spouse consulted with the Commission as to when he could take parental leave but he was never told about any parental benefit window. The Claimant says that they contacted Service Canada several times regarding many matters, and discussed the five-week parental sharing benefit. Each time they were informed that he would be eligible for such leave in addition to his spouse's 12-month parental leave. The Claimant says they specifically called the Commission at the end of April or early May for the purpose of clarifying the exact end date of his spouse's leave and when he could apply for parental leave. They were told that his spouse's leave ended on May 31, 2020 and his would start on June 1, 2020. The Claimant related that they were informed how to apply online and were assured he would be granted a leave as long as he completed the proper documentation. The Claimant says after being denied parental benefits, however, he was forced to return to work two weeks early and he was not eligible for the top up benefit from his employer for the three weeks he was off work. The Claimant points out that he and his spouse experienced an overwhelming amount of stress to find childcare for their son. The Claimant says he planned his parental leave based on the Commission's information. He says it is unlawful and unfair that he is denied parental benefits. He says he should not be penalized for an error on the part of the Commission's employees.

[20] The Claimant's spouse testified to the same effect. She explained she had several conversations with the Commission to ensure the paperwork was completed properly. She says that the Commission did not comply with their rights and responsibilities as set out in the application form. She points out that the Commission delayed in paying her benefits and they did not properly explain the legislation. The Claimant's spouse says no one would take five weeks off work if they knew they were not going to be paid for it. She says the Commission did not provide them with accurate information about how to claim benefits. She testified that she and her spouse had phoned the Commission at the end of April specifically to confirm this information. The Claimant's spouse says they did their due diligence. She says it was a complete shock to find out her spouse would not receive the parental benefits. She says they are out \$5011.12, not to mention the stress and cost of childcare and the fact her spouse was robbed of his parental leave with their first child. He had to return to work early because they were denied benefits.

[21] The Claimant also submits that the EI parental window rule is inconsistent with the leave provisions in the *Canada Labour Code*. She says according to that statute, her spouse would be entitled to parental leave following her leave.

[22] I have to decide what the Claimant's parental benefit window is. The Claimant's son was born on May 27, 2019. I find the Claimant's parental benefit window starts on the Sunday of that week, on May 26, 2019.¹³ The Claimant's parental benefit window ends 52 weeks after that week, on May 30, 2020.¹⁴ This means the Claimant can only claim parental benefits between May 26, 2019 and May 30, 2020, unless he meets a reason for an extension of that window.

[23] I asked the Claimant's spouse about the criteria for a possible extension to the parental benefit window. She confirmed the Claimant is not a member of the Canadian Forces and did not apply for or receive any other type of special benefits. The Claimant's spouse testified that her son was hospitalized after birth. After his birth on May 27, 2019, he left the hospital to go home on May 28, 2019. However, her son was then admitted to another hospital where he remained from May 29, 2019 to June 2, 2019.

¹³ Paragraph 23(2)(a) of the *Employment Insurance Act*.

¹⁴ Paragraph 23(2)(b) of the *Employment Insurance Act*.

[24] I accept the Claimant's credible testimony regarding her son's hospitalization and find that he was hospitalized for a week in the parental benefit window (May 27, 2019 to June 2, 2019).

[25] As the Claimant's child was hospitalized for a week during the parental benefit window, I find the parental benefit window can be extended by a week, from May 30, 2020, to end on June 6, 2020. Since the Claimant claimed benefits from May 31, 2020, he is entitled to parental benefits for the week of May 31, 2020 to June 6, 2020.

[26] The Claimant's spouse has referenced the *Canada Labour Code* leave provisions. She says these provisions are inconsistent with the EI legislation. It may be that the Claimant's entitlement to parental leave from his employer is governed by other statutes but the EI legislation is concerned with *benefits*, not leaves from employment. The *Canada Labour Code* is not relevant to the issue I have to decide, which is the Claimant's entitlement to parental benefits.

[27] I acknowledge the Claimant's frustration. I believe that neither he or his spouse were told anything about the parental benefit window in their conversations with the Commission's agents and I believe he was misinformed that he could receive five weeks of parental benefits after his wife's parental benefits ended.

[28] It is regrettable the Commission did not tell the Claimant or his spouse in their conversations about the parental benefit window such that they could have made an informed decision about when to claim their parental benefits. Further compounding the problem is the fact that the EI application does not explain the parental benefit window at all. It is understandable that the Claimant reached the conclusion that he could claim five weeks of parental benefits after his spouse's thirty-five weeks of parental benefits ended.

[29] While I sympathize with the Claimant's situation, I am bound to apply the law. I have no discretion to step outside the bounds of the legislation no matter how compelling the circumstances.¹⁵ In this case, the Claimant is only entitled to one week of parental benefits.

¹⁵ *Canada (Attorney General) v. Shaw*, 2002 FCA 325; *Granger v. Canada Employment and Immigration Commission*, A-684-85.

CONCLUSION

[30] The appeal is allowed in part. The Claimant is entitled to one week of parental benefits for the week of May 31, 2020 to June 6, 2020. He is not entitled to parental benefits after June 6, 2020.

Charlotte McQuade
Member, General Division - Employment Insurance Section

HEARD ON:	August 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. D., Representative for the Appellant