



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *IR v Canada Employment Insurance Commission*, 2020 SST 865

Tribunal File Number: GE-20-1742

BETWEEN:

I. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: August 20, 2020

FINAL SUBMISSION DEADLINE: August 26, 2020

DATE OF DECISION: September 4, 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 receiving parental benefits, you cannot change your election.¹ The standard benefits option is consistent with taking a year's leave from work.²

[3] On her employment insurance application form (EI form), the Claimant selected the extended option. Later, she asked the Commission to switch her from extended to standard.

[4] The Commission refused. It said she could not switch to standard parental benefits because it had already paid her parental benefits under the extended option.

[5] The Claimant is appealing that decision to the Tribunal. She says she meant to select standard parental benefits, as she only wanted to take a year's leave.

[6] I have to decide what type of parental benefits the Claimant elected.³

DOCUMENTS FILED AFTER THE HEARING

[7] In her initial submissions, the Claimant provided two documents with sticky notes on them. The Tribunal did not remove the notes before scanning the documents. So, neither I nor the Commission, could see what was under the sticky notes. I gave the Claimant time to refile the documents, without the sticky notes. She did. I then gave the Commission time to review and

¹ *Employment Insurance Act*, s 23 (1.1) and s 23 (1.2).

² Because the maximum pregnancy benefits of 15 weeks, plus the maximum standard parental benefits of 35 weeks, represents a total of 50 weeks of benefits.

³ 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.

provide a response. I waited a week after the response deadline before making my decision. The Tribunal has not received a response from the Commission.

ISSUE

Did the Claimant choose standard or extended parental benefits?

ANALYSIS

Standard v Extended

[8] Claimants wanting parental benefits can choose to receive either standard or extended parental benefits.⁴ 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.⁵

[9] **An election cannot be changed after the Commission pays benefits.**

[10] The law says a claimant cannot change their election after the Commission pays them parental benefits.⁶

[11] Since she has been paid parental benefits, her election cannot be changed.⁷ That is why it is important to decide which option she elected.

The election is more than what the EI form says

[12] Decisions from the Tribunal's Appeal Division have held that a claimant's choice of standard or extended parental benefits on the EI form does not necessarily represent the claimant's election. According to the Appeal Division, I have to consider circumstances that might cast doubt on the claimant's choice.⁸

⁴ The two options are explained in ss 12(3)(b) and 14(1) of the *Employment Insurance Act*.

⁵ *Employment Insurance Act*, s 14(1).

⁶ *Employment Insurance Act*, s. 23(1.2)

⁷ There is no dispute that she has been paid parental benefits.

⁸ *V. V. v Canada Employment Insurance Commission*, 2020 SST 274 at para 10.

[13] 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.*⁹
[emphasis mine]

The Claimant *selected* the extended option

[14] On her EI form, the Claimant selected 61 weeks of parental benefits and the extended option.

[15] The Commission says these selections represent her election.

[16] I have to consider circumstances that might cast doubt on this.

Circumstances that are contrary to her selection of extended benefits

[17] I find it likely the Claimant intended to take one year’s leave. My reasons follow.

[18] The Claimant’s EI form has conflicting information. The return to work date is consistent with just over a year’s leave (one year from the baby’s due date).¹⁰ However, she selected extended parental benefits for 61 weeks.

[19] I accept the Claimant’s testimony that she was confused when she completed the EI form. She thought it had to be consistent with the leave form she completed with her employer.

[20] The employer’s leave form also has conflicting information. It shows the Claimant was taking a year’s leave (January 11, 2020 (the baby’s due date) to January 11, 2021), but wanted “61/63” weeks of parental leave. It is worth noting these dates are not on the line for extended parental benefits.

⁹ *V. V. v Canada Employment Insurance Commission*, 2020 SST 274 at para 11.

¹⁰ GD3-7

[21] When the Claimant noticed her EI payments would be reduced when her parental benefits started, she called her employer. Her employer told her they would fix things up. The employer completed a second form to change her leave dates. This form shows that her original leave was from January 3, 2020 (the baby's birthday, which would not have been known when she completed the original form in December), to January 11, 2021. The revised leave was from January 3, 2020, to January 1, 2021.

[22] When I consider the conflict between the specific dates (which show she wanted to take a year's leave) and the indications she wanted to take more than a year's leave, I prefer the specific dates. I find the dates are a better indicator of the amount of leave she wanted to take because she had to type in the dates.

[23] The Commission says I shouldn't rely on the first employer leave form because it is not signed by the employer. The Claimant says this is the form she gave her employer, but a fully signed copy was never returned to her. I believe the Claimant because the dates on the this form are consistent with the record of employment completed by the employer around the same time (before the baby's birth).¹¹

[24] The Commission says the Claimant may, at some point, have wanted to take 78 weeks of leave. This is because the second form says the leave was being changed from 78 weeks to 52 weeks. It is unclear why the employer wrote this as it is plainly inconsistent with the original leave dates marked on the top of the form. I prefer the specific dates to the unexplained comment about 78 weeks. The seemingly random reference to 78 weeks is not enough to change my finding that the Claimant intended to take a year's leave.

[25] The Claimant's original record of employment (ROE) shows she intended to return to work on January 11, 2020, one year from her due date.¹² Later, the employer issued another record of employment that shows she planned to return on January 2, 2021, one year from the baby's birthday. This is strong evidence the Claimant intended to return to work after one year.

¹¹ The employer's leave form shows her leave starts on January 11, 2020. The record of employment shows that her last day paid is January 10, 2020. The employer's leave form shows her leave ends on January 11, 2021. The record of employment shows her recall date is January 12, 2021.

¹² This is because her last day paid was January 10, 2020, and her return to work date was January 12, 2021.

The Claimant *elected* the standard option

[26] I find the Claimant intended to elect the standard option because it is consistent with her intention of taking a year's leave. The extended option is inconsistent with the evidence in the file, including the return to work date on her EI form, the two employer forms, and her records of employment.

[27] Further, I find the evidence shows the Claimant was prompt in trying to find out why her EI benefits were going to be reduced. The second employer leave form was completed before she started receiving parental benefits. This proves the Claimant contacted the employer to fix the problem *before* she ever received parental benefits. It is understandable the Claimant would contact her employer because, in an earlier letter, the Commission said there was a problem with the return to work date provided by her employer.¹³

[28] I considered how long it took the Claimant to contact the Commission about switching options. I accept the Claimant's evidence that she tried to reach the Commission much earlier by telephone, but could not get through to talk to anyone. One day, she waited on hold for more than four hours. Since Service Canada Centres were closed because of the COVID-19 pandemic, it is reasonable that it would have been difficult to get through on the telephone lines.

[29] 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

[30] The Claimant elected standard parental benefits. The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	August 20, 2020
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¹³ GD3-25

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	I. R., Appellant