



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DH v Canada Employment Insurance Commission*, 2020 SST 1197

Tribunal File Number: GE-20-1977

BETWEEN:

D. H.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: October 22, 2020

DATE OF DECISION: November 4, 2020

Decision

[1] The appeal is allowed in part. The Claimant's parental benefit window is extended by two weeks. This means the Claimant is entitled to receive two weeks of standard EI parental benefits.

Overview

[2] The Claimant's child was born July X, 2019. He and his spouse planned to share standard EI parental benefits after his spouse received 35 weeks of parental benefits. They became aware of shared parental benefits from a flyer, researched the benefit on line and spoke to a Service Canada agent about their plans. The Claimant applied for 5 weeks of EI parental benefits beginning on July 20, 2020. The Commission looked at the child's birth date and did not pay any parental EI benefits because 52 weeks had passed since the child's birth. The Claimant is asking to be paid 5 weeks parental benefits and appeals to the Social Security Tribunal (Tribunal).

Preliminary Matters – Post Hearing Documents

[3] During the hearing, the Claimant testified that his child remained in hospital after birth. He had submitted a discharge certificate to the Commission but it did not appear in the appeal file. I asked the Claimant to submit the discharge certificate to the Tribunal. I have admitted the certificate into evidence because it is relevant to the issue of his entitlement to parental benefits. In accordance with its procedures, the Tribunal sent the Commission a copy of the discharge certificate. The Commission responded to the discharge certificate in a supplementary submission. I admitted the Commission's supplementary submission into evidence because it is relevant to the issue. I then gave the Claimant an opportunity to reply to the Commission's submission if he wished and asked that he do so by November 2, 2020. The Claimant has not replied as of the date of this decision.

Issues

[4] Can the Claimant be paid parental benefits after July 19, 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.¹ Parental benefits can only be paid for the 52 weeks following the week in which your child is born or the placement of a child with you for adoption. The 52-week period is called the “parental window.” If you or the other parent chooses to receive standard EI parental benefits, the parental window starts in the week in which the child is born and ends 52 weeks after that week.

[6] Starting in March 2019, a parent of a newborn is entitled to an additional five weeks of standard parental benefits, if they share parental benefits with another parent.²

[7] The Claimant’s child was born on July X, 2019. He says that he and his spouse first learned about the additional weeks of shared parental benefits in a flyer from their Member of Parliament. The Claimant’s spouse, affirmed to give evidence, testified that before the child was born she visited a Service Canada office to discuss their plans for taking the shared parental benefit. She said that she spoke to a Service Canada Agent and mapped out their plan that she would claim maternity EI benefits, 35 weeks of standard EI parental benefits and her spouse, the Claimant, would then take five weeks of standard EI parental benefits. The Claimant’s spouse testified that she was told by the Service Canada Agent the benefits could be shared and taken one after the other or concurrently. She said the information from the Agent lined up with the information she and the Claimant read on Service Canada’s web site.

[8] The Claimant noted that the information from the Agent and the web site was the same as that in the flyer they received from their Member of Parliament (MP). He noted that none of the material he reviewed indicated that shared parental benefits must be taken concurrently or within 52 weeks of the child’s birth. In support of his position, the Claimant provided a quote from their MP’s statement in Parliament on April 23, 2018, and a web site link to the same. The Claimant highlighted the MP’s statement: “... if both parents take parental leave, they will

¹ This is set out in section 23(1) of the *Employment Insurance Act*

² This is set out in section 23(4) of the *Employment Insurance Act*. This new section of the *Act* came into effect on March 17, 2019. It specifies that the maximum number of weeks of standard parental benefits that can be paid to a parent remains at 35 weeks, but if the other parent seeks to share parental benefits, an additional five weeks are available. This brings the total weeks to 40 weeks for shared parental benefits.

receive an additional five weeks of parental benefits, for a total of 40 weeks of leave, split between the parents as they choose, so long as each parent takes at least five weeks of leave.”³

The Claimant provided a web site link to a “Backgrounder: Parental sharing benefits” from Employment and Social Development Canada. The Claimant highlighted the sentence: Benefits can be accessed at the same time or separately.⁴ The Claimant’s spouse noted that the starting point for their research was the Government of Canada website. She noted that the web site does not specify that the benefit must be taken within a 52-week period. She noted that if accessed separately there was no way for parents to receive the maximum benefit of 40 weeks unless the leave was taken at the same time.

[9] The Claimant testified that he completed the application for EI parental benefits on line. He could not complete the application until after he had taken parental leave from his job. He completed the application on July 22, 2020. He noted that at no point after he entered his child’s date of birth, July X, 2019, was there any indication that the leave was outside the parameters. He said that the application process should have flagged the issue. Had he been allowed to complete an application earlier, in advance of his leave, and had he been told then of the issue it would have been helpful.

[10] The Claimant testified that had he known he would not receive the benefit he would not have taken the time off work. Being without income for five weeks is causing financial issues because he cannot afford to not work and not get paid. The Claimant noted that the Agent’s recording of his conversation on September 4, 2020, was not accurate. The Agent recorded the Claimant as stating that he “admitted that there may have been some miscommunication or misinterpretation.” The Claimant said that while there may have been miscommunication from the agent to his spouse he did not misinterpret the information on the web site, the MP’s flyer or the information that his spouse received from a Service Canada agent.

[11] The Claimant submitted that he and his spouse are detail orientated. They were careful and his spouse double-checked with a Service Canada Agent to clarify their benefits. They did their due diligence. It was not until four weeks after his application that the Claimant was

³ <https://openparliament.ca/debates/2018/4/23/andy-fillmore-2/?singlepage=1>

⁴ <https://www.canada.ca/en/employment-social-development/news/2018/09/backgrounder-parentalsharing-benefit.html>

informed he was not eligible. The Claimant's spouse submitted that the information on the Service Canada web site should match the legislation as most people do not read the legislation. In addition, she says the information from the MP and other Government of Canada web sites should match the legislation.

[12] In some cases, a claimant's parental window can be extended.⁵ The Claimant explained that his child was hospitalized after birth and submitted a copy of the discharge certificate. The Commission says that the Claimant's parental window starts in the week in which the child is born or placed for the purposes of adoption and ends 52 weeks after that week. It says that this meant the Claimant's parental window is from July 14, 2019, to July 18, 2020. The Commission was provided a copy of the discharge certificate and determined that the Claimant was entitled to a two-week extension of the parental benefit window from July 19, 2020, to August 1, 2020, because his child was hospitalized. The Commission submitted that although the Claimant is not entitled to the five weeks of parental benefits requested, two weeks of parental benefits could be payable as per the extension of the parental benefits window. The Commission requested that the Claimant's appeal be dismissed with this modification.

[13] I have reviewed the Claimant's application for parental benefits and note that it says, under the heading "Standard option: If parental benefits are shared, up to a combined total of 40 weeks payable if the child was born or placed for the purpose of adoption." I note in the pages of the Claimant's application for EI parental benefits, as provided in the appeal file, there is no reference to the requirement that parental benefits, shared or not, must be taken within 52 weeks of the date of the child's birth.

[14] The "Backgrounder" from Employment and Social Development Canada provided by the Claimant also does not reference the requirement that parental benefits, shared or not, must be taken within 52 weeks of the date of the child's birth. Nor does the Claimant's MP's remarks made in Parliament, provided by the Claimant, reference the requirement that parental benefits, shared or not, must be taken within 52 weeks of the date of the child's birth.

⁵ 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*.

[15] I recognize that the Claimant and his spouse acted in good faith and with due diligence when they researched shared EI parental benefits and determined that the Claimant could apply for and receive EI parental benefits once his spouse's 35 weeks of parental benefits ended. None of the information they consulted, the MP's remarks, the Background, the application form or the Service Canada Agent that the Claimant's spouse spoke with said that the shared EI parental benefit must be taken within 52 weeks of their child's birth. In addition, there is no indication that because the shared standard EI parental benefits must be taken within 12 months of the child's birth, regardless of which parent receives the benefits there might be some overlap in the weeks of benefits. This is because for most claimants, the 52-week parental window is less than the 55 weeks of available combined maternity and shared parental benefits. Where a couple gives birth and the female partner receives 15 weeks of EI maternity benefits following birth there remains 37 weeks in the 52-week parental window for both partners to share 40 weeks of standard parental benefit. This is because the legislative changes introduced in March 2019, did not increase either claimants' parental benefit window. Of note is that where EI maternity benefits are paid for less than 11 weeks after birth or are not taken, it is possible for the 40 weeks shared parental benefits to be taken consecutively within the 52-week parental window.

[16] I find that the Commission initially correctly calculated the Claimant's parental window to begin in the week in which his child was born and to end 52 weeks after that week. However, the Claimant's parental benefit window should be extended by two weeks due to the hospitalization of his child. This means the Claimant is entitled to receive two weeks of EI standard parental benefits.

[17] I recognize the Claimant submits that his spouse spoke to a Commission agent who provided incorrect information. The courts have found that it is obvious that Commission agents have "no power to amend the [law]," so any interpretation they make of the law does not, by itself, "have the force of law."⁶ The Court also stated that any commitment the Commission's representatives might make, "whether in good or bad faith, to act in a way other than" written in the law, is "absolutely void." This means that even if the Claimant did receive incorrect information from Commission agents, what is important is what is written in the *Employment*

⁶ *Granger v. Employment and Immigration Commission*, A-684-85. This is how I refer to decisions of the courts applicable to this appeal.

Insurance Act, and the benefits the Claimant can receive under those provisions. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.⁷ I must follow the law and render decisions based on the relevant legislation, and precedents set by the courts.

Other matters – Employment Insurance Emergency Response Benefit

[18] The Commission submitted that the Claimant’s claim had been set up as an EI Emergency Response Benefit (EI ERB) claim. The Commission said that the Claimant is required to complete his weekly claimant reports to initiate the payment of that benefit. At the hearing, the Claimant questioned whether he would be eligible for the EI ERB given he had taken a leave of absence from his employment and had a Supplemental Unemployment Benefit from his employment. As the issue of the Claimant’s eligibility for the EI ERB is not before me, I suggested to the Claimant that he check with Service Canada to determine his eligibility given the recent changes to the *Employment Insurance Act*. It will be the Commission’s decision as to whether the Claimant’s is eligible for the EI ERB.

Conclusion

[19] The appeal is allowed in part. The Claimant’s parental benefit window is to be extended by two weeks. This means the Claimant is entitled to receive two weeks of standard EI parental benefits.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	October 22, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. H., Appellant

⁷ *Canada (Attorney General) v. Knee*, 2011 FCA 301.