



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *GA v Canada Employment Insurance Commission*, 2020 SST 1203

Tribunal File Number: GE-20-2243

BETWEEN:

G. A.

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: November 27, 2020

DATE OF DECISION: November 30, 2020

Decision

[1] The appeal is allowed. The Claimant elected to receive extended Employment Insurance (EI) parental benefits.

Overview

[2] The Claimant's child was born on March X, 2020. He took a leave of absence from his employer and applied for 35 weeks of standard parental benefits beginning on August 30, 2020. The Commission wrote to the Claimant to say that it would not be able to pay him all 35 weeks of parental benefits because those benefits were only payable for the 52 weeks following the birth of his child. The Claimant requested reconsideration of this decision and asked to change his selection of standard parental benefits to extended parental benefits. He said that he did not know he made a mistake in his selection until he received the Commission's letter on September 25, 2020. The Claimant's request was denied by the Commission because it said the Claimant chose the standard option, had received parental benefits and could not revoke his selection once any parental benefits were paid.

Issue

[3] Did the Claimant elect to receive standard parental benefits?

Reasons for my decision

[4] I find that, on a balance of probabilities, the Claimant did not elect standard parental benefits. I find it is more likely than not that he elected extended parental benefits.

[5] Parental benefits are payable to a claimant to care for their newborn child.¹ A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be paid.² The standard option provides up to 35 weeks of benefits at a benefit rate of 55% of

¹ *Employment Insurance Act*, subsection 23(1). This is how I refer to the legislation that applies to this appeal.

² The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is found in subsection 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks for which parental benefits may be paid is found in paragraph 12(3)(b) of the *Employment Insurance Act*, based on the election the claimant makes under section 23.

weekly insurable earnings. The extended option provides up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings.

[6] A claimant's election cannot change once parental benefits are paid.³

[7] The Claimant testified that he and his wife do not have any family nearby to help with their first child. He was able to arrange his work so that he could spend time at home with his spouse and child. The Claimant is on a leave of absence from his employer from August 30, 2020, to May 1, 2021. His employer issued a Record of Employment showing that the reason for issuing is Parental. However, the employer reported that the date of return is unknown. The Claimant explained that he planned to take 35 weeks of leave and expected to receive 35 weeks of EI benefits during that time. He included with his appeal a letter from his employer indicating he would be on parental leave from August 31, 2020, to April 30, 2021.

[8] After he applied for EI benefits, the Claimant received a letter from Service Canada dated September 18, 2020. The Claimant testified that he received this letter on September 25, 2020, the same day as he received the first cheque for parental benefits. The Claimant testified that he called the Commission on September 28, 2020, and provided a copy to the Tribunal of his cell phone call records to show the date of the call. The Claimant said that when he read the letter it was the first time that he realized that he had made a mistake on the application. He was not aware that the payment of standard parental benefits would end 52 weeks after his child was born. He said that nowhere on the application form does it say that he would not be paid standard parental benefits 52 weeks after his child was born. The Claimant submitted that he provided his child's birthdate on the application and the application process should have warned him about his selection and the 52 weeks. He said that he received the notice that his selection was wrong on the same day as he received the first cheque. If he had been told prior to receiving the first cheque, that he would not receive all 35 weeks of benefits, he would have been able to change his selection. It is unfair that he was not told prior to receiving his first cheque.

[9] The Commission says that that subsection 23(1.2) of the *Employment Insurance Act* establishes that the election between standard or extended parental benefits is irrevocable once

³ *Employment Insurance Act*, Subsection 23(1.2)

parental benefits are paid in respect of the same child or children. It says that the information given to all claimants, prior to making the parental selection, clearly states the difference between standard and extended benefits. The Commission submitted the Claimant was also informed that the decision was irrevocable once parental benefits were paid. It says the law is clear once an election is made and parental benefits are paid the choice cannot be recalled.

[10] I note that subsections 23(1.1) and 23(1.2) of the *Employment Insurance Act* have the effect of preventing claimants from switching back and forth between the standard and extended parental benefit options. I am not trying to interfere with those provisions. However, although I am not bound, I am persuaded by recent decisions of the Social Security Tribunal of Canada, Appeal Division, regarding the selection of parental benefits.⁴ The decisions have found that claimants are able to argue that the Commission misinterpreted the choice they made before they started to receive parental benefits. Specifically, confusion can arise from contradictory answers that applicants provide on their application forms. In these cases, the Commission might consider acting early to clarify the intentions of claimants. When asked, Tribunal Members have the power to look at all the relevant circumstances and decide whether a claimant did, in fact, chose the standard or extended parental benefits option.⁵

[11] The Commission submitted the Claimant's application for parental benefits as evidence that he elected standard parental benefits. The onus then shifts to the Claimant to show, on a balance of probabilities, that he did not elect standard benefits or has not been paid any parental benefits in respect of the same child.

[12] The Claimant's personal circumstances are relevant to his understanding of what parental benefit option he was electing to receive. Prior to applying for benefits, the Claimant spoke to his employer's human resources department. He arranged a leave for 35 weeks and during that time will receive a top up while he is receiving benefits. The Claimant's application for benefits, under the heading Last Employer Information, shows that the Claimant's last day of work was August 30, 2020. In response to the question, will you be returning to work with this employer? the Claimant indicated yes and that his date of return was May 1, 2021. I note that there are 35

⁴ *T. B. v Canada Employment Insurance Commission*, AD-19-426; *M. H. v Canada Employment Insurance Commission*, AD-19-503. This is how I refer to decisions that apply to the circumstances of this appeal.

⁵ *Department of Employment and Social Development Act*, section 64(1)

weeks between August 30, 2020, and May 1, 2021. On the page titled Parental Information, the Claimant provided the birth date of his child as March X, 2020. On the following page, the Claimant indicated that he wished to claim 35 weeks. If it was his intent to stop caring for his child and return to work 52 weeks after his child's birth, he would have indicated that he wished to receive 27 weeks of parental benefits. He did not. The child's date of birth was given as part of the EI application process. I note that the EI application form does not state that standard parental benefits will not be paid once the child reaches the age of 1 year. It is the case that the standard option is a maximum of 35 weeks. However, the correct option, given the child's age at the time of application would have been the extended option for a period of 35 weeks. I accept the Claimant's evidence that he received notification on September 25, 2020, that he would not receive the total amount of parental benefits. That letter was issued on the same date as the first payment of parental benefits occurred. The Claimant, realizing the mistake, contacted the Commission within days requesting that the error be corrected. The Claimant's circumstances, the confusion created by the information on the application form, the evidence of his intention to return to work after 35 weeks of parental leave, and his contacting the Commission once he was informed of his entitlement are all evidence that he wanted to receive extended parental benefits. As a result, I find that the Claimant did not want to claim standard EI parental benefits as the Commission asserts, but rather it is more likely than not that his choice was to receive extended EI parental benefits. Accordingly, I find that, on a balance of probabilities, the Claimant chose to receive his parental EI benefits according to the extended option.

Conclusion

[13] The appeal is allowed.

Raelene R. Thomas
Member, General Division - Employment Insurance Section

HEARD ON:	November 27, 2020
METHOD OF PROCEEDING:	Teleconference

APPEARANCES:	G. A., Appellant
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