



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *JB v Canada Employment Insurance Commission*, 2021 SST 179

Tribunal File Number: GE-21-8

BETWEEN:

J. B.

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: January 18, 2021

DATE OF DECISION: January 20, 2021

Decision

[1] The appeal is allowed. The Claimant elected to receive standard employment insurance (EI) parental benefits.

Overview

[2] The Claimant arranged with her employer to take maternity and parental leave from April 15, 2020, to April 15, 2021. She applied for maternity EI benefits and parental EI benefits. The Claimant selected extended parental benefits and 52 weeks believing that was the total number of weeks for maternity EI benefits and parental EI benefits. The Claimant's benefits were reduced when she received her first parental EI benefit payment on August 14, 2020, however, she did not notice the reduction until some months later when there was not as much money available to pay her bills. The Claimant contacted the Commission to correct the error. The Commission says that once the Claimant received parental benefits her election of extended parental benefits could not change.

Preliminary Matter ~ Document received after the hearing

[3] The Claimant's Representative said in the hearing that she had prepared a document containing their argument in support of their position that the Claimant should be allowed to select standard EI parental benefits. The Representative asked to submit the document after the hearing. I admitted the document into evidence because I consider it to be relevant to the issue under appeal and clarifies the Claimant's argument concerning her selection of parental benefits.

Issue

[4] Did the Claimant elect to receive extended parental EI benefits?

Analysis

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

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

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

[8] The Claimant testified that she only intended to take one year off work after the birth of her baby. She arranged for her maternity leave with her employer about three months prior to her due date. With her appeal, she provided a copy of the form that she submitted to her supervisor and said that her supervisor approved her leave. The leave form shows that the Claimant requested leave from April 15, 2020, to April 15, 2021. The Claimant also provided a copy of a letter her employer wrote on June 24, 2020, in support of her application for a mortgage. The letter states the Claimant is a full time employee who "is currently on maternity leave and is scheduled to return to work on April 12, 2021."

[9] The Claimant testified that she completed her application for EI benefits on line. She did not discuss her application with anyone. The Claimant completed her application for EI benefits on April 11, 2020. She noted that she indicated that she would be returning to work on April 13, 2021. The Claimant said that she chose the extended parental benefits and 52 weeks under that option because the standard option only went to 35 weeks and she thought that the 52 weeks was for the entirety of her leave. She always had 52 weeks of leave in her mind and said she made a mistake. The Claimant testified that she believed she was being consistent throughout her application. She never had any intent to take an extended leave. The Claimant says that she made a mistake when she chose extended parental benefits and 52 weeks. She says she was not aware of the difference between standard and extended parental benefits.

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.

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

[10] The Claimant testified that she received a top-up from her employer for 15 weeks of her maternity leave. She was overwhelmed as a new mother and was not paying much attention to her finances. When the top up ended she thought that the amount of money coming in was low but did not have anyone to ask about why the amount was low as people were not at work. She thought that everything was fine but then, when there was not enough money to pay bills, it became apparent to her the amounts were really low and that is when she called the Commission.

[11] The Representative argued that the Claimant's application was for maternity benefits but she did not select parental benefits. She said it was very clear in the application that the Claimant planned to return to work within 52 weeks. There was an obvious error in the Claimant's application with the selection of extended parental benefits. The Representative questioned whether the Commission had the responsibility to identify the inconsistency in the Claimant's application before it processed the application or to contact the Claimant for clarification of her selection.

[12] 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 parental benefits are paid in respect of the same child or children. It says that the Claimant was informed on the application form of the difference between standard and extended parental benefits. It says the Claimant elected to receive a total of 52 weeks of extended parental benefits. The Commission submitted the law is clear once an election is made and once parental benefits are paid the choice cannot be recalled. It says that it is not discounting the Claimant's intent to take 52 weeks leave. The Commission says unfortunately, although the Claimant's explanation is both accepted and understandable, it must follow the information as provided and it cannot negate the explanation of benefits stated in the application form, which clearly identifies the significance of the decision of the type of parental benefits requested by the Claimant.

[13] 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

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

[15] The Claimant's personal circumstances are relevant to her understanding of what parental benefit option she was electing to receive. The Claimant testified that she provided inconsistent information in her application for EI benefits. She indicated that her return to work would be 52 weeks after she stopped working. She arranged for 52 weeks of maternity leave from her employer. She thought by selecting 52 weeks she was indicating the total number of weeks she would be taking off work.

[16] The Claimant stopped working on April 10, 2020, and applied for EI benefits on April 11, 2020. The Claimant's leave request form shows the end date of her leave as April 15, 2021. The employer's letter in support of the Claimant's application for a mortgage states that she would be returning to work on April 12, 2021. The application for EI benefits shows that the Claimant would be returning to work on April 13, 2021. This evidence tells me that the Claimant was confused about the choice she was making. The evidence confirms it was her intention from the outset to take 52 weeks of leave, receive benefits during that period and to return to work at the end of those 52 weeks. The Claimant's parental benefits began on August 2, 2020, with the first payment processed on August 14, 2020. The Claimant received a top up from her employer for the first 15 weeks of her maternity leave. She was overwhelmed with

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)

being a new mother. It took some time for her to realize that the amount she was receiving after the top up ended was really low. Once she realized that there might be something wrong she contacted the Commission. The appeal file shows that she spoke to a Service Canada agent on December 9, 2020, requesting that the error be corrected. Her delay in contacting the Commission is not determinative of the matter. The Claimant's circumstances, the confusion created by the information on the application form, the evidence of her intention to return to work within 52 weeks of starting her maternity leave and benefits, and her contacting the Commission once she realized the amount she was receiving was really low are all evidence she wanted to receive standard EI parental benefits. As a result, I find that the Claimant did not want to claim extended EI parental benefits as the Commission asserts, but rather it is more likely than not that her choice was to receive standard EI parental benefits. Accordingly, I find that, on a balance of probabilities, the Claimant elected to receive her parental EI benefits according to the standard option.

Conclusion

[17] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

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| HEARD ON: | January 18, 2021 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | J. B., Appellant R. B., Representative for the Appellant |