



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *KK v Canada Employment Insurance Commission*, 2020 SST 1222

Tribunal File Number: GE-20-2361

BETWEEN:

**K. K.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Lilian Klein

HEARD ON: December 30, 2020

DATE OF DECISION: December 31, 2020

## **DECISION**

[1] I am dismissing the appeal. The Claimant elected to receive extended parental benefits. This choice is irrevocable because the Commission has already started paying her these benefits.

## **OVERVIEW**

[2] When the Claimant applied for maternity and parental benefits, she clicked on the extended parental benefit option. She now wants to change to the standard option because she cannot manage financially on the reduced benefits that the extended option pays.

[3] The Commission says the Claimant cannot change from extended to standard parental benefits because her choice of options became irrevocable once her parental benefits began.

## **POST-HEARING DOCUMENTS**

[4] After the hearing, the Claimant submitted correspondence with her employer about her return-to-work date; a bank statement showing when the Commission first deposited parental benefits into her account; and a My Service Canada Account statement showing that the Commission incorrectly input the end of her claim as July 10, 2021, one year after she gave birth. I accepted this evidence as relevant to her appeal.

## **ISSUE**

[5] **Did the Claimant choose standard or extended parental benefits?**

## **ANALYSIS**

[6] After your maternity benefits end, you can get parental benefits to care for one or more newborn children or adopted children.<sup>1</sup> When making a claim for parental benefits, you must choose (“elect”) either standard parental benefits or extended parental benefits.<sup>2</sup> I explain these options below.

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<sup>1</sup> S 23(1) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> Since December 2017, applicants for EI parental benefits must choose the maximum number of weeks they wish to receive (s 23(1.1) of the EI Act).

[7] After your 15 weeks of maternity benefits ends, you can get standard parental benefits up to a maximum of 35 weeks at 55% of your usual weekly earnings up to a maximum amount. This option is for claimants who plan to take up to one year of maternity/parental leave.

[8] You can receive up to a maximum of 61 weeks of extended parental benefits at 33% of your usual weekly earning up to a maximum amount.<sup>3</sup> This option is for claimants who plan to take more than one year of maternity/parental leave.

[9] The dollar amount of benefits paid is the same whichever parental benefit option you choose. The benefits are spread over a longer period if you choose the extended option, which is why they are paid at a lower rate.

[10] The online benefit application explains these two options. It also explains that your choice of options is irrevocable. This means that you cannot change your mind once payment of parental benefits begins.<sup>4</sup>

[11] I have to decide if the Claimant can receive standard parental benefits. To do this, I must decide which parental benefit option she chose when she first applied for benefits.

**Did the Claimant choose standard or extended parental benefits?**

[12] I find that the Claimant choose extended parental benefits when she claimed her maternity and parental benefits. She did not choose standard parental benefits. I explain my findings below.

***What does the Claimant say?***

[13] The Claimant reported that she gave birth on July X, 2020. She applied for maternity and parental benefits on July 13, 2020. She says this is her first time applying for these benefits.

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<sup>3</sup> The two options are explained in s 12(3)(b) and s 14(1) of the EI Act.

<sup>4</sup> S 23(1.2) of the EI Act.

[14] In the “Maternity Information” section of her online application, the Claimant listed July 8, 2020, as her last day of work and September 13, 2021, as her return-to-work date.<sup>5</sup> She indicated that she wanted to receive parental benefits immediately after her maternity benefits.

[15] In the “Parental Information” section of her application, the Claimant clicked on the extended parental benefit option. She chose 61 weeks from the drop-down menu in answer to the question: “How many weeks do you wish to claim?”

[16] The Claimant says she clicked on the extended benefits option and requested 61 weeks because she thought that would cover 15 weeks of maternity benefits and 35 weeks of parental benefits, both types of benefits at 55% of her usual weekly salary. She says she expected that 11 weeks of extended benefits would follow at 33% of her usual weekly salary. That is why she asked for a total of 61 weeks of benefits.

[17] The Claimant argues that the application for maternity/parental benefits is confusing and she misunderstood the instructions. She was sleep deprived at the time because she had just given birth. She says Service Canada’s website is confusing too.

[18] The Claimant says the Commission told her over the phone when her maternity claim began that she would get \$1,010 biweekly (after the usual deductions). She argues that she never received a letter telling her that the amount would drop to \$660 midway through her claim. She says the Commission should have contacted her to tell her it was going to reduce her benefits.

[19] On November 19, 2020, after she saw the reduced benefits in her account for the first time, the Claimant asked the Commission to change her claim to the standard parental option. She says it was just two days after the first reduced payment. Given the circumstances, she says she should be able to change her claim to standard parental benefits.

***What does the Commission say?***

[20] The Commission says the Claimant chose extended parental benefits when she clicked on that option on her application and asked for 61 weeks of these benefits. It says it issued the first

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<sup>5</sup> GD3-6. After her baby was born, the Claimant arranged with her employer to return to work on September 23, 2021(GD5).

payment of her parental benefits on November 13, 2020.<sup>6</sup> The Commission says the Claimant's election of the extended option was irrevocable because it had already started paying her extended parental benefits.

### ***My Findings***

[21] I have to consider all the relevant evidence before deciding which parental benefit option the Claimant chose when she completed her application for benefits.<sup>7</sup> Based on this evidence, I find it more likely than not that she chose extended parental benefits.

[22] Ticking a box is not—on its own—evidence of choosing extended parental benefits but the other available evidence matches this option. The Claimant's choice of extended benefits is consistent with her expected return-to-work date. This date is well over the one year of benefits available for claimants who choose standard benefits.

[23] I give most weight to the Claimant's declaration on her application right after she gave birth that she planned to return to work on September 13, 2020. This is approximately 14 months later. Her correspondence with her employer after the baby was born shows that she extended her maternity leave by 10 more days until September 23, 2020.

[24] I considered the Claimant's argument that the parental benefit application is confusing. It is unfortunate that she misinterpreted the benefits that were available but I find that the explanation on the application gives two clear options: standard benefits or extended benefits. There is no option to receive a combination of both types of benefits.

[25] I considered the print screens that the Claimant submitted from the Service Canada website, which she says are confusing. I find that the website gives clear instructions that you must choose between standard and extended parental benefits. The website also warns that you cannot change options after you start receiving parental benefits. This information is consistent with the instructions on the online benefit application.

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<sup>6</sup> The Claimant's bank statements confirm that parental benefits at the lower rate were first deposited on November 17, 2020.

<sup>7</sup> *M.C. v Canada Employment Insurance Commission*, (2019) SST 666.

[26] I considered the Claimant's recent My Service Canada Account statement. While the Commission input an incorrect end date for her claim that was just one year after she gave birth, the statement correctly identifies that she requested 61 weeks of extended benefits at a lower weekly rate.

[27] According to the law, claimants cannot change their election from extended to standard parental benefits after the Commission starts paying them extended benefits. The Claimant received these benefits in her bank account two days before she first contacted the Commission. The timing is unfortunate but the election is still irrevocable.

[28] Since I find, on a balance of probabilities, that the Claimant chose to receive the extended option when she applied for parental benefits, she cannot now change her election to standard benefits.

[29] While I sympathize with the Claimant's difficult financial situation, I cannot interpret the law in any other way than its plain meaning.<sup>8</sup> I do not have the authority to set aside the law, even in cases of financial hardship.<sup>9</sup>

[30] The Claimant says she should receive the higher rate of parental benefits that comes with the standard option because she paid into EI for many years and has never before applied for benefits. However, EI is an insurance plan. As with other plans, claimants must meet the terms and conditions to receive benefits.<sup>10</sup> The Claimant does not meet the conditions to change her choice of parental benefit option because the Commission has already starting paying her extended benefits.

## **CONCLUSION**

[31] The Claimant chose extended parental benefits and this choice is irrevocable under the law. This means that her appeal is dismissed.

Lilian Klein

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<sup>8</sup> *Attorney General of Canada v Knee*, 2011 FCA 301.

<sup>9</sup> *Attorney General of Canada v Lévesque*, 2001 FCA 304.

<sup>10</sup> *Pannu v Attorney General of Canada*, 2004 FCA 90.

Member, General Division - Employment Insurance Section

HEARD ON:	December 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. K., Appellant