



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *BA v Canada Employment Insurance Commission*, 2021 SST 298

Tribunal File Number: GE-21-387

BETWEEN:

B. A.

Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gary Conrad

HEARD ON: March 19, 2021

DATE OF DECISION: March 20, 2021

DECISION

[1] The appeal is allowed. The Claimant's original intention was to elect standard parental benefits, so she is entitled to received standard parental benefits.

OVERVIEW

[2] The Claimant applied for maternity benefits on September 16, 2020, and requested her parental benefits start right after her maternity benefits ended. On the application for parental benefits the Claimant was given two choices, standard benefits for 35 weeks at a higher rate of pay or extended benefits for 61 weeks at a lower rate of pay¹.

[3] On her application the Claimant selected that she wanted extended benefits at the lower rate of pay and said she wanted 48 weeks of parental benefits².

[4] The Claimant called the Commission on January 26, 2021, and asked the Commission to change her parental benefits from extended to standard³.

[5] The Commission says that once a selection is chosen for parental benefits and those benefits are paid the law⁴ does not allow any change. The Commission says the Claimant was paid parental benefits on January 22, 2021, and she asked for the change in parental benefit type after she had already been paid benefits so they could not change her benefit type⁵.

[6] The Claimant says she misunderstood the maternity and parental benefits⁶.

ISSUE

[7] I must decide whether the Claimant can be paid standard parental benefits.

ANALYSIS

¹ GD03-9

² GD03-9 and GD03-10

³ GD03-21

⁴ Subsection 23(1.2) of the *Employment Insurance Act*

⁵ GD04-3

⁶ GD02-7

[8] The law says that benefits are payable to a claimant to care for one or more new-born children⁷.

[9] The law says that in a claim for parental benefits the claimant shall elect the maximum number of weeks for which benefits may be paid⁸, either 35 or 61 weeks⁹.

[10] The law says the election by a claimant of how many weeks of parental benefits to receive is irrevocable, i.e. cannot be changed, once the benefits have been paid¹⁰.

[11] The Commission says the Claimant's first payment of extended parental benefits was paid on January 22, 2021, and she made her request to change her parental benefits from extended to standard on January 26, 2021, which was after she had been paid benefits.

[12] The Commission says that since the Claimant made the request to change her parental benefits after she had already been paid parental benefits, as per the law, her benefits could not be changed¹¹.

[13] The Claimant testified she was planning to take one year off of work to care for her child and return to work on October 4, 2021.

[14] The Claimant testified she selected extended benefits and asked for 48 weeks of parental benefits as at the time she completed her application she believed that was what was required to cover the year off of work she wished to take to care for her child.

[15] The Claimant says on January 26, 2021, she noticed she was getting far less money than she was previously and she immediately called the Commission to try and get her benefits changed as she could not survive on so little money.

[16] The Claimant says she had problems completing the application as it was in English and she is not fluent in English.

⁷ Subsection 23(1) of the *Employment Insurance Act*

⁸ Subsection 23(1.1) of the *Employment Insurance Regulations*

⁹ Paragraph 12(3)(b) of the *Employment Insurance Act*

¹⁰ Subsection 23(1.2) of the *Employment Insurance Act*

¹¹ GD04-3

[17] I agree with the submission of the Commission an election made after benefits have been paid is irrevocable, as per the legislation¹²; however, that is not the issue I am looking at here. What I am looking at is what election the Claimant made in the first place, not whether she can change the election she initially made.

[18] While not bound by it, I find the decision of the Tribunal's Appeal Division in *Canada Employment Insurance Commission v T.B.* 2019 SST 823, persuasive, in that it states I should look at all the relevant circumstances to determine which option the Claimant had wanted for parental benefits and not simply go by what box was checked on the application form.

[19] In considering all the circumstances surrounding the Claimant's application for benefits I find she elected the standard option for parental benefits and she selected extended on her application form due to a mistake.

[20] I note the Claimant selected 48 weeks of parental benefits on her application form, which is neither the standard 35 weeks or the extended 61 weeks and asked for extended benefits. In considering the Claimant's testimony in why she chose this number and selected extended benefits I find her explanation probable and reasonable.

[21] Her testimony she felt 48 weeks and extended benefits was necessary in order to cover a year off work is understandable in light of her problems completing the application due to her struggles with English as seeing 35 weeks of standard, it is possible to understand how the Claimant would feel that is not enough time to cover her year off as she would be wanting benefits for longer than 35 weeks.

[22] I find that understanding that those 35 weeks refer to only parental and will not impact the amount of maternity which will immediately proceed parental is something a person could struggle with if they are not fluent in English and the Claimant testified she was having trouble understanding the way maternity and parental benefits interact and their differences.

[23] I find the Claimant calling the Commission mere days after her parental benefits started and her rate of pay decreased from her maternity benefits supports she wanted standard benefits.

¹² Subsection 23(1.2) of the *Employment Insurance Act*

I find if the Claimant had always wanted to select extended parental benefits she would not be concerned about the amount of her benefits dropping, since she would have expected it, being aware that at the start of her application she had decided to select the parental benefit type with the lower payment amount.

[24] I note the Claimant did not put a return to work date on her application and her employer did not list one on her Record of Employment. I find this calls into question her testimony that she wanted to take approximately a year off of work and return to work on October 4, 2021, as she could have easily put a return to work date on her application when asked and October 4, 2021, is more than one year from when her child was born.

[25] However, the issues with the Claimant's return to work date is not fatal to her appeal. I find, when I consider all the circumstances regarding the Claimant's application the totality of the evidence supports the Claimant always wanted to apply for standard benefits, but she selected extended by mistake.

CONCLUSION

[26] The appeal is allowed. I find the Claimant elected to receive standard parental benefits not extended.

Gary Conrad

Member, General Division - Employment Insurance Section

HEARD ON:	March 19, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. A., Claimant