



Citation: *RW v Canada Employment Insurance Commission*, 2021 SST 300

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: R. W.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (422275) dated May 3, 2021
(issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Teleconference
Hearing date: May 18, 2021
Hearing participant: Appellant

Decision date: May 18, 2021
File number: GE-21-725

Decision

[1] The appeal is allowed. I find the Claimant elected to receive standard parental employment insurance benefits.

Overview

[2] The Claimant applied for maternity and parental employment insurance (EI) benefits. She selected to receive extended parental benefits on the application form, but she believed she was choosing to receive one year of total benefits. In fact, extended parental benefits pay a lower rate of benefits for up to 61 weeks, in addition to 15 weeks of maternity benefits. The Claimant realized she made a mistake when she noticed the parental benefit payment was much lower than the maternity benefit payment.

[3] The Canada Employment Insurance Commission (Commission) says the Claimant was already paid parental benefits, so her choice of parental benefit type cannot be changed. It submits the Claimant elected to receive extended benefits because she picked that option on the application form. The Claimant says she chose extended parental benefits by mistake. The Claimant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

Issue

[4] What type of parental benefits did the Claimant elect to receive?

Analysis

[5] Parental benefits are intended to support parents while they take time off work to care for their newborn children.¹ Claimants must elect the maximum number of weeks,

¹ *Employment Insurance Act*, section 23(1)

either 35 or 61, that they want to be paid parental benefits.² The election of the parental benefit term cannot be changed once parental benefits are paid.³

[6] For the following reasons, I find the Claimant elected to receive standard parental benefits.

[7] The Claimant applied for maternity and parental EI benefits on December 4, 2020. She submitted on the application form that her last day of work was November 26, 2020, and she did not know her return to work date. At the hearing, she explained that she is a teacher and she knew she would be taking around a year off work, but expected that she may go back to work a bit before one year of leave. She testified that she planned to take, at most, one year off work for maternity and parental leave.

[8] Despite her intention to take only one year off work for maternity and parental leave, on the parental information section of the EI application form she selected to receive extended parental benefits. She testified that she chose this option on the form, but submitted it was not what she intended to choose. The form also asks how many weeks of parental benefits she wants to claim. She picked 52 weeks from the drop-down menu.

[9] The Claimant testified that she thought she was choosing to receive 52 weeks of benefits in total when she selected to receive 52 weeks of parental benefits. She submitted that she read the application form and understood the benefit types, but thought she selected standard benefits and did not know she made a mistake until the parental benefits were paid.

[10] The Claimant appealed to the Tribunal on May 3, 2021. She submitted that she accidentally asked for 52 weeks of parental benefits, when she really wanted 52 weeks including the maternity period.

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

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

[11] The Commission submits that the Claimant was informed of the difference between standard and extended parental benefits, and elected to receive extended parental benefits. It adds that she was also informed that the decision was irrevocable once parental benefits were paid.

[12] The Commission adds that the first payment of parental benefits was issued on April 23, 2021. The Claimant does not dispute this information, so I find it is a fact. The Commission argues that since the Claimant received parental benefits on April 23, 2021, the election became irrevocable as of that date. It adds that while the Claimant's situation may evoke sympathy, the law is clear that once the choice of election is made and benefits are paid, that choice cannot be switched.

[13] I agree with the Commission on the matter of the law being clear that once benefits are paid an election for parental benefits cannot be changed. I disagree, however, with its determination that selecting a certain option on an application form is the only relevant information in deciding which election the Claimant made.

[14] This issue turns on what it means to elect a benefit period. Is it only the choice on the application form? Or does it include the individual's *intention* in making that choice? A decision from the Tribunal's Appeal Division confirms that I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive.⁴

[15] I find it is more likely than not that the Claimant intended to elect one year of maternity and parental benefits combined, because her explanation that she thought maternity and parental were the same period and that she only wanted 52 weeks off work was credible.

[16] I further find the Claimant elected to receive standard benefits, because I prefer her evidence that when she made the choice of parental benefit terms, she believed she was selecting the entire length of her EI benefits to be one year and did not intend to be

⁴ The Appeal Division set out that the General Division has the authority to decide what kind of parental benefits a claimant elected to receive, considering all of the relevant evidence in *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823

off work for longer than the 15 week maternity and 35 week parental benefit period. Since standard benefits provide up to 35 weeks of parental benefits at a higher benefit rate than extended benefits, it would not be reasonable to find the Claimant intended to elect to receive extended parental benefits.

[17] The law does not allow a claimant to change their election after they have been paid parental benefits.⁵ However, as I find the Claimant did not elect extended parental benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her election of standard parental benefits.

Conclusion

[18] The appeal is allowed. I find the Claimant elected to receive standard parental benefits.

Candace R. Salmon
Member, General Division – Employment Insurance Section

⁵ *Employment Insurance Act*, subsection 23(1.2)