



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *JW v Canada Employment Insurance Commission*, 2021 SST 260

Tribunal File Number: GE-20-2398  
GE-20-2400

BETWEEN:

**J. W.**

Appellant / Claimant

and

**Canada Employment Insurance Commission**

Respondent / Commission

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

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DECISION BY: Raelene R. Thomas

HEARD ON: January 29, 2021

DATE OF DECISION: February 11, 2021

## **Decision**

[1] The appeals are dismissed.

[2] The Claimant can only be paid parental benefits during his parental window. This means he cannot be paid standard parental benefits after August 1, 2020.

[3] The Claimant's claim for employment insurance (EI) regular benefits was made in the same benefit period after he claimed parental benefits. This means the Claimant must serve a one-week waiting period prior to receiving EI regular benefits.

## **Overview**

[4] The Claimant's child was born July X, 2019. He and his spouse planned to share 40 weeks of standard EI parental benefits. The Claimant applied for 21 weeks of parental benefits and expected to receive benefits from March 22, 2020 to August 15, 2020. The Commission looked at the child's birth date and decided it could not pay any parental EI benefits after July 25, 2020 because 52 weeks had passed since the child's birth. The Claimant requested reconsideration of this decision. The Commission, after it learned that the Claimant's child was hospitalized for four days following birth, extended the timeframe for receiving parental benefits and paid the Claimant parental benefits until August 1, 2020.

[5] The Claimant was due to return to work on August 17, 2020 and was unable to secure childcare for his child from August 2, 2020 to August 16, 2020. The Commission suggested he apply to receive regular EI benefits effective August 2, 2020. He did so. The Commission then determined that the Claimant was required to serve a one-week waiting period prior to receiving regular EI benefits with the result that the Claimant only received regular EI benefits for the week of August 9, 2020, to August 15, 2020.

[6] The Claimant appealed both decisions to the Social Security Tribunal. He says that the parental benefit information on the Commission's website and the information he received from Service Canada Agents was incorrect, incomplete or misleading. If he and his spouse had been told that the shared parental benefits had to be taken within 52 weeks of their child's birth they would have arranged to do so by overlapping their weeks of benefits. He says that he should not have to serve a waiting period to receive regular EI benefits because of the misinformation he

was given about the parental benefits and the waiting periods have since been waived following his application for regular EI benefits.

### **Preliminary Matters – Joined Appeals**

[7] I can hear two or more appeals at the same time if they involve a common question of law or fact arises in the appeals, but I can do that only if it would not be unfair to the people involved in the appeals.<sup>1</sup>

[8] I have reviewed these two appeals. The circumstances around the Claimant’s parental benefits claim and his regular benefits claim have much in common. I am therefore satisfied that it is appropriate to deal with the Claimant’s appeals together because of the common questions of law and fact involved.

### **Issues**

[9] Can the Claimant be paid parental benefits after August 1, 2020?

[10] Does the Claimant have to serve a waiting period from August 2, 2020 to August 8, 2020?

### **Analysis ~ Parental Benefits**

[11] Parental benefits are intended to support you while you take time off work to care for your newborn child.<sup>2</sup> Parental benefits can only be paid for the 52 weeks following the week in which your child is born or the placement of a child with you for adoption. The 52-week period is called the “parental window.” If you or the other parent chooses to receive standard EI parental benefits, the parental window starts in the week in which the child is born and ends 52 weeks after that week.

[12] Starting in March 2019, a parent of a newborn is entitled to an additional five weeks of standard parental benefits, if they share parental benefits with another parent.<sup>3</sup>

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<sup>1</sup> *Social Security Tribunal Regulations*, section 13. This is how I refer to the legislation that applies to this appeal.

<sup>2</sup> *Employment Insurance Act*, section 23(1)

<sup>3</sup> This is set out in section 23(4) of the *Employment Insurance Act*. This section of the *Act* came into effect on March 17, 2019. It specifies that the maximum number of weeks of standard parental benefits that can be paid to a parent

[13] The Claimant's child was born on July X, 2019. He says that he and his spouse researched EI benefits on the Commission's website and also talked to Service Canada agents about the benefits. He applied for benefits on-line and planned to take from March 23, 2020, to August 17, 2020, off work. That is a period of 21 weeks. He completed his application for standard parental EI benefits on-line on April 4, 2020. The Claimant testified that he received 19 weeks of parental benefits.

[14] The Claimant says throughout the on-line research he and his spouse did, in conversations with Service Canada agents and the process of trying to figure out why his parental benefits were cut off on August 1, 2020, he and his spouse were misled and given incorrect information. The Claimant said he and his spouse realized there was a problem when his parental benefits abruptly ended. The Claimant said that if he and his spouse were told in advance about the actual details of shared parental benefits all of this would have been avoided because they would have overlapped their leaves and benefits.

[15] In some cases, a claimant's parental window can be extended.<sup>4</sup> The Claimant explained to a Service Canada agent that his child was hospitalized after birth. The Commission says that the Claimant's parental window starts in the week in which the child is born or placed for the purposes of adoption and ends 52 weeks after that week which was July 25, 2000. It says that because the Claimant's child was hospitalized after birth this meant the Claimant's parental window could be extended by one week to end on August 1, 2020. The Commission submitted that without further conditions to extend the parental entitlement period, no further weeks of parental benefits are payable.

[16] I have reviewed the Claimant's application for parental benefits and note that it says, under the heading "Standard option: If parental benefits are shared, up to a combined total of 40 weeks payable if the child was born or placed for the purpose of adoption." I note in the pages of the Claimant's application for EI parental benefits, as provided in the appeal file, there is no reference to the requirement that parental benefits, shared or not, must be taken within 52 weeks of the date of the child's birth.

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remains at 35 weeks, but if the other parent seeks to share parental benefits, an additional five weeks are available. This brings the total weeks to 40 weeks for shared parental benefits.

<sup>4</sup> *Employment Insurance Act*, sections 23(3) and 23(3.01)

[17] I have also looked at the website pages the Claimant provided to the Commission as part of his reconsideration request. One page titled “Employment Insurance Choice and flexibility for parents” shows that there are 15 weeks of maternity benefits “+ 40 weeks parental benefits to share.” There is no mention on that page that the parental benefits must be taken within 52 weeks of the child’s birth. A second Government of Canada webpage entitled “EI maternity and parental benefits: what these benefits offer” explains the shared parental benefits and states “Parents can receive their weeks of benefits at the same time or one after the other.” There is no mention on this page that parental benefits must be taken by both parents within 52 weeks of the child’s birth.

[18] I recognize that the Claimant and his spouse acted in good faith and with due diligence when they researched shared EI parental benefits and determined that the Claimant could apply for and receive EI parental benefits once his spouse’s weeks of parental benefits ended. None of the information they consulted on-line, the application form or the Service Canada agents they spoke with said that the shared EI parental benefits must be taken by both parents within 52 weeks of their child’s birth. In addition, there is no indication that because the shared standard EI parental benefits must be taken within 12 months of the child’s birth, regardless of which parent receives the benefits there might be some overlap in the weeks of benefits. This is because for most claimants, the 52-week parental window is less than the 55 weeks of available combined maternity and shared parental benefits. Where a couple gives birth and the female partner receives 15 weeks of EI maternity benefits following birth there remains 37 weeks in the 52-week parental window for both partners to share 40 weeks of standard parental benefits. This is because the legislative changes introduced in March 2019, did not increase either claimants’ parental benefit window. Of note is that where EI maternity benefits are paid for less than 11 weeks after birth or are not taken, it is possible for the 40 weeks shared parental benefits to be taken consecutively within the 52-week parental window.

[19] I find that the Commission initially correctly calculated the Claimant’s parental window to begin in the week in which his child was born and to end 52 weeks after that week. I also find that the Commission correctly extended the parental benefit window by one week when it learned the Claimant’s child was hospitalized for four days after birth. Accordingly, I find the Claimant has received the correct amount of parental benefits and cannot be paid parental benefits after August 1, 2020.

## **Analysis ~ Waiting Period**

[20] Benefits are paid to a claimant for each week of unemployment that falls in a benefit period.<sup>5</sup>

[21] As a general rule the law says that all claimants must serve a one-week waiting period at the start of their claim,<sup>6</sup> unless they qualify for a waiver of their waiting period.<sup>7</sup>

[22] Claimants who apply for maternity/parental benefits are also subject to a waiting period; however, only one waiting period is served in respect of the same child. This means that only one of the two parents has to serve a waiting period when both are seeking parental or maternity benefits.<sup>8</sup>

[23] When one parent has served, or is serving, their waiting period after filing a claim to receive maternity or parental benefits, the other parent's waiting period is deferred. The other parent's waiting period is deferred until he or she makes another claim for benefits in the same benefit period.<sup>9</sup> A deferral is not a waiver.

[24] A benefit period is 52 weeks in length, unless a claimant qualifies for an extension.<sup>10</sup> A claimant may receive more than one type of EI benefits in the same benefit period.

[25] The Claimant testified that he spoke to agents when his claim for parental benefits ended abruptly. It was at the suggestion of a Service Canada agent that he applied for regular EI benefits. The application for regular EI benefits was completed over the phone by a Service Canada agent. The Claimant testified he was initially told that the waiting period for the regular EI benefits would be waived. He was later told that because he was claiming a new benefit that he was required to serve a waiting period. It was not until he was paid the extra week of parental benefits and the one week of regular EI benefits in October 2020 that the facts came out.

[26] The Claimant submitted that he should not have to serve a waiting period because the incorrect information he and his spouse received led to his parental benefits ending two weeks

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<sup>5</sup> *Employment Insurance Act*, section 12(1)

<sup>6</sup> *Employment Insurance Act*, section 13

<sup>7</sup> *Employment Insurance Regulations*, section 40, provides that the waiting period may be waived where a claimant receives sick pay from their employer after they stop working.

<sup>8</sup> *Employment Insurance Act*, section 23(5)

<sup>9</sup> *Employment Insurance Act*, section 23(5)

<sup>10</sup> *Employment Insurance Act*, section 10(2)

before his planned date of return to work. That misinformation led to his application for regular EI benefits so that he could receive 21 weeks of EI benefits as planned. He said he should not be penalized by the one-week waiting period due to the lack of clarity from the Commission's websites and Service Canada agents. He said it is hard for people to know what is true when the websites and agents tell you one thing and there is no way to know that the legislation is not superseded by what the website and the agents say. The Claimant said that while he was having the issues around his parental benefits and regular EI benefits addressed, the legislation changed so that the waiting period was waived for all EI applicants. The Claimant argued that his request to have the waiting period waived should be allowed as it has now been waived for everyone, especially because his dispute fell within the period when the waiting period was waived.

[27] The Commission submitted that it was satisfied the Claimant's spouse had served a one-week waiting period with respect to the Claimant's request for parental benefits. Which meant the Claimant could defer his waiting period when he claimed parental benefits. However, it says that a waiting period can only be deferred until a claimant makes a new claim for benefits within the same benefit period. The Commission says the Claimant's claim for regular benefits, payable from August 2, 2020, requires that the Claimant serve a waiting period of one week, because he does not meet any of the conditions that would allow it to waive the waiting period. The Commission says that the change in legislation that waives the waiting period came into effect as of September 27, 2020 and cannot be applied to the Claimant's claim because his claim was established before that date. The Commission also considered if the Claimant could receive benefits under the legislation that was in effect from March 15, 2020, to October 3, 2020. It determined that the March 15, 2020, amendments to the legislation do not apply to claimants, like the Claimant, who are able to establish a claim under section 23 Parental Benefits of the *Employment Insurance Act*.

[28] I find the Claimant must serve the one-week waiting period. The pre-amble to section 23(5) of the *Employment Insurance Act* says that a claimant may have the waiting period deferred until he or she makes another claim for benefits in the same benefit period if the claimant meets one of four conditions. In this case, the Claimant's waiting period was deferred because his spouse had served a one-week waiting period when she received maternity and parental benefits for their child. The Claimant's 52-week benefit period began on March 22, 2020, the same day as he established his claim for parental benefits. Despite his and his spouse's

best efforts to ensure the Claimant would receive 21 weeks of parental benefits, he received 19 weeks of parental benefits when the parental benefit window ended on August 1, 2020. The only means by which the Claimant could continue receiving EI benefits was to make a claim for regular EI benefits. In doing so, the Claimant's waiting period could no longer be deferred, because the claim for regular EI benefits was another claim in the same benefit period.

[29] I further find that the Claimant cannot take advantage of the waiver of the waiting period that came into effect with the legislative amendments enacted in response to the COVID-19 pandemic. This is because the legislative changes came into effect after the Claimant's benefit period began and also after he applied for EI regular benefits.

[30] The Claimant's benefit period began on March 22, 2020. His parental benefits ended on August 1, 2020. The Claimant's claim for regular EI benefits for the weeks August 1, 2020, to August 15, 2020, was completed by the Service Canada agent on September 15, 2020. The change to the law that waived the waiting period for claimants came into effect on September 27, 2020.<sup>11</sup> This means that for a waiting period to be waived a claimant would have to establish their claim for benefits after September 27, 2020, which is not the case for the Claimant. As a result, I find the Claimant cannot take advantage of this provision to have the waiting period waived.

## **Conclusion**

[31] I recognize that the Claimant and his spouse made diligent efforts to ensure they were eligible to receive the full amount of shared parental benefits and spoke to Commission agents who provided incorrect information. The courts have found that Commission agents have "no power to amend the [law]," so any interpretation they make of the law does not, by itself, "have the force of law."<sup>12</sup> I also recognize the Claimant was given conflicting information about the requirement to serve the waiting period. The Court has also stated that any commitment the Commission's representatives might make, "whether in good or bad faith, to act in a way other than" written in the law, is "absolutely void." This means that even if the Claimant and his spouse did receive incorrect information from Commission agents, what is important is what is

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<sup>11</sup> Interim Order No. 8 Amending the *Employment Insurance Act (Facilitated Access to Benefits)*, section 6 and explanatory note.

<sup>12</sup> *Granger v. Employment and Immigration Commission*, A-684-85. This is how I refer to decisions of the courts applicable to this appeal.



written in the *Employment Insurance Act*, and the benefits the Claimant can receive under those provisions. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.<sup>13</sup> I must follow the law and render decisions based on the relevant legislation, and precedents set by the courts.

[32] The Claimant can only be paid parental benefits during his parental window. This means he cannot be paid standard parental benefits past August 1, 2020.

[33] The Claimant's claim for employment insurance (EI) regular benefits was made in the same benefit period in which he claimed parental benefits. This means the Claimant must serve a one-week waiting period prior to receiving EI regular benefits.

[34] The appeals are dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	January 29, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. W., Appellant

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<sup>13</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301.