



Citation: *KD v Canada Employment Insurance Commission*, 2021 SST 336

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

Decision

Appellant: K. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (418387) dated March 24, 2021
(issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Videoconference

Hearing date: May 10, 2021

Hearing participants: Appellant
F. D., Appellant's Witness

Decision date: May 12, 2021

File number: GE-21-679

Decision

[1] K. D. is the Claimant. The Canada Employment Insurance Commission (the Commission) made a decision about her Employment Insurance (EI) benefits. She is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am allowing the appeal. The Claimant's election for extended parental Employment Insurance (EI) benefits is invalid. This means the Claimant can elect to receive standard parental benefits.

Overview

[3] The Claimant applied for maternity and parental benefits. The Commission says the Claimant elected 48 weeks of extended parental benefits on her application. The Claimant asked the Commission to change her benefits to standard parental benefits. The Commission refused. They say they cannot change her benefits because they have already issued a payment.

[4] The Claimant appeals to the Tribunal. She says she thought she requested one year of maternity leave when she requested 48 weeks of extended parental benefits. She says she thought the full benefit for one year was 12 months x 4 weeks so 48 weeks. She understood the application to mean that extended benefits was an extension of maternity benefits. She says she applied within 48 hours of giving birth so she was physically fatigued, in an emotional state, and on pain medication, added to her confusion.

Issues

[5] Is the Claimant's election for extended parental benefits valid?

[6] If not, is she entitled to standard parental benefits?

Analysis

[7] Parental benefits are payable to a claimant to care for one or more of the claimant's newborn children. Parental benefits may be shared between the parents.¹

[8] A claimant must choose between standard or extended parental benefits when completing their Employment Insurance (EI) application. Standard parental benefits are paid to a maximum of 35 weeks, at the regular benefit rate. Extended parental benefits are paid to a maximum of 61 weeks, at a reduced benefit rate.²

[9] The EI Act states that a claimant cannot change their choice, or "election," between standard and extended parental benefits once parental benefits are paid.³

[10] I find that the Claimant's election for extended parental benefits is invalid. Further, I find she would have elected standard parental benefits had the information on the application been clear.⁴ My reasons are set out below.

[11] The Commission states that they cannot change the Claimant's election of parental benefits. This is because they issued the first payment for extended parental benefits on February 12, 2021. She did not request a change to her parental benefits until February 25, 2021, after they had issued the first payment.

[12] The Commission says that the Claimant was "informed on the application for parental benefits of the difference between standard parental benefits and extended parental benefits and she chose extended parental benefits."⁵ They say that the application explains that the decision was irrevocable once parental benefits were paid. The Commission argues that the Claimant's election became irrevocable as of February 12, 2021, as this is when they issued the first payment for extended parental benefits.

[13] The Claimant disputes the Commission's submissions. She says she found the application confusing. She thought the explanation on the application meant that she

¹ Subsection 23(1) of the *Employment Insurance Act* (EI Act).

² Subsection 23(1.1) and subparagraphs 12(3)(b)(i) and (ii) of the EI Act.

³ Subsection 23(1.2) of the EI Act.

⁴ I make this finding based on a balance of probabilities. Meaning that it is more likely than not.

⁵ See GD3-9 to GD3-10.

had to choose extended parental benefits because that was an extension of her maternity benefits. She says she found the drop-down menu added to the confusion when she had to select a number. This is when she did the math of 12 months x 4 weeks and selected 48 weeks.

[14] The Claimant says that English is her second language and she had just given birth a few days prior to applying for benefits, all of which contributes to her making an honest mistake on her application. Having to complete the application for EI benefits as soon as she gave birth only added to her stress and confusion. While completing her application, she says she thought she would see a summary of her answers and an opportunity to review or change them prior to submitting her application, but that did not happen. She states she never fully understood the difference between standard and extended parental benefits until she spoke with an agent after her benefit rate dropped to the lower rate.

[15] The Claimant states that she had always planned to take a one-week vacation and then one full year of maternity leave, as supported by the evidence on file. Namely, her Record of Employment (ROE), her return to work date listed on her application for benefits, and her proof of employment letter. She says she gave birth on X, 2020, and was paid vacation pay from October 19, 2020, to October 23, 2020. This is why her ROE lists her last day paid as October 23, 2020.⁶ She lists October 26, 2021, as her return to work date on her application for benefits.⁷ Shortly after giving birth, she says she applied for a mortgage. The mortgage company required a letter of employment so her employer issued the letter on November 30, 2020. The employer states in this letter that she commenced maternity leave on October 27, 2020, and will be returning to work on October 28, 2021.⁸

[16] In making my decision, I am persuaded by three decisions issued by the Tribunal's Appeal Division (AD), even though they are not binding.⁹ In these decisions, the AD Members determined that the claimant's election for parental benefits was

⁶ See page GD3-19.

⁷ See page GD3-7.

⁸ See page GD2-11.

⁹ *M.L. v Canada Employment Insurance Commission*, AD-19-681; *T.B. v Canada Employment Insurance Commission*, AD-19-426; *M.H. v Canada Employment Insurance Commission*, AD-19-503.

invalid. They determined that the Commission misinterpreted the claimant's choice of parental benefits. In some cases, they found that the application lists an inadequate explanation of parental benefits, causing the claimant's confusion.

[17] I have the power to decide whether a claimant did in fact make a valid election for parental benefits.¹⁰ To "elect" is to make a deliberate choice between options.¹¹ When a claimant has been misled or misinformed about their options then they are not able to make a deliberate choice of one option over the other.¹²

[18] The facts of this case resemble those in *M.H. v Canada Employment Insurance Commission*.¹³ In that case, the claimant wanted to take a one-year leave so she figured that she needed the extended option. She appeared to have forgotten that she would receive 15 weeks of maternity benefits before her parental benefits. That claimant provided evidence on her application confirming her return to work date. The AD Member found that her answer to the one question about which type of parental benefits she was applying for, was not in line with her intentions and conflicted with other answers she provided on the same application form.

[19] The application form states that Service Canada is responsible to "give you accurate information about your claim."¹⁴ In this case, the information provided on the application misled the Claimant. She was not aware that the number of benefits she was selecting was only for parental benefits. She was not aware her choice did not include maternity benefits and would result in an overall lower amount of benefits.

[20] The Claimant consistently states that she thought she was applying for one year of benefits, based on her calculation of 12 months x 4 weeks or 48 weeks. This supports that the application does not provide a clear explanation that maternity benefits is not included in the number of weeks selected from the drop-down menu. The Claimant lists her return to work date on the application, which is not consistent with the

¹⁰ Subsection 64(1) of the *Department of Employment and Social Development Act*.

¹¹ *M.L. v Canada Employment Insurance Commission*, AD-19-681 provided an example from *Newcorp Properties Ltd. v West Vancouver (District)*, 1989 CanLII 2908 (BCSC).

¹² *M.L. v Canada Employment Insurance Commission*, AD-19-681.

¹³ *M.H. v Canada Employment Insurance Commission*, AD-19-503.

¹⁴ See GD3-10.

number of weeks she selected for parental benefits. She also provides documentary evidence that she arranged a one-year maternity leave with her employer, as supported by her letter of employment issued one month after her last day paid. Further, I recognize that English is the Claimant's second language and she had to apply for benefits as soon as she gave birth, which is a time when she was physically fatigued, in an emotional state, and on pain medication.

[21] I find that the Claimant's election for extended parental benefits is invalid. The absence of clear information on the application prevented the Claimant from making a valid election for parental benefits. I accept that the fact that she lists her return to work date as October 26, 2021, is evidence of her choice to be off work for one year. This supports that the type of parental benefits she was applying for was not in line with her intentions as it conflicted with other answers she provided on the same application.

[22] The Claimant completed the application based on the instructions provided.¹⁵ Her intention was to be on maternity and parental leave for one year. This is supported by her last day paid of October 23, 2020, and her return to work date of October 26, 2021. Therefore, I find her election for extended parental benefits is invalid. So, I am rescinding the Commission's decision to pay the Claimant extended parental benefits.

Conclusion

[23] The Claimant's election for extended parental benefits is invalid. This means she is entitled to elect standard parental benefits. Accordingly, I am allowing the appeal.

Linda Bell
Member, General Division – Employment Insurance Section

¹⁵ See section 50(3) of the EI Act.