



Citation: *DT v Canada Employment Insurance Commission*, 2021 SST 352

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

Decision

Appellant:	D. T.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (423220) dated May 7, 2021 (issued by Service Canada)
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Tribunal member:	Maria Marchese
Type of hearing:	Teleconference
Hearing date:	May 21, 2021
Hearing participant:	Appellant
Decision date:	May 28, 2021
File number:	GE-21-773

Decision

[1] The appeal is allowed. This means that the Appellant truly elected to receive standard and not extended parental employment insurance (EI) benefits.

Overview

[2] The Appellant applied for combined pregnancy and parental benefits on January 13, 2021. In her application, the Appellant requested to receive extended EI parental benefits of 61 weeks. On May 3, 2021 the Appellant received an email that a notification had been added to her Service Canada account. The Appellant checked her account and learned that her maternity benefits had been exhausted, and she would receive extended parental benefits at a level of 33% of her weekly earnings. On learning this information, the Appellant immediately contacted the Canada Employment Insurance Commission (Commission) to tell them she had not intended to collect extended EI benefits and to request a change to standard EI parental benefits.

[3] The Appellant says that she never intended to be on an extended leave so she never intended to collect 61 weeks of EI benefits. The Appellant says she only wanted a maximum of 12 months of benefits after which time she intended to return to work. She says she made a mistake and did not fully understand the options when she made her selection.

[4] The Commission told the Appellant that she had elected the extended benefit option that resulted in a lesser benefit amount. The Commission denied the Appellant's request to change her EI parental benefit option to standard benefits stating it had no discretion to do so.

Issue

[5] Which of the two options of EI parental benefits, either standard or extended, did the Appellant elect?

Analysis

[6] Parental benefits are intended to support claimants while they take time off work to care for their newborn child.¹ A claimant must choose (or elect) the maximum number of weeks, either 35 or 61, that they can be paid parental benefits.² The choice of the parental benefit term cannot be changed once parental benefits are paid relating to the same child.³

[7] When claimants apply for parental benefits, they must choose between two different kinds of parental benefits:

- Extended parental benefits allows claimants to receive up to 61 weeks of benefits at the rate of 33% of their weekly earnings, up to a maximum amount.
- Standard parental benefits allows claimants to receive up to 35 weeks of benefits at the rate of 55% of their weekly earnings, up to a maximum amount.⁴

[8] I must take into account all the evidence when I decide which type of EI parental benefits the Appellant likely elected to receive.⁵

Which of the two options of EI parental benefits, either standard or extended, did the Appellant elect?

[9] I find that the Appellant elected standard EI parental benefits.

¹ This is set out in section 23(1) of the *Employment Insurance Act* (Act).

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

³ This is stated in section 23(1.2) of the Act.

⁴ These options are set out in sections 12(3)(b) and 14(1) of the Act.

⁵ The Appeal Division of the SST has confirmed that the SST has the authority to make a decision about which type of EI parental benefits a claimant elected in the first place.

[10] The Appellant gave birth on January 11, 2021. She applied for maternity, followed by parental, benefits on January 13, 2021, and her claim was established effective January 10, 2021.

[11] When she completed her on-line application, the Appellant had the choice to select between the standard and the extended EI parental benefits. The Appellant selected the extended option, and she inputted "61" as the number of weeks she wished to receive benefits.⁶

[12] The employer's Record of Employment (ROE) states the Appellant is expected to be recalled to work on January 12, 2022.

[13] The Commission issued the first extended EI parental benefit payment to the Appellant on April 30, 2021.⁷

[14] The Appellant contacted the Commission on May 3, 2021 requesting a change to her parental benefit type but the Commission refused the request because EI parental benefits had already been paid to the Appellant.

[15] The Appellant asked the Commission to reconsider its decision stating:

- she had no idea she had chosen the extended EI parental type,
- she received a notification that a decision had been made in her file,
- she had planned on taking 12 months off and returning to work on January 11, 2022,
- she could not afford to stay off work with the amount of EI benefits she was receiving.⁸

[16] The Appellant spoke with the Commission on May 3, 2021 stating that she applied for the 61 weeks of extended parental benefits in error as she meant to apply for

⁶ Reconsideration File, GD3-10.

⁷ Reconsideration File, GD3-28.

⁸ Reconsideration File, GD3-23.

the 35 weeks of standard EI parental benefits since she intended to take 1 year off for maternity leave, and return to work on January 12, 2022.

[17] The Commission denied the Appellant's request to reconsider its decision reiterating that, once benefits have been paid, the choice of option is irrevocable.

[18] The Appellant appealed to the Social Security Tribunal of Canada (SST) saying that:

- this was her first time applying for EI maternity/parental benefits,
- she had no idea she had selected the extended EI parental benefit option, nor did she understand what "extended benefits" meant,
- her plan was always to go back to work in 12 months, returning to work on January 12, 2022,
- she tried getting information about EI benefits online and the representative did not mention anything about the different types of maternity/parental benefit options,
- she was struggling financially.

[19] At the hearing, the Appellant testified that on May 3, 2021 she received an automated message that a notification had been added to her Service Canada Account. The Appellant immediately checked her account and realized, for the first time, that she was receiving extended EI parental benefits at 33% of her earnings. The Appellant was adamant that this was the first notification that she would be receiving 61 weeks of extended EI parental benefits at a level of 33% of her earnings.

[20] The Appellant said that on learning, on May 3, 2021, she was receiving extended EI parental benefits she immediately called the Commission that same day. The Appellant reiterated that she made a simple mistake in selecting the extended EI parental benefit option, and that she had never been on EI benefits before. Further, the Appellant added that she completed her application two days after she had her baby

and she was going through a lot with all the stress brought on with having just had a baby, when completing her application.

[21] The Appellant said that she never intended to take an extended leave because she intended to have a second child and was not planning to be off for 18 months for this first baby.

[22] The Appellant felt that the EI program should have recognized that her work recall date listed on the ROE did not correspond with the 61 months of extended EI parental benefits selected on the online application. The Appellant believes that the EI system should flag any discrepancies between the recall date on the ROE and the parental benefit option selected on the online application.

[23] Further, the Appellant stated that, had the Commission issued an earlier notice of the upcoming switch from EI maternity benefits to EI parental benefits, she would have been alerted to the fact that she had mistakenly selected extended rather than standard EI parental benefits, and the Appellant could have requested the change before the Commission issued the first parental benefit payment.

[24] The Commission says that the law prevents claimants from changing an election once parental benefits are paid. It says that the election became irrevocable when the first benefit payment was made to the Appellant on April 30, 2021, and could not be changed. The Commission decided that it could not make the change because the Appellant selected the extended parental benefit option, and once the choice of election is made, and benefits are paid, the choice cannot be recalled.

[25] It is my view that the real issue in this case is not whether a choice of parental benefit can be changed, but whether the option selected was the true expression of the Appellant's desired option.

[26] I find that, in reviewing all of the evidence, the Appellant's selection of the extended EI parental benefit option was not a true expression of the Appellant's desired option.

[27] In reviewing the application as completed by the Appellant I find she did click the button associated with extended benefits.

[28] I believe the Appellant when she says, and I find that, she made a mistake in choosing the 61 week extended parental option, and did not really understand what “extended benefits” meant.

[29] The Appellant has been consistent in saying that she did not intend to be off for more than 12 months: she indicated this in her reconsideration request to the Commission; she reiterated this in her appeal to the SST; and she repeated this in her testimony at the hearing. I find the Appellant to have presented in a very forthright manner, with consistent messaging about her intentions of being off work on maternity leave for only 12 months, all supporting that the Appellant’s selection of the extended EI parental benefit was not consistent with her desire to be off work for only 12 months.

[30] Furthermore, I find the employer’s ROE supports the Appellant’s statement that she only intended to be off for 12 months because it states that the Appellant’s recall date was January 12, 2022, 12 months from her last day worked on January 11, 2021.

[31] I am further convinced that the Appellant did not intend to choose the extended EI parental option because she acted quickly to contact the Commission on seeing the notification in her Service Canada Account. On May 3, 2021, immediately after learning she was receiving extended EI parental benefits for 61 weeks, she immediately contacted the Commission, on that same day, to ask them to change the EI benefit type to standard from extended EI parental benefits.

[32] I also believe the Appellant when she stated that she did not understand what it meant to select the “extended benefit” option given the timing of the completion of her online application. The Appellant gave birth on January 11, 2021 and completed her application just two days later, on January 13, 2021. It is understandable that the Appellant would have been unable to truly focus on completing, and understanding, her online EI application just two days after giving birth, given the stress of childbirth and assuming new parental responsibilities.

[33] I am also guided by a recent decision of the Appeals Branch of the SST.⁹ The issue was not whether an election is irrevocable as prescribed by the legislation, but whether the Appellant made an election consistent with one option or the other regardless of which button was clicked.

[34] I am satisfied that the Appellant intended to elect standard EI parental benefits regardless of the actual election she clicked in her online application. I find nothing in the testimony or submissions that would lead me to another conclusion.

Conclusion

[35] The appeal is allowed. This means the Appellant truly elected the standard benefit option for EI parental benefits, and her claim should be treated as such.

Maria Marchese
Member, General Division – Employment Insurance Section

⁹ *Canada Employment Insurance Commission v T. B.*, 2019 SST 823.