



Citation: *GS v Canada Employment Insurance Commission*, 2021 SST 368

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

Decision

Appellant: G. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (419864) dated March 31, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference
Hearing date: April 29, 2021
Hearing participants: Appellant
Appellant's Representative

Decision date: April 30, 2021
File number: GE-21-592

Decision

[1] The appeal is allowed. The Tribunal agrees with G. S. (the Claimant).

[2] I find it more likely than not that the Claimant elected to receive standard employment insurance (EI) parental benefits.

Overview

[3] The Claimant arranged with her employer to take 52 weeks of maternity leave. After she gave birth, she applied for maternity benefits. She selected 52 weeks of extended parental benefits believing that choice matched her planned period of maternity leave. The Claimant's benefits were reduced when she received the first EI parental benefit. She did not notice the reduction until the end of the month when she reviewed her benefits with her spouse. The Claimant contacted the Commission to correct the error. The Commission says that once the Claimant received parental benefits her election of extended parental benefits could not change.

Issue

[4] Did the Claimant elect to receive extended EI parental benefits?

Analysis

[5] I find that, on a balance of probabilities, the Claimant did not elect extended parental EI benefits. I find that, it is more likely than not, she elected standard parental EI benefits.

[6] Parental benefits are payable to a claimant to care for their newborn child.¹ A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be paid.² The standard option provides up to 35 weeks of benefits at a

¹ *Employment Insurance Act*, subsection 23(1). This is how I refer to the legislation that applies to this appeal.

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

benefit rate of 55% of weekly insurable earnings. The extended option provides up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings.

[7] A claimant's election cannot change once parental benefits are paid.³

[8] The Claimant testified that she spoke to her supervisor about her maternity leave about a month before she expected to give birth. She completed papers at work to allow her to go on leave. She told her supervisor she would be returning to work on October 4, 2021, and her papers showed this as well. Her child was born on September 30, 2020.

[9] The Claimant applied on-line for maternity benefits on November 3, 2020. She did not receive any assistance when she completed the application. The Claimant indicated on her application that she would be returning to work with her employer on October 4, 2021. She explained that she chose the extended parental option because that option allowed her 52 weeks, which was the same amount of time she was taking as leave from her employment. She said the standard option was only for those people who were taking 35 weeks. The Claimant explained this is her second child. She applied for the same amount of benefits, 52 weeks, as when her first child was born in 2016. The Claimant said that when she completed her application for EI she did not receive a confirmation showing what benefits she had selected.

[10] The Claimant's husband, affirmed to give evidence, explained that he would ask the Claimant at the end of the month how much money she got for EI benefits. At the end of February 2021, she told him she had received the reduced amount. At first they thought there are had been a consolidation of the amount. In March 2021 when the amount did not go back up to what it had been the Claimant contacted the Commission. When the Claimant spoke to a Service Canada agent she found the benefit was reduced because she had selected the extended parental benefit option. She says that she made a mistake with that selection and asked to have the extended option changed to the standard option.

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

[11] The Commission says the Claimant was informed on the application of the difference between standard and extended parental benefits and elected to receive extended parental benefits. The first payment for parental benefits was issued on February 5, 2021. Once the payment was made the Claimant's election became irrevocable. The Commission recognizes the confusion of the application process and that it is not impossible that the Claimant misunderstood the information surrounding her claim or the importance of her selection within the application. The Commission also acknowledged the Claimant indicated a return to work date of October 4, 2021, on her application, which supports a maternity leave of 12 months. The Commission says that the Claimant's request for 52 weeks of parental benefits may have been misunderstood by the Claimant to be the total sum of weeks of EI she was requesting overall. The selection of 52 weeks was in line with the Claimant's desire to return to work after a 12-month maternity leave. The Commission says, while it may not have been the Claimant's intent to receive the 52 weeks of extended parental benefits it has to use the information provided by the Claimant. The Commission says the *Employment Insurance Act* is clear that once the election is made, and benefits are paid the choice cannot be recalled.

[12] I note that subsections 23(1.1) and 23(1.2) of the *Employment Insurance Act* have the effect of preventing claimants from switching back and forth between the standard and extended parental benefit options. I am not trying to interfere with those provisions. However, although I am not bound, I am persuaded by recent decisions of the Social Security Tribunal of Canada, Appeal Division, regarding the selection of parental benefits.⁴ The decisions have found that claimants are able to argue that the Commission misinterpreted the choice they made before they started to receive parental benefits. Specifically, confusion can arise from contradictory answers that applicants provide on their application forms. In these cases, the Commission might consider acting early to clarify the intentions of claimants. When asked, Tribunal

⁴ *T. B. v Canada Employment Insurance Commission*, AD-19-426; *M. H. v Canada Employment Insurance Commission*, AD-19-503. This is how I refer to decisions that apply to the circumstances of this appeal.

Members have the power to look at all the relevant circumstances and decide whether a claimant did, in fact, chose the standard or extended parental benefits option.⁵

[13] The Commission submitted the Claimant's application for maternity and parental benefits as evidence that she elected extended parental benefits. The onus then shifts to the Claimant to show, on a balance of probabilities, that she did not elect extended benefits or has not been paid any parental benefits in respect of the same child.

[14] I note that the application for benefits contains inconsistent information. The application form asks "Will you be returning to work with this employer" the response was "yes" and the date of return entered was 04-10-2021. On a page labeled "Maternity Information" the actual date of birth was entered as 30-09-2020. The form asks if the Claimant wants to receive parental benefits immediately after maternity benefits. The Claimant indicated yes. On the next page, titled "Parental Information" the Claimant indicated that she wanted the extended option. On the same page, under a section titled "Parental Information" the form asks how many weeks do you wish to claim? The Claimant chose 52 from the drop down menu. I find the selection of 52 weeks of parental leave, on an application completed on November 3, 2020, is not consistent with a return to work date of October 4, 2021.

[15] I note that in the section under the heading "Parental Information" there is no reference to maternity (pregnancy) benefits. The form states "Parental benefits are payable only to the biological, adoptive, or legally recognized parents while they are caring for their newborn or newly adopted child." The Claimant's personal circumstances are relevant to her understanding of what parental benefit option she was electing to receive. The Claimant testified that she had applied for EI benefits when her first child was born in 2016. She said that she applied for 52 weeks of benefits for that child and that she did the same when she applied for 52 weeks of benefits for this child. I note that the extended parental option came into effect on December 3, 2017. The Claimant's explanation of her understanding of the difference in the parental benefits options was framed in the number of weeks of benefits. She did

⁵ *Department of Employment and Social Development Act*, section 64(1)

not distinguish between maternity or parental benefits. The Claimant testified that she chose the extended parental option because the standard option was for 35 weeks and that would not cover the 52 weeks she had arranged to take off work. She testified she thought by selecting 52 weeks, she was indicating the total number of weeks she would be taking off work.

[16] I find that the question “How many weeks do you wish to claim” was reasonably construed by the Claimant to be asking how many weeks do you want to take off work and receive benefits. There is nothing in the question to indicate the weeks requested are for parental benefits only. Nor, is there any indication, on this page or in the question, the weeks selected would be in addition to the 15 weeks of maternity benefits. There is no question on the pages of the form, as provided by the Commission, asking how many weeks of maternity and parental benefits in total that the Claimant is requesting. Given the Claimant’s circumstances and the confusion created by the questions on the form, I find it credible that she made a mistake on the application.

[17] The evidence tells me that the Commission misinterpreted the choice the Claimant made before she started to receive parental benefits. Specifically, there was confusion in the contradictory answers the Claimant provided on her application form. The Claimant’s indication that she would be returning to work on October 4, 2021, contradicts her choice of 52 weeks of parental benefits. This evidence tells me that the Claimant was confused about the choice she was making. It was her intention from the outset to be off work for only 52 weeks of leave and to make a claim for benefits for that 52 week period. The Claimant testified she did not receive any confirmation from Service Canada about the type of benefits she would receive following her application.

[18] The Claimant’s parental benefits began on January 24, 2021, with the first payment processed on February 5, 2021. Her spouse explained that they discuss their bank accounts at the end of the month. He asked her how much she had received from EI at the end of February. It was then they realized that the amount had dropped. The claimant said there was a problem with the amount of benefits she received for her first child that was corrected after some time. She expected the same to happen this time.

When it did not, she did try to contact the Commission but it took a number of tries to get through. The appeal file shows that the Claimant spoke to a Service Canada agent on March 12, 2021, requesting that the error be corrected. Her delay in contacting the Commission is not determinative of the matter. It was at that time she was told she had selected the extended parental benefits option.

[19] I note that the *Employment Insurance Act* says that applicants for parental benefits must make an election. However, the *Employment Insurance Act* does not specify how, precisely, that election is to be made, nor does it tell the Commission what to do if an election is unclear.⁶

[20] In this case the Claimant's understanding of her selection, the confusion created by the questions and information on the application form, and the Claimant's indication in the application form that she would return to work within 11 months of applying for EI benefits are all evidence the Claimant wanted standard EI parental benefits. The standard option is in line with the Claimant's return to work plans, which she had discussed with her employer. As a result, I find that the Claimant did not want to claim extended EI parental benefits as the Commission asserts, but rather it is more likely than not that her choice was to receive standard EI parental benefits. Accordingly, I find that, on a balance of probabilities, the Claimant elected to receive her parental EI benefits according to the standard option.

Conclusion

[21] The appeal is allowed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

⁶ In some cases, the courts have emphasized the need for an election to be clear or unequivocal: *Semenchuck v. Ruhr*, 1996 CanLii 7148 (SK QB)