



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MO v Canada Employment Insurance Commission*, 2021 SST 436

Tribunal File Number: GE-21-350

BETWEEN:

M. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: March 10, 2021

DATE OF DECISION: March 12, 2021

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 because 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's choice of parental benefit term cannot be changed after the first payment of parental benefits was made. It submits she elected to receive extended benefits because she picked that option on the application form. The Claimant says she chose extended parental benefits on the form by mistake. The Claimant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

Issue

[4] Which parental benefit term 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, 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

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

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)

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

[7] The Claimant applied for maternity and parental EI benefits on September 1, 2020. She submitted that her last day worked was August 31, 2020, and she did not know her return to work date. At the hearing, the Claimant explained that when she applied for EI benefits, she had not yet delivered her baby. She stated that she could not know her date of return to work, because her employer determines that date depending on the date of birth of the child. She added that she is scheduled to return to work on Wednesday, September 1, 2021.

[8] Despite her intention to take only one year off work for maternity and parental leave, on the parental information section of the 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 asked how many weeks of benefits she wished 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 but did not know she made a mistake until the parental benefits were paid.

[10] The Commission submits the Claimant received the first payment of parental benefits on January 22, 2021. The Claimant confirmed this information at the hearing. The Commission submits the Claimant's parental election was irrevocable as of January 22, 2021, because that is the date she received the first payment of parental benefits.

[11] The Claimant testified that she contacted the Commission on February 9, 2021, after she realized her benefit payments were lower than anticipated. She submits that a Commission agent told her she was receiving less money because she chose to receive extended parental benefits, and that the choice could not be changed.

[12] The Claimant requested reconsideration on February 16, 2021. She stated that she made a mistake on the application form and chose the wrong type of parental benefits, because the form was unclear. At the hearing, she explained that the wording is confusing and it is not obvious that a 15-week maternity benefit period is separate from parental benefits. She submits that for a person who wants one year off work, the application form saying standard benefits pay up to 35 weeks

appears to mean that you must choose extended benefits to claim 52 weeks off work. The Commission issued a reconsideration decision on February 25, 2021, upholding its previous finding that the Claimant's election could not be changed.

[13] At the hearing, the Claimant reiterated that her intention was always to take only one year off work, which is supported by her request for 52 weeks of leave on the application form. She stated that she thought she was requesting a total amount, for maternity and parental leave, and did not realize she was requesting 52 weeks in addition to the maternity period.

[14] The Commission submits that, although the Claimant may have mistakenly elected to receive extended parental benefits, the law is clear and unambiguous that once the choice of election is made and benefits paid, the election cannot be changed. Since the Claimant was paid parental benefits on January 22, 2021, it submits her election was irrevocable from that date.

[15] 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, on its determination that selecting a certain option on an application form is the only relevant information in deciding which election the Claimant made.

[16] 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

[17] I recognize that the Claimant selected the extended option on her application form; however, that is the only evidence in the file supporting an intention to claim extended benefits. The Claimant requested 52 weeks of parental benefits, which is equivalent to one year of benefits. Give the Claimant's testimony that she thought the choice of 52 weeks on the application's dropdown box meant she was claiming 52 weeks in total, and her evidence about the form being

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

confusing and her plan to return to work in September 2021, I find it is more likely than not that she intended to claim standard benefits and to take a total of 52 weeks off work.

[18] 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

[19] The appeal is allowed. I find the Claimant elected to be paid standard parental benefits.

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

HEARD ON:	March 10, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. O., Appellant

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