



Citation: *LC v Canada Employment Insurance Commission*, 2021 SST 366

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

Decision

Appellant: L. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (418193) dated March 17, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Videoconference
Hearing date: April 12, 2021
Hearing participant: Appellant
Decision date: April 14, 2021
File number: GE-21-448

Decision

[1] The appeal is allowed. The Tribunal agrees with L. C. (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 50 weeks of maternity leave. The Claimant asked her husband to complete the application for EI benefits. He selected extended parental benefits for 50 weeks believing that was the right selection based on the information on the application form and the leave that was arranged. The Claimant's benefits were reduced when she received her first EI parental payment, however she did not notice the reduction until some weeks later. 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

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 arranged with her human resources department to take 50 weeks off work following the birth of her child. With her appeal to the Tribunal, she provided a letter issued from her employer detailing the leave. The Claimant was paid until August 28, 2020. Her child was born on August 27, 2020.

[9] The Claimant explained that her husband completed the application for EI benefits because she had experienced a difficult birth. She was in the room when the application was completed. The application for benefits was made on-line on September 3, 2020. The Claimant testified that her husband selected the extended parental benefits option and 50 weeks of that benefit because he knew that she was entitled to 50 weeks and the standard parental benefits option with a maximum of 35 weeks was not long enough to cover her leave. The Claimant said it was not clear to her or to her husband from the information on the application form that the parental benefit was different from the maternity benefit. He and she thought that the entire benefit was parental benefit and that because she had 50 weeks of leave they needed to select the extended option, which provided for up to 61 weeks of benefits payable. The Claimant said that she and her husband did not understand that maternity benefits were 15 weeks and that the parental benefits were in addition to the maternity benefits.

[10] The Claimant testified that she did not receive any information about her choice of benefits. She checks her bank account monthly and noticed the reduced amount of benefits in February. It took a while for her to figure out that the reason for the reduction was that the extended parental benefit option was selected. Once she figured out that was the issue she contacted the Commission within days to ask that the mistake be corrected.

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.

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 January 1, 2021. Once the payment was made the Claimant's election became irrevocable. The Commission says the Claimant should have contacted Service Canada prior to submitting her application to verify that her option was correct.

[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 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 13-08-2021. On a page labeled "Maternity Information" the actual date of birth was entered as 27-08-2020. The form asks if the Claimant wants to receive parental benefits immediately after maternity benefits. The

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.

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

Claimant's husband indicated yes. On the next page, which continues a section from the previous page titled "Parental Information" the Claimant's husband 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's husband chose 50 from the drop down menu. This section is followed by a heading "Other Parent Information" which asks for the other parent's name and social insurance number. The selection of 50 weeks of parental leave is not consistent with a return to work date of August 13, 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 a difficult birth and relied upon her husband to complete the application or EI benefits. Both were overwhelmed with being new parents. This is her first child. She was not aware of the difference between maternity benefits and parental benefits. The Claimant arranged for 50 weeks of maternity from her employer. She testified that she and her husband selected the extended parental option because the information on the form said that the standard option was for 35 weeks and that would not cover the 50 weeks she had arranged to take off work. The form did not tell her that she would first receive 15 weeks maternity benefits and then receive the remaining weeks as parental benefits. She testified she and her husband thought by selecting 50 weeks they were 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 and her husband 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 and her husband made a mistake on the application.

[17] The Claimant's last day for which she was paid was August 28, 2020. The application for EI benefits was made on September 3, 2020. The Claimant's employer wrote to her that her period of job protected leave ends on August 13, 2021. The application for EI benefits shows that the Claimant would be returning to work on August 13, 2021. This evidence tells me that the Claimant and her husband were confused about the choice they were making. It was their intention from the outset the Claimant would be off work for only 50 weeks of leave. She would receive benefits during that period and return to work following her leave. The Claimant testified she did not receive any confirmation from Service Canada about the type of benefits she would received following her application.

[18] The Claimant's parental benefits began on December 20, 2020, with the first payment processed on January 1, 2021. She experienced a difficult birth and was overwhelmed with being a new mother. It took some time for her to realize that the amount of benefits she was receiving had dropped. Once she and her husband realized that the cause of the reduced payment was the selection of the extended parental benefits option she contacted the Commission. The appeal file shows that she spoke to a Service Canada agent on March 2, 2021, requesting that the error be corrected. Her delay in contacting the Commission is not determinative of the matter.

[19] The Claimant's circumstances, the confusion created by the information on the application form, the evidence of her intention to return to work within 50 weeks of starting her maternity leave, and her contacting the Commission once she realized the amount she was receiving was a result of selecting the extended option are all evidence she wanted to receive standard EI parental benefits. 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

[20] The appeal is allowed.

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