



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AK v Canada Employment Insurance Commission*, 2021 SST 523

Tribunal File Number: GE-20-2396

BETWEEN:

A. K.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: January 7, 2021

DATE OF DECISION: January 8, 2021

DECISION

[1] I am dismissing the appeal. This means the Claimant cannot change her election of extended parental benefits.

OVERVIEW

[2] The Claimant submitted an Employment Insurance (EI) application for maternity and parental benefits. When completing her application, she had to choose (elect) either standard parental benefits or extended parental benefits. She elected to receive 61 weeks of extended parental benefits. The application states that this election is irrevocable once the Commission issues payment for parental benefits. The Commission issued her first payment for extended parental benefits on November 6, 2020. The Claimant says that she contacted the Commission on November 16 or 17, 2020, and requested they change her election to standard parental benefits. The Commission refused her request.

[3] The Commission reconsidered their decision but said that they could not change the Claimant's parental benefits. The Claimant appeals to the Social Security Tribunal. She says she made a mistake when completing her application.

[4] I must decide whether the Claimant can change her election to standard parental benefits. The evidence shows that the Claimant asked the Commission to change her election after she received payment for extended parental benefits. This means that her election for parental benefits became irrevocable so I am dismissing her appeal.

PRELIMINARY MATTER

Post-Hearing Documents

[5] After conclusion of the January 7, 2021, teleconference hearing, the Claimant submitted an email to the Tribunal. She sent this email on January 7, 2021, at 1:56 p.m. PST. It appears that this email is the Claimant's attempt to provide additional submissions and arguments after the hearing ended.

[6] The Tribunal has a Practice Direction¹ outlining the procedure for dealing with post-hearing documents. When a party sends additional documents on their own initiative, without prior approval from the member, consideration will be given whether the documents should or should not be admitted.

[7] In order to admit and consider post-hearing documents, I will have to either re-open the hearing or give the other party an opportunity to respond by way of written submissions. This causes a delay in finalizing the appeal.

[8] I have determined that the post-hearing email will not be admitted or considered because the Claimant was given a full and fair opportunity to be heard during the hearing. Prior to concluding the hearing, I provided the Claimant three opportunities to make further comments and ask questions. When she had nothing further to add or question, I ended the hearing. The Claimant did not request permission to submit post-hearing documents. So, I have determined that the post-hearing email will not be considered.

ISSUE

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

[10] If so, can she change this election after extended parental benefits have been paid?

ANALYSIS

[11] Parental benefits are payable to a claimant to care for one or more newborn children of the claimant.² A claimant must choose (elect) between standard or extended parental benefits when completing their EI application (making a claim for benefits).

[12] Standard parental benefits are paid to a maximum of 35 weeks paid at 55% of the normal weekly earnings. Extended parental benefits are paid to a maximum 61 weeks at 33% of the normal weekly earnings.³

¹ The practice direction is listed at <https://www1.canada.ca/en/sst/rdl/gdpd2016eiposthearing.html>

² Subsection 23(1) of the *Employment Insurance Act (Act)*.

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

[13] The law says that a claimant cannot change their election if the Commission has issued a payment for parental benefits.⁴

[14] When combined with maternity benefits, the standard option provides EI benefits for up to 50 weeks (15 weeks maternity plus 35 weeks parental benefits). The extended option provides combined benefits up to 76 weeks (15 weeks maternity plus 61 weeks parental benefits). The total amount of benefits payable under each option is about the same, if the person claims benefits for the full number of weeks. However, the Commission can only pay parental benefits for weeks that fall within the parental window.

[15] The parental window is the period during which parental benefits may be paid. The window for standard parental benefits is 52 weeks from the date the child or children are born.⁵ The window for extended parental benefits is 78 weeks from the date the child or children are born.⁶

The parties agree that the Claimant elected extended parental benefits when completing her application.

[16] The Commission submitted a copy of the Claimant's June 29, 2020, application for benefits. The Claimant agrees that when she completed this application for maternity and parental benefits she elected to receive 61 weeks of extended parental benefits. She states that it was always her intention to collect only 14 months of benefits (15 weeks of maternity plus 46 weeks of parental benefits) before returning to work in September 2021, so she requested extended parental benefits.

[17] The Claimant listed her return to work date on her application as September 6, 2021. She says she completed her application based on her experience of asking for more benefits than she wanted, and then cancelling them when she returned to work. She argued that she only wanted 14 months of benefits but applied for 18 months consisting of 15 weeks of maternity plus 61 weeks of parental benefits, in case her situation changed. So, I find as fact that the Claimant elected extended parental benefits.

⁴ See subsection 23(1.2) of the *Act*.

⁵ See subsection 23(2) of the *Act*.

⁶ See subsection 23(3.21) of the *Act*.

The parties do not agree that the Claimant's election of extended parental can be changed to standard parental benefits.

[18] The Commission states that they cannot change the Claimant's election to standard parental benefits because she made this request after they issued payment for extended parental benefits.

[19] The Commission states that the application for benefits informed the Claimant of the difference between standard and extended parental benefits. It also informed her that the choice between standard and extended parental benefits is irrevocable once they have paid parental benefits.⁷

[20] The Commission provided a list of payments showing that they issued the Claimant's first payment for extended parental benefits on November 6, 2020.⁸ They also provided a copy of the November 19, 2020, Supplementary Record of Claim documenting that the Claimant had made a request to change her parental benefits. The Claimant does not dispute this evidence but clarifies that the first time she made a request to change her parental benefits was during a telephone conversation on either November 16th, or 17th, 2020. So I find as fact that the Claimant had received payment for extended parental benefits before making her request to change her benefits.

[21] The Claimant agrees that she was aware that the application says that standard parental benefits are paid at 55% and extended parental benefits are paid at 33% of her "weekly insurable earnings up to a maximum amount." However, she says she interpreted this to mean she would receive 33% of her "normal weekly earnings," which she calculated as being higher than the \$573 weekly benefit rate. She thought her benefit rate would stay at \$573, which is the same rate she received for her maternity benefits. Based on her explanation during the hearing, it appears that the Claimant did not consider the full sentence. Specifically, the ending. The full sentence states that extended parental benefits are paid at 33% of the weekly insurable earnings "up to a maximum amount" [my emphasis added.]

[22] The Claimant says she made a mistake when completing her application because of the ambiguity of the information listed. She argues that the application should list benefit rates for

⁷ See GD3-9.

⁸ See GD3-25.

each option so there is a clear picture of the difference in benefit rates between the two parental options. It should also explain that the Commission does not pay the benefits on a sliding scale that would increase the weekly amount when a claimant wants less than the maximum 61 weeks of extended parental benefits. Although such explanations may have assisted the Claimant in understanding extended parental benefits more fully, it does not change the fact that she made a personal choice to request 61 weeks of extended parental benefits, knowing this amount was more than what she had initially planned to claim. As she explained, she claimed for more weeks than what she wanted and planned to cancel her benefits when she returned to work.

[23] The return to work date listed on the Claimant's application supports that her planned return to work date was about 14 months after her child was born. The Claimant says she only intended to be off work for 14 months. Based on these dates she planned for 15 weeks of maternity plus 46 weeks of parental benefits. This said a claimant could only receive 46 weeks of parental benefits under the extended option. This means that the Claimant's answers to the questions on her application were consistent with her election for extended parental benefits.

[24] The Claimant admits that she knew the application states that once parental benefits are paid she will not be able to change her request. She explained how she received an email sometime before November 6, 2020, stating that her claim was switching to parental benefits soon so she should check the website to clarify her benefits. She argued that this email didn't list any dollar amounts or say anything about her benefits being reduced. So she didn't think she needed to check the website. She says she was under the belief that her benefits would remain close to her \$573 maternity benefits.

[25] The Claimant states she checked her Service Canada account on approximately November 14, 2020. This is when she saw that the payment she received for parental benefits was much lower than expected. She says she called the Commission on November 16 or 17th to request that they change her election to standard parental benefits. During that call the Commission made an appointment for her to go into the Service Canada office on November 19, 2020. Upon review of the Supplementary Record of Claim dated November 19, 2020, the Claimant said that this is the date she went into the Service Canada office to discuss her request to change her benefits.

[26] In this case, the evidence tells me that the Claimant did in fact elect the extended parental benefits option. I recognize that her return to work date on her application and Record of

Employment are not exactly the same but they both indicate a return to work during the first week of September 2021. Further, both dates are consistent with the Claimant's election for extended parental benefits. She admits that she knew that her election for parental benefits was irrevocable once the Commission issued payment. Therefore, I find as fact that the Claimant elected 61 weeks of the extended parental benefits option. The Commission issued the first payment for extended parental benefits on November 6, 2020. The Claimant did not request to change her election until after she received payment for parental benefits, on approximately November 16 or 17, 2020. Therefore, the Claimant's election for extended parental benefits cannot be changed.⁹

[27] As explained during the hearing, this is not a discretionary matter. Rather, I must make this decision based on the facts and applicable law. I recognize that the Claimant was seeking a different result. However, I am not permitted to rewrite or interpret the law in a manner that is contrary to its plain meaning.¹⁰ There is no exception and no room for discretion.

CONCLUSION

[28] The appeal is dismissed. The Claimant cannot change her election after payments for parental benefits have been issued.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	January 7, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. K., Appellant (Claimant)

⁹ See subsection 23(1.2) of the *Act*.

¹⁰ *Canada (Attorney General) v Kneé*, 2011 FCA 301.