



Citation: *BS v Canada Employment Insurance Commission*, 2021 SST 480

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

## Decision

**Appellant:** B. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (422143) dated April 23, 2021 (issued by Service Canada)

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**Tribunal member:** Katherine Wallocha

**Type of hearing:** Videoconference

**Hearing date:** May 20, 2021

**Hearing participants:** Appellant

**Decision date:** May 21, 2021

**File number:** GE-21-775

## **DECISION**

[1] The appeal is allowed. The Claimant (B. S.) elected to receive standard parental employment insurance (EI) benefits.

## **OVERVIEW**

[2] The Claimant applied for maternity and parental EI benefits on December 13, 2020. In her application she said, she would be returning to work for this employer on December 13, 2021. She selected the option for extended parental benefits wishing to claim 48 weeks.

[3] When she received her first payment, she noticed the payment amount had decreased. She contacted the Canada Employment Insurance Commission (Commission) and requested an amendment to the parental benefits option chosen. The Commission refused to change the type of parental benefits selected because she had already received a parental benefit payment.

[4] The Claimant appealed the Commission's decisions explaining she planned to go back to work on December 13, 2021. She selected standard parental benefits, which in general would be 48 weeks. She thought maybe it was a technical issue as she had no plans to be off work for more than a year. It was explained to her that the 15 weeks of maternity benefits aren't calculated in the number of weeks of parental benefits. She didn't know this rule, so she selected 48 weeks.

## **WHAT I MUST DECIDE**

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

## REASONS FOR MY DECISION

[6] When you apply for parental EI benefits, you must choose between two different kinds of parental benefits<sup>1</sup>:

- Extended parental benefits: the Commission pays up to 61 weeks of parental benefits at the rate of 33% of your weekly earnings;
- Standard parental benefits: the Commission pays up to 35 weeks of parental benefits at the rate of 55% of your weekly earnings.

[7] When you choose a type of benefit, the law calls this an “election”. Once you have received a parental benefit payment, you cannot change your election<sup>2</sup>.

### **Did the Claimant elect to receive extended parental EI benefits?**

[8] No, I find, on the balance of probabilities, that the Claimant didn’t elect extended parental benefits. I find that she elected standard parental benefits, but made a mistake in selecting the extended benefits option on the application for EI benefits.

[9] The Commission argued the following:

- the Claimant was informed on the application for EI benefits of the difference between standard and extended parental benefits;
- she elected to receive extended parental benefits;
- she was also informed that the decision was irrevocable once parental benefits were paid;
- the first payment for parental benefits was issued on April 16, 2021;
- on April 20, 2021, the Claimant requested that the claim be changed to standard parental benefits;
- the Claimant’s election became irrevocable as of April 16, 2021;

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<sup>1</sup> This is set out at s 12(3)(b) and 14(1) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> This is set out in s 23(1.2) of the EI Act.

- the law is clear and unambiguous that once the choice of election is made and benefits paid, that choice cannot be recalled.

[10] However, a recent decision by the Appeal Division (AD) of the Social Security Tribunal explained that while Parliament made the election of standard or extended parental benefits irrevocable, it did not define “election”, or state that a claimant’s selection on the application form must be conclusively deemed to be his or her election.

[11] In the AD’s view, the purpose of making the election irrevocable is to prevent claimants from changing their minds as their circumstances change and they reassess which type of benefit would be most advantageous. Its purpose is not to punish claimants for provable slips or objectively reasonable misunderstandings at the time that they complete their applications<sup>3</sup>.

[12] Another decision by the AD confirms that I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive<sup>4</sup>.

[13] I am not required to follow the AD’s guidance, but in this case, I find it applies.

[14] The Claimant applied for EI benefits on December 13, 2020. In her application, she indicated the following:

- she was going to return to work on December 13, 2021;
- she wished to claim 48 weeks;
- she selected extended parental benefits.

[15] The Claimant told me at the hearing that she only ever wanted one year off, so it is not possible that she chose extended benefits. It was not intentional, it was a mistake. She had an agreement with her employer to be off work with her newborn for one year. She provided the letter she sent to her employer dated December 9, 2020, informing

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<sup>3</sup> This is explained in the AD decision *V.E. v. Canada Employment Insurance Commission*, AD-20-3.

<sup>4</sup> This is explained in the AD decision *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823.

her employer she had plans to get back to the job on December 13, 2021. This shows me that the Claimant didn't intend to be off work for more than a year.

[16] I asked the Claimant why she chose to claim 48 weeks. She told me that there are 48 weeks in a year and she wanted to be off work for one year. She explained that they multiplied 12 months by 4 weeks in a month, concluding there were 48 weeks in a year. The Claimant also told me that she did not realize that the 15 weeks of maternity benefits were not included in this number. This again shows me that the Claimant intended to be off work for only one year.

[17] I find the Claimant is more likely than not to have elected the standard parental benefits option. I make this finding based on the information in the Claimant's application as a whole.

[18] I accept that the Claimant was confused when she applied for maternity and parental benefits, not realizing they were two different benefit types. I also accept that when the Claimant indicated she wished to collect 48 weeks of parental benefits, she chose that number to represent the total number of weeks she intended to be off work, thinking there were 48 weeks in a year.

[19] The evidence shows that the Claimant intended to elect standard parental benefits. When she selected the extended parental option, she made a mistake, but a mistake is not an election.

## **CONCLUSION**

[20] The Claimant elected to receive standard parental benefits. This means the appeal is allowed.

*K. Wallocha*

Member, General Division - Employment Insurance Section