



Citation: *Canada Employment Insurance Commission v RD*, 2021 SST 552

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Isabelle Thiffault

**Respondent:** R. D.

---

**Decision under appeal:** General Division decision dated May 10, 2021  
(GE-21-649)

---

**Tribunal member:** Janet Lew

**Type of hearing:** Teleconference

**Hearing date:** September 15, 2021

**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** October 6, 2021

**File number:** AD-21-173

## Decision

[1] The Commission's appeal is allowed. The Claimant elected to receive extended parental benefits.

## Overview

[2] This is an appeal by the Appellant, the Canada Employment Insurance Commission (Commission), of the General Division decision. The General Division found that the Respondent, R. D. (Claimant), had elected to receive Employment Insurance standard parental benefits, although she had chosen extended parental benefits on her application form and had asked for 55 weeks of benefits.

[3] The Commission argues that the General Division made several jurisdictional, legal and factual errors. The Commission asks the Appeal Division to allow the appeal and give the decision that it says the General Division should have given. The Commission argues that the General Division should have decided that the Claimant elected to receive extended parental benefits and that her election is irrevocable.

[4] The Claimant asks the Appeal Division to dismiss the appeal. She claims that she always wanted to take only a year off work. She simply made an honest mistake when she filled out the application form and asked for extended benefits. She argues that the application form was misleading or, at best, did not give enough information to help her fill out the form correctly. She claims that the application form clearly contains confusing information, so the Commission should have asked her what she really wanted.

[5] I find that the General Division based its decision on a factual error that the application form misled the Claimant. I also find that the Claimant's election was irrevocable. This means the Claimant elected to receive extended parental benefits.

## Issue

[6] The Commission raises several arguments, but I will focus on whether the General Division based its decision on a factual error. In particular, I will focus on whether the General Division based its decision on a factual error that the application form misled the Claimant into making the wrong choice between standard and extended parental benefits.

## Analysis

[7] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.<sup>1</sup> The Commission argues that the General Division made several errors.

## Background Facts

[8] The Claimant applied for Employment Insurance maternity and parental benefits.

[9] There are two types of parental benefits:

- Standard parental benefits – the benefit rate is 55% of an applicant's weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits is payable to one parent.
- Extended parental benefits - the benefit rate is 33% of an applicant's weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits is payable to one parent.

[10] When the Claimant filled out the application form, she chose extended over standard parental benefits.<sup>2</sup>

---

<sup>1</sup> See section 58(1) of the *Department of Employment and Social Development Act*.

<sup>2</sup> See Claimant's application, at GD3-8.

[11] When the application asked, “How many weeks do you wish to claim?” the Claimant chose the number 55 on the drop-down menu.<sup>3</sup>

[12] The Claimant also indicated that she last worked on September 15, 2020, and that she expected to return to work on October 1, 2021.<sup>4</sup> Her employers indicated that they did not know when she would be returning to work.<sup>5</sup>

[13] After the Claimant received her first parental benefit payment, she phoned the Commission to find out why her Employment Insurance benefits were suddenly lower. An agent told her that she had finished getting maternity benefits and was now getting extended parental benefits. The agent also told her that if she had chosen standard parental benefits instead, she would have gotten a higher weekly benefit.

[14] The Claimant told the agent that she wanted to change to standard parental benefits. The agent told her that they could not change the type of parental benefits that she was getting because she had already started getting parental benefits.<sup>6</sup>

– **The reconsideration stage**

[15] The Claimant asked the Commission to reconsider its decision. She explained that when she filled out the online application, she was “confused on the weeks being provided on the online application ... [she did not] know the calculation of weeks between Maternity and Parental leave. What [she wants] is just a one year maternity leave application.”<sup>7</sup> The Commission did not change its decision so the Claimant appealed the Commission’s reconsideration decision to the General Division.

– **The Claimant’s evidence at the General Division**

[16] At the General Division hearing, the Claimant testified that when she filled out the application form, she did not really see the difference between standard and extended

---

<sup>3</sup> See Claimant’s application, at GD3-9.

<sup>4</sup> See Claimant’s application, at GD3-10.

<sup>5</sup> See Record of Employment dated September 15, 2020, at GD3-20 and October 6, 2020, at GD3-22.

<sup>6</sup> Under section 23(1.2) of the *Employment Insurance Act*, a claimant’s election is irrevocable once parental benefits have been paid in respect of the same child or children.

<sup>7</sup> See Claimant’s request for reconsideration, at GD3-24 and GD3-25.

parental benefits. She did not see any description of the two different types of parental benefits until after she filed an appeal with the General Division. She believes that she might have gone through the application without reading it very carefully to see the differences.<sup>8</sup> She thought the two benefits were joined.

[17] The Claimant also explained why she selected “55” in the drop-down menu (to the question of how many weeks of benefits she wanted). She explained that, at the time, she thought about the benefit rate that she wanted. She wanted the 55% rate so claimed that, thinking that 55 was the number of weeks in one year too.<sup>9</sup>

– **The General Division decision**

[18] The General Division noted that the application form stated that Service Canada was responsible for giving accurate information about an applicant’s claim. The General Division wrote:

However, in this case, the information provided on the application misled the Claimant. She was not aware that by selecting “55” she was selecting the number of weeks for parental benefits and not the percentage of her benefit rate. Nor was she aware that maternity benefits were separate from parental benefits and that her choice of extended parental benefits would result in an overall lower amount of benefits.<sup>10</sup>

[19] The General Division found that the Claimant chose to be on maternity leave for one year from the child’s date of birth of September 30, 2020. This was why the Claimant said she would be returning to work on October 1, 2021. The General Division found that the Claimant completed the application based on the instructions provided, thinking she was asking for the higher rate of 55%.<sup>11</sup>

[20] The General Division found that the “absence of clear information on the application prevent[ed] the Claimant from making a valid election for parental benefits.”<sup>12</sup> The General Division concluded that the Claimant’s election for extended

---

<sup>8</sup> At approximately 10:05 to 11:37 and 16:15 of the audio recording of the General Division hearing.

<sup>9</sup> At approximately 27:44 to 28:37 of the audio recording of the General Division hearing.

<sup>10</sup> See General Division decision, at para. 23.

<sup>11</sup> See General Division decision, at para. 24.

<sup>12</sup> See General Division decision, at para. 25.

parental benefits was invalid. The General Division rescinded the Commission's decision to pay the Claimant extended parental benefits.

– **The Commission's appeal to the Appeal Division**

[21] The Commission argues that the General Division made several errors, as follows, that it:

- Based its decision on a factual error when it concluded that the application form misled the Claimant into making the wrong choice between the standard and extended options for parental benefits;
- Exceeded its authority by deciding what type of parental benefit the Claimant chose, and by deciding that her election was invalid;
- Failed to apply section 23(1.2) of the *Employment Insurance Act*;
- Failed to apply the principles set out in a case called *Karval*.<sup>13</sup>

**Did the General Division base its decision on a factual error about whether the application form was misleading?**

[22] The General Division found that the application form misled the Claimant. In particular, the General Division found that the application form misled the Claimant into thinking that, by selecting "55," she was selecting the percentage of her benefit rate and not the number of weeks of parental benefits she wanted. The General Division also found that the form misled the Claimant into thinking that maternity benefits were not separate from parental benefits, and that she would get the higher benefit rate.<sup>14</sup> So, it found that all this caused the Claimant to make the wrong choice between the standard and extended options for parental benefits.

[23] The Commission accepts that the Claimant misunderstood the application form and that, as a result, she made a wrong choice about the type of parental benefits she

---

<sup>13</sup> See *Karval v Canada (Attorney General)*, 2021 FC 395.

<sup>14</sup> See General Division decision, at para. 23.

wanted. However, the Commission denies that the application form was in any way misleading or that it caused the Claimant to make a wrong choice. The Commission argues that the application form was clear about the differences between extended and standard parental benefits.

– **The question “How many weeks do you wish to claim” referred to the weeks of benefits and not to the rate of benefits that would be paid**

[24] When she got to the part on the application form that asked, “How many weeks do you wish to claim,” the Claimant responded “55.” She thought that 55 corresponded with the payment rate that she would get.

[25] The Commission argues that the question “How many weeks do you wish to claim?” was clear. The Commission argues that nothing about the question could have led the Claimant to believe that it was asking her what benefit rate she wanted.

[26] I find that it should have been apparent from the wording of the question that it was about how many weeks the Claimant wished to claim. The question had nothing to do with the rate of benefits. The question did not refer to nor mention the rate of benefits.

[27] On top of that, as the Commission notes, the drop-down menu offered numbers that went up to “61.” The fact that there were other numbers available should have immediately alerted the Claimant that the question referred to the weeks of benefits, rather than to the benefit rate that she wanted. After all, if the question had referred to the rate of benefits, there would have been only two options – 33 or 55--since parental benefits are paid at only either of these two rates. Clearly, the wide range of numbers represented something other than the benefit rate.

[28] I do not find that the question “How many weeks do you wish to claim” misled or could have misled the Claimant into believing she was being asked what benefit rate she wanted to receive.

– **The form showed that the maternity and parental benefits were different from each other**

[29] The General Division found that the application form also misled the Claimant so that she was unaware that maternity benefits were separate from parental benefits.

[30] The Commission argues that several places in the application form show that maternity benefits are different from parental benefits.

[31] I agree that there are at least two places in the application form that show this:

- i. For instance, under the heading “Benefit Type,” the application form asks a claimant the type of benefits they are seeking. The options include regular, fishing, sickness, maternity, parental, compassionate care, and family caregiver benefits. The form lists each option separately from the others.<sup>15</sup>

The option for maternity benefits explains that the benefit is for those who are pregnant or have recently given birth. The form also explains that the maternity option also allows a claimant to receive maternity followed by parental benefits.

The option for parental benefits explains that the benefit is for those who are caring for a newborn or newly adopted child.

- ii. Under the heading “Maternity Information,” the application form asks a claimant whether they want to receive parental benefits immediately after receiving maternity benefits. There are two choices. A claimant can specify whether they want to receive parental benefits immediately after maternity benefits, or they can ask to receive up to 15 weeks of maternity benefits only.<sup>16</sup>

---

<sup>15</sup> See Claimant’s application form, at GD3-4.

<sup>16</sup> See Claimant’s application form, at GD3-7.



[32] It should have been apparent to the Claimant that maternity benefits are separate from parental benefits. I do not find that the application form misled the Claimant into believing that maternity benefits are the same thing as parental benefits.

– **The application form informed claimants what benefit rate they could expect from each parental benefit type**

[33] The General Division found that the application form also misled the Claimant so that she was unaware that her choice of parental benefit type would result in an overall lower amount of benefits.

[34] I find that the application form clearly establishes the benefit rate for each the standard and the extended options. The application form says that the benefit rate for the extended option is at 33% of a claimant's weekly insurable earnings, and 55% for the standard option.

[35] I do not find that the application form misled or could have misled the Claimant so that she would have been unaware of the benefit rate for either standard or extended parental benefits.

– **The Claimant was not (mis)guided by the application form**

[36] The General Division found that the Claimant's election between standard and extended parental benefits was invalid. The member found that the election was invalid because it found that the Claimant could not possibly have made a deliberate choice due to the absence of clear information.

[37] However, this finding overlooked the Claimant's evidence at the General Division hearing that she simply did not carefully read the application form. The Claimant testified that when she completed the online application form, she did not see or focus on the description of parental benefits that explained the differences between the

standard and extended option. She was anxious because she was about to enter a period of isolation and, after that, undergo surgery.<sup>17</sup>

– **Summary**

[38] I find that the General Division based its decision on a factual error when it found the application form misled the Claimant into thinking that:

- the question “How many weeks do you wish to claim” asked her what benefit rate she wanted;
- maternity and parental benefits were the same, and
- choosing extended parental benefits would not result in an overall lower benefit rate.

[39] The application form clearly showed that maternity and parental benefits are different. The application form also showed that extended parental benefits pay a lower weekly rate than the standard option. And, the question about how many weeks a claimant wished to claim clearly referred to the weeks of benefits, not the rate of benefits.

[40] More importantly, the Claimant had no basis to comment on whether the application form was misleading, inaccurate or lacking in information because she simply had not read it.

[41] Given the nature of the General Division’s error, I do not have to address the rest of the Commission’s arguments regarding any errors that the General Division might have made. I turn now to considering the appropriate remedy.

---

<sup>17</sup> At approximately 8:28 to 11:37 and 19:40 to 20:53 of the audio recording of the General Division hearing.

## Remedy

[42] How can I fix the General Division's error? I have two basic choices.<sup>18</sup> I can substitute my own decision or I can refer the matter back to the General Division for reconsideration. If I substitute my own decision, this means I may make findings of fact.<sup>19</sup>

### – The Parties' arguments

[43] The Commission urges me to give the decision that the General Division should have given. The Commission argues that the General Division should have found that the Claimant elected to receive extended parental benefits and that her election is irrevocable.

[44] The Claimant argues that, even if the General Division made a factual mistake, it does not change the outcome because the evidence is clear that she always wanted to take only a year off work. She simply made an honest mistake when she filled out the application form and asked for extended benefits. She argues that the application form was misleading or, at best, did not give her enough information to let her fill out the form correctly. She claims that she gave conflicting information on the application form, so the Commission should have noticed this and asked her what she really wanted.

### – The Commission did not owe a duty to the Claimant

[45] I agree that the Claimant gave conflicting information on the application form. On the one hand, the Claimant stated that she would be returning to work after one year. Yet, on the other hand, she asked for benefits to last for more than a year. If she were to return to work within a year, then she would never get parental benefits after a year had passed.

[46] The Claimant argues that the Commission was under a duty to notify her of this conflict in her application form. As ideal as this would be, I am unaware of any duty that

---

<sup>18</sup> Section 59 of the *Department of Employment and Social Development Act*.

<sup>19</sup> *Weatherley v Canada (Attorney General)*, 2021 FCA 58, at paras. 49 and 53, and *Nelson v Canada (Attorney General)*, 2019 FCA 222, at para. 17.

requires the Commission to actively review applications and ensure applicants have completed them correctly.

[47] As the Federal Court held in the case of *Karval*, “Fundamentally, it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions.”<sup>20</sup>

[48] The corollary to this basic principle must be that, fundamentally, it is the responsibility of a claimant to not only carefully read and attempt to understand their entitlement options, but to also carefully and accurately complete the application form. (This assumes, of course, that the information setting out a claimant’s entitlement options is clear and not misleading in any way.)

[49] I do not see any compelling reasons why the Claimant should be relieved of this fundamental responsibility, or why the Commission should be under any duty to clarify what the Claimant wanted. The Claimant gave conflicting information, but it was because she had not taken the time to carefully read the application form in the first place.

[50] There are significant factual differences between Ms. Karval’s case and the Claimant’s. But, much like Ms. Karval, had the Claimant carefully read the application form, she would have understood that, by clicking on the extended option, payments would be paid at a lower rate than if she had clicked on the standard option.

[51] On the facts of this case, I do not find that the Commission owed a duty to the Claimant to clarify what parental benefit type she chose.

– **The Claimant did not carefully read the application form**

[52] The Claimant also argues that she found the application form misleading and lacking in information. But, the problem for the Claimant with this argument is that she

---

<sup>20</sup> See *Karval v Canada (Attorney General)*, 2021 FC 395, at para. 14.

testified at the General Division that she simply did not carefully read the application form.

Maybe I'm reading the explanation of extended and standard [benefits] but it's not on my mind because I'm anxious of my situation now . . . honestly, when I did it online, I did not see the difference. Maybe I answered it but I did not see the explanation of the standard and extended benefits online but when I received this document when I tried to read one by one, I noticed that there is an explanation of extended and the standard benefits which I missed it when I applied online. So, that is my honest mistake. I think I just clicked it and did not read it very carefully what is the difference of the standard and extended benefits. I just realized the difference now when the Tribunal sent all the online information that I answered online.<sup>21</sup>

[53] The Claimant only realized the difference between standard and extended parental benefits after she filed an appeal with the General Division. She did not see the difference when she filled out the form because she was anxious.

[54] The Claimant testified that when she completed the online application form, she did not see or focus on the description of parental benefits that explained the differences between the standard and extended option. She thinks that she may have just clicked on an option.<sup>22</sup>

[55] So, the Claimant cannot credibly argue that the application form was misleading or lacked sufficient information if she did not carefully read the form in the first place.

– **The irrevocability provisions**

[56] The Commission argues that section 23(1.2) of the *Employment Insurance Act* applies. Under that section, an election of parental benefits cannot be changed once parental benefits have been paid.

[57] My colleagues on the Social Security Tribunal have consistently determined that, if an election is invalid, the section does not apply. Here, the General Division defined a

---

<sup>21</sup> At approximately 8:28 to 11:37 of the audio recording of the General Division hearing.

<sup>22</sup> At approximately 8:28 to 11:37 and 19:40 to 20:53 of the audio recording of the General Division hearing.

valid election as one in which an applicant makes a deliberate choice. The member determined that the Claimant's election was invalid in this case because the Claimant could not possibly have made a deliberate choice due to the absence of clear information and the presence of misleading information.

[58] I have addressed this issue above. If the Claimant did not make a deliberate choice, it is not for the reason that the Claimant found the application form unclear or misleading.

[59] The Claimant did not have any particular reason why she chose extended parental benefits. She just clicked on an option, without considering what she was doing or what the consequences would be. She described it as an honest mistake. She was anxious because of her situation.

[60] I have no doubt that the Claimant was anxious about her situation and that that led her to fill out the application form without carefully reading the information on it. But, that, along with the conflicting information that she gave, are not enough to invalidate the Claimant's election.

[61] Further, the Claimant had several weeks during which she could have changed her election. She would have had surgery by then and would have had time to revisit her application.

[62] Had the Claimant revisited her application, she might have realized that she would be better off with the standard option. She could have then contacted the Commission to request a change in her choice of parental benefit type. She would have had time to do all of this before she received the first payment of parental benefits.

[63] There is no evidence that the Claimant revisited her application or that she read any of the information about the differences between standard and extended parental benefits. There is no evidence to support her claim that she found the application form confusing or misleading. The Claimant simply did not read the information about the two different parental benefit types until after she filed her appeal with the General Division.

[64] Section 23(1.2) of the *Employment Insurance Act* applies. The Claimant's election of extended parental benefits was irrevocable once parental benefits were paid.

## **Conclusion**

[65] The appeal is allowed. The Claimant's election of extended parental benefits is irrevocable.

Janet Lew  
Member, Appeal Division