



Citation: *LC v Canada Employment Insurance Commission*, 2021 SST 623

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

Decision

Appellant:	L. C.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (422808) dated May 3, 2021 (issued by Service Canada)
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Tribunal member:	Amanda Pezzutto
Type of hearing:	Teleconference
Hearing date:	June 4, 2021
Hearing participant:	Appellant
Decision date:	June 8, 2021
File number:	GE-21-840

Decision

[1] L. C. is the Claimant. The Canada Employment Insurance Commission (Commission) made decisions about her Employment Insurance (EI) parental benefits. She is appealing these decisions to the Social Security Tribunal (Tribunal).

[2] I am allowing the Claimant's appeal. I find that she elected to receive standard parental benefits.

Overview

[3] The Claimant applied for EI maternity and parental benefits. On her application, she asked for extended parental benefits. The Commission paid her 15 weeks of maternity benefits. Then, the Commission started paying extended parental benefits at the reduced weekly rate of benefits. The Claimant is appealing the decision to pay extended parental benefits.

[4] The Claimant says that she made a mistake by choosing extended parental benefits on her application. She says that she always meant to take one year of leave. She says she want standard parental benefits.

[5] The Commission says that the Claimant elected extended parental benefits because she chose this option on her application. The Commission says that the Claimant cannot change her election because she has already received parental benefits.

Issue

[6] I must decide whether the Claimant elected to receive extended parental benefits. This means that I must look at all of the circumstances and decide which kind of parental benefits the Claimant elected.

Analysis

[7] When you apply for parental benefits, you must choose between two different kinds of parental benefits:

- Extended parental benefits. The Commission pays up to 61 weeks of benefits at the rate of 33% of your weekly earnings.
- Standard parental benefits. The Commission pays up to 35 weeks of benefits at the rate of 55% of your weekly earnings.¹

[8] When you choose a type of benefits, the law calls this an “election.” Once you have received parental benefits, you can’t change your election.²

[9] The Appeal Division thinks that I have the authority to make a decision about what kind of parental benefits you elected in the first place. I don’t have to follow the Appeal Division’s guidance, but in this case, I think it is useful. I will look at all of the evidence and make a decision on the balance of probabilities: did you elect standard or extended parental benefits?³

Issue 1: Which kind of parental benefits did the Claimant elect?

[10] I find that the Claimant did not elect extended parental benefits. I find that it is more likely that she elected standard parental benefits.

[11] The Claimant has always given the same explanation to the Commission and to the Tribunal. She says that she made a mistake on her application. She says that she always planned to return to work after one year of leave. She always meant to elect standard parental benefits.

[12] The Claimant’s due date was January 18, 2021. She worked until early September 2020, and her employer paid her until September 24, 2020. At the hearing, she said she went on short-term disability for a few weeks, and then started collecting maternity benefits at the end of November 2020.

[13] On her application, the Claimant selected extended parental benefits. She asked for 52 weeks of parental benefits. She said she expected to return to work on January

¹ Paragraph 12(3)(b) and subsection 14(1) of the *Employment Insurance Act*.

² Subsection 23(1.2) of the *Employment Insurance Act*.

³ *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823.

18, 2022. Her Record of Employment (ROE) said that her expected return to work was March 7, 2022.

[14] At the hearing, the Claimant said she didn't realize that maternity and parental benefits were different. This is the first time she has ever applied for EI maternity and parental benefits. She thought she was asking for 52 total weeks of benefits when she asked for 52 weeks of parental benefits. She said she wrote her expected return to work date of January 18, 2022 because this was one year after her due date.

[15] The Claimant said that she only ever planned to take one year off work. She doesn't know why her employer put her return to work date as March 7, 2022 on the ROE. She provided a letter from her human resources (HR) coordinator. According to the letter, the employer planned for the Claimant to take one year of leave.

[16] The Claimant said that she contacted the Commission as soon as she noticed the reduced rate of benefits. She said she wasn't expecting her benefit rate to drop and so she thought there was a mistake. According to the Commission's records, the Claimant received her first reduced payment on March 19, 2021, and she contacted the Commission on April 9, 2021.

[17] I agree that there is some evidence that suggests that the Claimant wanted to elect extended parental benefits. She chose this option on her application. The ROE says that her expected return to work date was about 17 months after her last day of work.

[18] But, I think that most of the evidence in this case shows that the Claimant wanted to receive standard parental benefits. She has always said that she wanted to take one year of leave. She asked for 52 weeks of extended benefits, and this suggests that she thought she was asking for one year of benefits. The return to work date on her application says that she expected to return to work one year after her baby's birth date. Her HR coordinator says that the Claimant always planned to take one year of leave. The Claimant contacted the Commission as soon as she noticed that her benefit rate changed. This suggests that she wasn't expecting her benefit rate to change.

[19] When I look at all of the evidence together, I think it is more likely that the Claimant elected standard parental benefits. I think the evidence pointing towards an election of standard parental benefits outweighs the evidence pointing towards an election of extended parental benefits. I don't think the Claimant made a genuine election of extended parental benefits. I think the election on her application was a mistake. I think the Claimant really meant to elect standard parental benefits.

Conclusion

[20] I am allowing the Claimant's appeal. She didn't elect extended parental benefits. She elected standard parental benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section