Citation: *KN v Canada Employment Insurance Commission*, 2021 SST 614

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	K. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (422889) dated May 3, 2021 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	Teleconference
Hearing date:	May 20, 2021
Hearing participant:	Appellant
Decision date:	May 21, 2021
File number:	GE-21-788

Canada

Decision

[1] The appeal is allowed. The Appellant chose to receive standard parental benefits.

Overview

[2] The Appellant applied for maternity and parental benefits on December 10, 2020. She had an agreement with her employer to be off work on maternity leave for 1 year. But on her application, she selected the extended option for parental benefits and asked for 61 weeks of benefits. The extended option meant she could receive parental benefits for longer than the standard 35-week entitlement, but that they would be payable at a reduced 33% benefit rate instead of the standard 55% benefit rate.

[3] After receiving 15 weeks of maternity benefits at the standard 55% benefit rate, the Appellant's first parental benefits payment was issued on April 9, 2021. She noticed that her benefit rate was reduced to 33% and realized she must have made an error when she selected the extended option. She immediately contacted the Commission and asked to switch to the standard option so that her parental benefits would continue at the same 55% rate as her maternity benefits and only run until the end of her maternity leave in December 2021. But the Commission said that her election to receive extended parental benefits was irrevocable because she had already received her first parental benefits payment. The Appellant appealed to the Social Security Tribunal (Tribunal).

Issue

[4] Did the Appellant choose the standard or extended parental benefits option?

Analysis

[5] As of December 3, 2017, claimants have two options for parental benefits. Parents can choose either standard or extended parental benefits[1]. Standard parental

[1] Section 23(1.1) of the *Employment Insurance Act*.

benefits are payable for up to 35 weeks[2] at a benefit rate of 55% of the claimant's weekly insurable earnings[3]. Extended parental benefits are payable for up to 61 weeks[4] at a benefit rate of 33% of the claimant's weekly insurable earnings[5].

[6] Claimants who request parental benefits ***must*** make a choice about the maximum number of weeks for which benefits may be paid[6]. This choice is known as the claimant's "election", and it is irrevocable once the claimant has been paid parental benefits on their claim[7].

[7] When the Appellant filed her application for benefits, she had to choose between standard and extended parental benefits. She chose extended parental benefits. In the field asking "How many weeks do you wish to claim?" the Appellant answered: 61 weeks.

[8] Based on her application, the Appellant was asking for 15 weeks of maternity benefits and 61 weeks of parental benefits, for a total of 76 weeks of benefits.

[9] The Appellant told the Commission that she made a mistake when she selected extended parental benefits. She also pointed out that she sked to change to standard parental benefits less than a week after the first payment was issued.

[10] At the hearing, the Appellant testified that she had an agreement with her employer to be off work for 1 year of maternity leave. She completed an application for maternity leave on September 10, 2020 – well in advance of the birth of her child (GD5). The employer agreed she could be off work for 52 weeks, with a planned date of return of December 7, 2021. Following the hearing, the Appellant filed a copy of the Leave Agreement signed by her Manager and the employer's Human Resources representative in September 2020 (GD8).

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[2] Section 12(3)(b)(i) of the *Employment Insurance Act*.
[3] Up to a maximum amount, as per section 14(1) of the *Employment Insurance Act.*
[4] Section 12(3)(b)(ii) of the *Employment Insurance Act*.
[5] Up to a maximum amount, as per section 14(1) of the Employment Insurance Act.
[6] Section 23(1.1) of the *Employment Insurance Act*.
[7] Section 23(1.2) of the *Employment Insurance Act.*

[11] I asked the Appellant why she selected 61 weeks of parental benefits if she only had 52 weeks of maternity leave. She answered that when she looked at the two options for parental leave, 61 weeks seemed a lot closer to her 1 year (52 weeks) of maternity leave than 35 weeks, so she chose the option that was closer to the number of weeks she had off. The Appellant also said that her child was born on December 4, 2020 and that she was tired and not able to think clearly when she completed her application on December 10, 2020. She only had 1 year of maternity leave and always intended to apply for standard parental benefits. She was confident she had done so and didn't realize there was an error until she got the first payment at the lower benefit rate. She said the errors on her application were "a simple human mistake" caused by the fatigue and stress of caring for her newborn.

[12] The *Employment Insurance Act* does not allow a claimant to change their election after they have already received parental benefits[8] . However, a recent decision from the Tribunal's Appeal Division stated that I have the authority to make a decision about what kind of parental benefits the Appellant ***likely*** elected where there is contradictory evidence about her intentions. I may look at all of the relevant evidence and make a decision on the balance of probabilities[9].

[13] The Commission submits that there was no contradictory information about the Appellant's intentions on her application for benefits, and that this is a situation where the Appellant was careless with her election.

[14] I do not agree. I find that the Appellant is more likely to have chosen the standard option.

[15] While she did select the extended benefits option on her application form, I accept that she did so because she didn't see an option that clearly corresponded to her 52 weeks of leave. She didn't understand that maternity benefits were a separate form of benefit and would account for the first 15 weeks of her maternity leave[10]. But she

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[8] Section 23(1.2) of the *Employment Insurance Act*.
[9] *Canada Employment Insurance Commission v. T.B.* 2019 SST 823
[10] 15 weeks of maternity benefits plus 35 weeks of parental benefits add up to 50 weeks, or approximately 1 year of benefits.

had the pre-existing agreement with her employer to return to work on a date that was consistent with the standard option. That agreement has never changed from the time she applied for benefits. The Appellant was surprised when she received a reduced payment at the start of her parental benefits, and took steps to contact the Commission immediately upon receipt of the first payment.

[16] I accept the Appellant's sincere testimony that she believed she had selected the standard option that corresponded to her 1 year of maternity leave. This was, in fact, the only option available to her in light of the pre-existing written agreement she reached with her employer prior to the birth of her child. While the Appellant could not explain why she failed to insert her return to work date on her application, I accept her testimony that, one week after the birth of her child, she was tired and not able to think clearly or carefully enough to process all of the information and questions on the application form.

[17] I am satisfied that this is **not** a case where the Appellant simply wants to switch from the extended option to the standard option on a whim or because her situation has changed. There was a pre-existing agreement about her maternity leave (GD8) in place at the time of her application. This amply and credibly supports the Appellant's statements to the Commission and before this Tribunal regarding the kind of parental benefits she ***likely*** elected. I therefore find that she made an honest mistake in her election and genuinely believed she had chosen the standard option for parental benefits.

[18] For all of these reasons, I find that the Appellant is more likely to have chosen the standard parental benefits option.

Conclusion

[19] I considered the Appellant's application for maternity and parental benefits as a whole, her application for maternity leave and the return to work date agreed upon with her employer, and her conduct upon discovering that her benefit rate had dropped. I find it is more likely than not that the Appellant elected to receive standard parental benefits.

[20] The appeal is allowed.

Teresa M. Day
Member, General Division – Employment Insurance Section