



Citation: *CP v Canada Employment Insurance Commission*, 2021 SST 594

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

C. P.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (430024) dated July 29, 2021
(issued by Service Canada)

Tribunal member:

Amanda Pezzutto

Type of hearing:

Videoconference

Hearing date:

September 29, 2021

Hearing participant:

Appellant

Decision date:

October 1, 2021

File number:

GE-21-1531

Decision

[1] C. P. is the Claimant. The Canada Employment Insurance Commission (Commission) made a decision about his Employment Insurance (EI) parental benefits. He is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am allowing his appeal. I find that he didn't make a valid election when he chose standard parental benefits on his EI application. This is because the application didn't give him all the information he needed to make his choice. I find that he can choose extended parental benefits.

Overview

[3] The Claimant took a 15-week parental leave from work. He applied for EI parental benefits and asked for 15 weeks of standard parental benefits. But he applied for benefits only a week before his child's first birthday. The window of time for standard parental benefits ended before he could collect the 15 weeks of parental benefits he wanted. The Claimant contacted the Commission and asked for extended parental benefits instead. The Commission refused.

[4] The Commission says the Claimant can't change the type of parental benefits. The Commission says the Claimant chose standard parental benefits on his application. He asked to change the type of parental benefits after he already received a payment and so he can't make any changes.

[5] The Claimant says he didn't know about the window of time for standard parental benefits when he applied for EI benefits. He says it was a mistake. He wants extended parental benefits so he can get EI benefits during his parental leave.

Issue

[6] Can the Claimant collect extended parental benefits?

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 cannot change your election.²

[9] The Appeal Division gives me a two-step approach to follow when I look at appeals about parental benefits:

1. Which kind of benefits did you choose on your application? Your choice should be clear. If it isn't clear, then I can look at all of the evidence and decide which kind of parental benefits you likely chose.
2. Was your election valid? Did you have all the information you needed to make a choice. Did the Commission give you misleading information? If you based your decision on misleading information, then you can make your election again.³

[10] I do not have to follow the Appeal Division's guidance, but in this case, I think it is useful. I will use the two-step process to make my decision.

Which kind of parental benefits did the Claimant choose?

[11] I find that the Claimant chose standard parental benefits.

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. MO.*, 2021 SST 435.

[12] On his application, the Claimant chose standard parental benefits. He asked for 15 weeks of benefits. He said his last day of work was May 28, 2021 and he expected to return to work on September 13, 2021. I note that this is 15 weeks after his last day of work.

[13] At the hearing, the Claimant agreed that he chose standard parental benefits. He read about the difference between the two kind of parental benefits and he deliberately chose standard parental benefits.

[14] There aren't any contradictions on the Claimant's application. He took 15 weeks off work and he asked for 15 weeks of standard parental benefits. He agrees that he chose standard parental benefits. I find that his choice was clear: he elected standard parental benefits.

Was the Claimant's election of standard parental benefits valid?

[15] I find that the Claimant didn't make a valid election. This is because the application form didn't give him all the information he needed to make a valid choice between standard or extended parental benefits.

[16] At the hearing, the Claimant said he always meant to take 15 weeks off work. He wanted to collect EI parental benefits during his parental leave. He said he read the application form carefully. He decided to choose standard parental benefits based on his understanding of the application form. He thought it made more sense to take 15 of a possible 35 weeks, instead of 15 of a possible 61 weeks.

[17] But the Claimant didn't know about the window of time for standard parental benefits. He said the application form didn't warn him about the window of time. He didn't know that his choice of standard parental benefits made it impossible for him to collect 15 weeks of EI benefits.

[18] The Commission included a copy of the application form. I have looked at it carefully, and I agree with the Claimant. I don't see any information on the application form about the window of time for standard parental benefits. I find that the application

form didn't give the Claimant all the information he needed to make a valid choice between standard or extended parental benefits.

[19] The Claimant said he would have chosen extended parental benefits if he had known about the window of time for standard parental benefits. I believe him. I think it is more likely that he wanted 15 weeks of benefits, even at a reduced rate, instead of one or two weeks of standard parental benefits.

[20] The Appeal Division says that an election made with misleading information from the Commission isn't a valid election. I find that the Claimant didn't make a valid election because the Commission didn't give him enough information to make a proper decision.

[21] The Appeal Division says the Claimant can make a new election if his first election wasn't valid. At the hearing, I asked the Claimant which kind of parental benefits he would choose if he could make a new choice with all of the information he has now. The Claimant said he would choose extended parental benefits.

[22] So, I find that the Claimant's first election wasn't valid. I find that he can make a new election. He has elected extended parental benefits.

Conclusion

[23] I am allowing the Claimant's appeal. He may choose extended parental benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section