



Citation: *Canada Employment Insurance Commission (Commission) v BT*, 2021 SST 748

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission (Commission)
Representative: Angèle Fricker

Respondent: B. T. (Claimant)

Decision under appeal: General Division decision dated June 30, 2021
(GE-21-968)

Tribunal member: Jude Samson

Type of hearing: Teleconference
Hearing date: December 7, 2021
Hearing participants: Appellant's representative
Respondent

Decision date: December 9, 2021
File number: AD-21-245

Decision

[1] The appeal is allowed. B. T. will continue getting Employment Insurance (EI) parental benefits under the extended option. She can get these benefits for up to 61 weeks.

Overview

[2] B. T. is the Claimant in this case. She applied for EI maternity and parental benefits. On her application, she had to choose between two parental benefit options: standard or extended.¹

[3] The standard option pays more money each week, for up to 35 weeks. The extended option pays less money each week, paid for up to 61 weeks.² In total, the Claimant could receive a bit more money under the extended option, but it is paid over more time.

[4] On her application, the Claimant chose the extended option.

[5] So, when the Claimant changed from maternity to parental benefits, she started getting less money. After she noticed this, she asked the Canada Employment Insurance Commission (Commission) to change to the standard option.³

[6] The Commission said no. It explained that it was too late for the Claimant to change options because she had already received parental benefits.

[7] The Claimant appealed the Commission's decision to the Tribunal's General Division and won. The General Division found that the Claimant had misunderstood

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

² When combined with 15 weeks of maternity benefits, the standard option pays EI benefits for about 12 months, and the extended option pays EI benefits for about 18 months. Maternity benefits are paid in the same amount as parental benefits under the standard option.

³ In fact, the Claimant has been communicating with Service Canada. But, Service Canada delivers the EI program for the Commission.

important information from the Commission because of her limited English. So, her choice between the standard and extended options was not valid.

[8] The Commission is now appealing the General Division decision to the Tribunal's Appeal Division. At the Appeal Division hearing, the Claimant accepted the Commission's arguments. Still, I felt it was important to write this short decision.

[9] One of the Commission's arguments is that the General Division based its decision on an important mistake about the facts of the case. I agree. So, I will give the decision the General Division should have given.

[10] On her application, the Claimant chose to get parental benefits under the extended option. And, the law says that it was already too late to change options when she asked for the standard option.

Issues

[11] These are the issues in this appeal:

- a) Did the General Division base its decision on an important mistake about the facts of the case?
- b) If so, how should I fix the General Division's mistake?
- c) Should the Claimant get parental benefits under the standard option or the extended option?

Analysis

The General Division based its decision on an important mistake about the facts of the case

[12] The General Division decided that the Claimant's choice of the extended option was invalid because she had misunderstood important information from the

Commission.⁴ The General Division based its decision on the Claimant's limited English.⁵

[13] But, the General Division does not seem to have noticed that the Claimant had help completing her application.⁶ The General Division had no information about whether the Claimant's helper understood the application form. And, it had no information about what the helper might have explained to the Claimant.

[14] So, the General Division based its decision on an important mistake about the facts of the case.⁷

[15] The General Division relied only on the Claimant's poor English in deciding what she understood. It should not have done this. The General Division also needed to consider how much help the Claimant had when filling out her application. But, the General Division had no information about this.

Fixing the General Division's mistake

[16] In this case, the best way to fix the General Division's mistake is for me to give the decision that the General Division should have given.⁸

The Claimant chose parental benefits under the extended option

[17] When deciding cases like this one, I focus on two issues:

- Did the Claimant make a clear choice on her application?
- Did the Commission mislead the Claimant and make her choice invalid?

⁴ See paragraph 23 of the General Division decision.

⁵ For example, see paragraph 14 of the General Division decision.

⁶ See the application form on page GD3-11.

⁷ This is among the mistakes that allow me to intervene in a case: See section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

⁸ This is set out in sections 59(1) and 64(1) of the DESD Act. Also, see paragraphs 16 to 18 of the Federal Court of Appeal's decision in *Nelson v Canada (Attorney General)*, 2019 FCA 222.

[18] First, the Claimant clearly chose the extended option on her application for parental benefits. There are no contradictions on her form. For example, the Claimant:

- chose the extended option when asked what type of parental benefits she wanted.⁹
- chose to get 40 weeks of benefits when asked how many weeks she wanted to claim.¹⁰ (The most she could get under the standard option is 35 weeks.)
- did not provide a return-to-work date.¹¹

[19] Second, the Claimant did not provide any information about how or when the Commission might have misled her into making the wrong choice.

[20] I accept that the Claimant's poor English might have made it hard for her to fully understand the application. But, this is very different from being misled by the Commission.

[21] In this case, I must respect the choice the Claimant made on her application. She chose to get parental benefits under the extended option.

[22] The Commission first paid the Claimant parental benefits around February 12, 2021. Many weeks later, on April 30, 2021, she asked to change to the standard option. But, the law did not allow her to change options at that time.¹²

Conclusion

[23] I am allowing the Commission's appeal. The General Division based its decision on an important mistake about the facts of this case. The Claimant chose to get parental benefits under the extended option. And, when she asked for the standard option, it was already too late to change options.

⁹ See the application form on page GD3-9.

¹⁰ See the application form on page GD3-10.

¹¹ See the application form on page GD3-7 and the Record of Employment on page GD3-19.

¹² See section 23(1.2) of the EI Act.

[24] At the hearing on December 7, 2021, the Commission said that the Claimant can continue getting parental benefits for up to 18 more weeks. There is nothing the Claimant needs to do to continue getting these benefits. But, the Claimant should contact Service Canada if she returns to work before her parental benefits end.

Jude Samson
Member, Appeal Division