



Citation: *NP v Canada Employment Insurance Commission*, 2021 SST 754

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

N. P.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (423933) dated May 18, 2021
(issued by Service Canada)

Tribunal member:

Katherine Wallocha

Type of hearing:

Teleconference

Hearing date:

June 15, 2021

Hearing participants:

Appellant

Decision date:

June 16, 2021

File number:

GE-21-883

DECISION

[1] The appeal is allowed. The Claimant (N. P.) elected to receive standard employment insurance (EI) parental benefits.

OVERVIEW

[2] The Claimant applied for maternity and parental EI benefits. In her application she indicated that her baby was born on October 15, 2020, and she would be returning to work on October 25, 2021. She chose the option for extended parental benefits wishing to claim 52 weeks.

[3] When the Claimant received her first payment of parental benefits, she noticed the payment amount had decreased. She contacted the Canada Employment Insurance Commission (Commission) and requested an amendment to the parental benefits option chosen. The Commission refused to change the type of parental benefits selected because she had already received a parental benefit payment.

[4] The Claimant appealed the Commission's decision because she told a Service Canada agent that she had wanted the "year of maternity leave or 52 weeks off" in which the Service Canada agent told her she would only get 35 weeks of leave. She misunderstood that maternity benefits was on top of parental benefits for a total of 50 weeks.

[5] After submitting her reconsideration request, she was told that her parental benefit option would be changed, but to give it time. She submitted the appeal because she was misinformed by a Service Canada agent and because she isn't able to make her monthly bills given the EI payment decrease.

WHAT I MUST DECIDE

[6] Did the Claimant elect to receive extended parental EI benefits?

REASONS FOR MY DECISION

[7] When you apply for parental EI benefits, you must choose between two different kinds of parental benefits¹:

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

[8] When you choose a type of benefit, the law calls this an “election”. Once you have received a parental benefit payment, you can’t change your election².

Did the Claimant elect to receive extended parental EI benefits?

[9] No, I find, on the balance of probabilities, that the Claimant didn’t elect extended parental benefits. I find that she elected standard parental benefits, but made a mistake in selecting the extended benefits option on the application for EI benefits.

[10] The Commission argued the following:

- the Claimant was informed on the application for EI benefits of the difference between standard and extended parental benefits;
- she elected to receive 52 weeks of extended parental benefits;
- she was also informed that the decision was irrevocable once parental benefits were paid;
- the first payment for parental benefits was issued on March 5, 2021;
- on March 23, 2021, the Claimant requested that the claim be changed to standard parental benefits;
- the Claimant’s election became irrevocable as of March 5, 2021;

¹ This is set out at s 12(3)(b) and 14(1) of the *Employment Insurance Act* (EI Act).

² This is set out in s 23(1.2) of the EI Act.

- the law is clear and unambiguous that once the choice of election is made and benefits paid, that choice can't be recalled.

[11] However, a recent decision by the Appeal Division (AD) of the Social Security Tribunal explained that while Parliament made the election of standard or extended parental benefits irrevocable, it didn't define "election", or state that a claimant's selection on the application form must be conclusively deemed to be her election.

[12] In the AD's view, the purpose of making the election irrevocable is to prevent claimants from changing their minds as their circumstances change and they reassess which type of benefit would be most advantageous. Its purpose isn't to punish claimants for provable slips or objectively reasonable misunderstandings at the time that they complete their applications³.

[13] Another decision by the AD confirms that I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive⁴.

[14] I am not required to follow the AD's guidance, but in this case, I find it applies.

[15] The Claimant applied for EI benefits on November 3, 2020. In her application, she indicated the following:

- Her child was born on October 15, 2020;
- She intended to return to work on October 25, 2020;
- She wished to claim 52 weeks;
- She selected extended parental benefits.

[16] The Claimant told me at the hearing that she called the Commission about a week before she applied for EI maternity and parental benefits. She told the Commission's agent that she wanted to take 52 weeks off. She was told she needed to apply for the extended benefits to get paid for 52 weeks. The Claimant said that she didn't realize that the 15 weeks of maternity benefits were on top of the 35 weeks of

³ This is explained in the AD decision *V.E. v. Canada Employment Insurance Commission*, AD-20-3.

⁴ This is explained in the AD decision *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823.

parental benefits. She chose the extended parental benefits because 35 weeks wasn't enough if she planned to be off work for a year.

[17] I find the Claimant is more likely than not to have elected the standard parental benefits option. I make this finding based on the information in the Claimant's application as a whole.

[18] I accept that the Claimant didn't understand that the 15 weeks of maternity benefits are added to the 35 weeks of parental benefits. I also accept that when the Claimant indicated she wished to collect 52 weeks of parental benefits, she chose that number to represent the total number of weeks she intended to be off work.

[19] The evidence shows that the Claimant intended to elect standard parental benefits. When she selected the extended parental option, she made a mistake, but a mistake isn't an election.

CONCLUSION

[20] The Claimant elected to receive standard parental benefits. This means the appeal is allowed.

K. Wallocha

Member, General Division - Employment Insurance Section