



Citation: *LB v Canada Employment Insurance Commission*, 2021 SST 863

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

**Decision**

**Appellant:** L. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (425396) dated June 11, 2021  
(issued by Service Canada)

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**Tribunal member:** Candace R. Salmon  
**Type of hearing:** Videoconference  
**Hearing date:** July 27, 2021  
**Hearing participant:** Appellant  
**Decision date:** August 6, 2021  
**File number:** GE-21-1173

## Decision

[1] The appeal is allowed. I find the Claimant elected to receive standard parental employment insurance benefits.

## Overview

[2] The Claimant applied for maternity and parental employment insurance (EI) benefits. She selected to receive extended parental benefits because she misunderstood the options for parental benefits. Extended parental benefits pay a lower rate of benefits for up to 61 weeks, in addition to 15 weeks of maternity benefits. The Claimant realized she made a mistake when she noticed the parental benefit payment was much lower than the maternity benefit payment.

[3] The Canada Employment Insurance Commission (Commission) says the Claimant's choice of parental benefit term cannot be changed after the first payment of parental benefits was made. It submits she elected to receive extended benefits because she picked that option on the application form. The Claimant says she chose extended parental benefits on the form by mistake. The Claimant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

## Issue

[4] What type of parental benefits did the Claimant elect to receive?

## Analysis

[5] Parental benefits are intended to support parents while they take time off work to care for their newborn children.<sup>1</sup> Claimants must elect the maximum number of weeks,

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<sup>1</sup> *Employment Insurance Act*, section 23(1)

up to either 35 or 61, that they want to be paid parental benefits.<sup>2</sup> The election of the parental benefit term cannot be changed once parental benefits are paid.<sup>3</sup>

[6] For the following reasons, I find the Claimant elected to receive standard parental benefits.

[7] The Claimant applied for maternity and parental benefits on October 19, 2020. A claim was established as of October 18, 2020. She submitted that her last day worked was October 15, 2020, and she planned to return to work on November 17, 2021.

[8] On the parental information section of the application form, the Claimant selected to receive extended parental benefits. The form also asks how many weeks of benefits she wishes to claim. She picked 56 weeks from the drop-down menu.

[9] The Claimant testified that she thought she was choosing to receive 56 weeks of benefits in total when she selected to receive 56 weeks of parental benefits. She submitted that she read the application form but did not know she made a mistake until the parental benefits were paid. At the hearing, she stated that she did not understand that maternity benefits were a separate period of time, so she did not deduct 15 weeks from the amount of parental benefits she requested.

[10] The evidence shows that the first payment of parental benefits was paid to the Claimant on February 5, 2021. At the hearing, the Claimant stated that she received her benefits by cheque and lives in an isolated area, so she did not receive the February 5, 2021, cheque until nearly March 2021.

[11] The Claimant testified that the Commission advised her that it was impossible to change the parental benefit choice because she had already received a payment of parental benefits. A decision letter dated May 6, 2021, supports this. The Claimant argues

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<sup>2</sup> The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is found in section 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks for which parental benefits may be paid is found in section 12(3)(b) of the *Employment Insurance Act*, based on the choice the claimant makes under section 23.

<sup>3</sup> *Employment Insurance Act*, section 23(1.2)

that she had no opportunity to correct her error, because she could not have known that she made a mistake until she received the first payment of parental benefits.

[12] She requested reconsideration, reiterating that the timeframe to make a change is unfair and left her no opportunity to correct her mistake. She also stated that when she completed the application form she was heavily pregnant, sleep deprived, and overwhelmed with hormones and emotions. She added that she had to have an unexpected caesarian section earlier than she planned to deliver, and this caused her to be in a “frantic state” when she applied for benefits. The Commission upheld its decision, determining the Claimant was not able to switch her parental benefit election from extended to standard.

[13] The Claimant appealed to the Tribunal on July 10, 2021. At the hearing, she said that she read the descriptions for parental benefits on the application form, but did not understand that by electing extended benefits for 33% of her weekly insurable earnings, she would receive the same amount per month as someone who went off work for 18 months. She submitted that she believed the payment for extended benefits would be adjusted based on the amount of weeks she requested, but that she would receive her full entitlement to benefits over the 13 months.

[14] When asked why she believed this to be true, the Claimant stated that she interpreted the application form to say that, “it would be prorated...it just made sense in my mind. Why would someone who is taking 13 months off choose to get paid a lower amount of money if they could get more up front? I completely misunderstood the...benefit types.”

[15] She added that while she wanted to take 13 months off work, if she had understood the application form she would have picked standard benefits and received her full entitlement of benefits over 12 months, and budgeted her benefits to cover the extra month of leave. She reiterated that she did read the application form and did know the election between standard and extended benefits was irrevocable once benefits were paid, but said she had no reason to contact the Commission and ask any questions about

her understanding of the benefit options because she did not know she misunderstood them until she received the first payment of parental benefits.

[16] On the application for EI benefits, it asks claimants if they want to receive parental benefits immediately following maternity benefits. The Claimant said that she read this and selected yes, because she did not know why someone would elect to receive only 15 weeks of maternity benefits.

[17] The Claimant submits that she is only asking for the benefits to which she is entitled. She argues that the consequence of her misunderstanding the application form is overly harsh. She adds that the reason for this harsh policy appears to be administrative purposes, which she believes is unfair because there is no point after filing the application form where the Claimant could have recognized she made a mistake, until the first payment of parental benefits was made.

[18] The Commission submits the Claimant was paid the first payment of parental benefits on February 5, 2021. She says she did not receive this payment until the end of February 2021, and contacted the Commission in March 2021, to change from extended to standard parental benefits. I find the first payment of parental benefits was made to the Claimant on February 5, 2021, because there is no evidence to the contrary. While the Claimant received the benefits via cheque in the mail at a later date, I find the Commission's full payment text screen to be strong evidence that the benefits were paid on February 5, 2021.

[19] The Commission adds that the law is clear and unambiguous that once the choice of election is made and any parental benefits are paid, the election cannot be changed. Since the Claimant was paid parental benefits on February 5, 2021, it submits her election was irrevocable from that date.

[20] I agree with the Commission that the law is clear that once benefits are paid an election for parental benefits cannot be changed. I disagree, however, on its determination that selecting a certain option on an application form is the only relevant information in deciding which election the Claimant made. Whether a claimant has elected

extended parental benefits in the first place is not the same question as whether an election can be changed.

[21] I have the power to decide any question of law or fact that is necessary to decide an appeal. This includes the ability to evaluate evidence of a claimant's intention at the time she completed the application for EI benefits, so that I can determine whether the election was actually or validly made.<sup>4</sup>

[22] This issue turns on what it means to elect a benefit period. Is it only the choice on the application form? A decision from the Tribunal's Appeal Division confirms that I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive.<sup>5</sup>

[23] I must also consider the recent case law from the Federal Court. In *Karval*,<sup>6</sup> the Court addressed the situation of a Claimant who appealed a similar but distinguishable situation to the Claimant's case. Ms. Karval filed a claim for extended parental benefits, and sought to change to standard benefits. The Commission refused to change the benefit election. The Tribunal denied her appeal at both the General and Appeal divisions. In that case, the evidence about which kind of parental benefits the Claimant chose was ambiguous and Ms. Karval did not provide a return to work date on her application for EI benefits.

[24] Also, Ms. Karval chose to receive extended benefits for 61 weeks. The Tribunal member noted that there was no contradiction on the application form, because the Claimant said she did not know when she was returning to work, and also requested the maximum number of benefit weeks available. Ms. Karval also stated that she did not

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<sup>4</sup> This power is found under section 64(1) of the *Department of Education and Social Development Act*, and is referenced in Appeal Division decision *Canada Employment Insurance Commission v. R.W.*, 2021 SST 299 at paragraph 24

<sup>5</sup> The Appeal Division set out that the General Division has the authority to decide what kind of parental benefits a claimant elected to receive, considering all of the relevant evidence in *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823

<sup>6</sup> *Karval v. The Attorney General of Canada*, 2021 FC 395

understand the difference between maternity and parental benefits and said she wanted the option that would give her one year of leave in total.

[25] The Claimant in the current case selected to receive only 56 weeks of extended parental benefits, not the maximum of 61 weeks. She also testified that she thought she understood the types of benefits, but must have made a mistake because she thought 56 weeks meant the length of time for both maternity and parental benefits. She added that she always intended to take only 13 months off work, which she reported on her application form. I find the choice of 56 weeks corresponds with 13 months, which distinguishes the Claimant's situation from Ms. Karval's.

[26] Additionally, in *Karval*, the Claimant's benefit rate dropped from 55% of her weekly earnings to 33% of her weekly earnings in the week of September 1, 2019. She collected this lower parental benefit rate for nearly six months before contacting the Commission. The Claimant in the current case contacted the Commission almost immediately after receiving her first extended parental payment.

[27] The preceding compares the *Karval* situation to the Claimant's case. The Court in *Karval* also made relevant comments that I want to address. It states that the questions on the EI application are not objectively confusing, and summarizes the parental benefits program.<sup>7</sup> It also reproduces the **Parental Information** section of the application in its decision, before noting that Ms. Karval chose the "extended option payable over 61 weeks [and] received benefits under that option for six (6) months before seeking to convert the claim to the standard option."<sup>8</sup>

[28] The Court found that, "where a claimant...is not misled but merely lacks the knowledge necessary to accurately answer unambiguous questions, no legal remedies are available. Fundamentally it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary

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<sup>7</sup> *Karval*, at paragraph 11

<sup>8</sup> *Karval*, paragraph 13

questions.” The Court determined that Ms. Karval deliberately selected the extended option and failed to read the application clearly.

[29] The Court also comments that there is nothing “very confusing about the application” for parental benefits and stated that if it was “perplexing, she could have called the Commission instead of providing answers that, she now says, were inconsistent with her true intentions.”<sup>9</sup>

[30] I appreciate the Court’s comments, but find they apply differently in this case. I recognize the Court found the questions on the parental benefits section of the EI application form were not objectively confusing; however, the Court did not address the interplay between this section and the maternity benefits section. While it may be clear that there are two types of parental benefits, standard and extended, it is evidently not clear that when identifying the number of weeks of parental benefits one wishes to claim, maternity benefits are a separate period of time. On the application for EI benefits, it states:

\*Do you want to receive parental benefits immediately after receiving maternity benefits?

- Yes, I want to receive parental benefits immediately after my maternity benefits.
- No, I only want to receive up to 15 weeks of maternity benefits.<sup>10</sup>

The application form does not specify that maternity benefits are a wholly separate type of benefit, and are not part of the parental benefit election.

[31] While the maternity section refers to 15 weeks of maternity benefits in the “No” option, I find it may not be obvious to a Claimant that this is independent from the parental benefits section. If a claimant chooses “yes” to the question above, they may not know

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<sup>9</sup> *Karval*, paragraph 16

<sup>10</sup> See GD3-8



that they are asking to receive up to 15 weeks of maternity benefits, because it does not state they will receive up to 15 weeks in addition to parental benefits.

[32] Further, while the question itself of, “do you want to receive parental benefits immediately after receiving maternity benefits?” suggests there is some separation between benefit types, I find that this is not plain and obvious to the average person, who does not work with EI benefits on a daily basis. It may suggest a separation between benefits, but it is not clear in defining the difference such that a claimant will certainly be clear about what they have elected to receive.<sup>11</sup>

[33] The Court also referred to the responsibility of a claimant to understand their entitlement options, and to ask questions if they do not understand. In this case, the Claimant thought she understood. I find she could not have known her error prior to the first payment of benefits, because she did not have access to her application for benefits after it was submitted.

[34] Further, she did not understand that parental and maternity were separate periods, so she did not know to contact the Commission and ask questions because she thought her claim was established correctly. I find this is not a case of the Claimant lacking the knowledge to answer unambiguous questions, because the difference between maternity and parental benefits and the relationship between the two benefits is not unambiguous.

[35] Further, while the application form explains the difference between extended and standard benefits, the Claimant was under significant stress and physical difficulties when she completed the application form. She completed the application form three days before her child was born, which occurred by an unexpectedly early caesarian section that caused the Claimant to be “frantic.”

[36] While I understand the Claimant’s testimony that she did not understand the financial impact of her selection on the application form, I find that the amount of financial

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<sup>11</sup> In Appeal Division decision *Canada Employment Insurance Commission v. R.W.*, 2021 SST 299 at paragraph 21, the Member confirms that the application does not state that the parental benefit is an entirely separate benefit from the maternity benefit, and finds that this must be inferred from the application form information. It adds that this is not the only inference that is possible.

payments are not the issue before me. I must determine what the Claimant elected at the time she completed her application form, which must be supported by the evidence of the circumstances that existed at the time she completed the form. Not being aware of the financial implications of an election does not negate the choice itself.

[37] I accept the Claimant's testimony that she was under significant stress relating to her pregnancy and that this likely contributed to her selecting the incorrect parental benefit option, despite the information on the application form.

[38] There is no question that the Claimant's situation differs from *Karval*. The Claimant requested only 56 weeks of extended benefits, not the maximum of 61, and contacted the Commission almost immediately upon receiving parental benefits to inquire about the lower benefit rate and ask for a change to standard benefits. In *Karval*, the Claimant received months of benefits before asking to change her claim. The Court found that if she had been confused, she could have called the Commission. In the current case, the Claimant did exactly that. She contacted the Commission almost immediately after receiving her first payment of parental benefits and recognizing it was significantly lower than she expected it to be. For all of these reasons, I find the Claimant's situation is distinguished from *Karval*.

[39] I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive. It is not disputed that she planned to be off work for 13 months. She chose extended benefits for 56 weeks on the application form, because she thought the form was asking her for the entire period of leave, not specifically the parental portion. Additionally, she received her first payment of parental benefits via cheque at the end of February 2021, and contacted the Commission in March 2021, to ask why her rate was changed.

[40] The Claimant chose to receive extended benefits on the application form, and intended to be off work for more than a year. This evidence supports an intention to elect extended benefits. The Claimant was under duress when she completed the application form. She immediately contacted the Commission when she received the first payment of parental benefits. She asked the Commission to change her benefit type to standard,

because she intended to receive her full entitlement to maternity and parental benefits, but misunderstood the application form when she chose extended benefits. This evidence supports an intention to elect standard benefits.

[41] I accept that the Claimant intended to take only 13 months off from work. I also accept that she was experiencing stress and physical challenges when she completed the application form, which caused her to misunderstand the options and believe she would receive prorated benefits. As soon as she was aware that she had made a mistake, she contacted the Commission. I find these factors strongly indicate that the Claimant intended to choose standard parental benefits.

[42] I find it is more likely than not that the Claimant intended to elect one year of maternity and parental leave combined, because her explanation at the hearing was credible and I accept her evidence that she arranged with her employer to take 13 months off work prior to taking leave. The Claimant also reported her specific dates of leave on the application form, and the dates reflect 13 months of leave. I find the Claimant's intention was to receive her full entitlement of parental benefits within her 56 weeks of maternity leave. Her choice of 56 weeks of extended parental benefits is inconsistent with that intention.

[43] I find that even though the Claimant selected to receive a period of 56 weeks of parental benefits, it is credible that she wanted one year of maternity and parental benefits combined. This is because she testified that she was under stress relating to her pregnancy at the time she filled out the application form and thought she understood the benefit options but misunderstood the choices.

[44] This is not a case where the Claimant chose extended benefits and later changed her mind, but one where the Claimant never meant to elect extended parental benefits. I find she made a mistake because she misunderstood the application form and was under stress relating to her pregnancy when she completed the form.

[45] I understand the Claimant selected extended parental benefits on her application form, but I find this click of a button is outweighed by the Claimant's clear intention to elect standard parental benefits.<sup>12</sup>

[46] The law does not allow a claimant to change their election after they have been paid parental benefits.<sup>13</sup> However, as I find the Claimant did not elect extended parental benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her election of standard parental benefits.

## **Additional Comments**

[47] While each case is independent and decided on its own merits—and this case is no different in that regard—I must add that I have personally dealt with more than 25 cases of this nature in 2021, which says nothing of how many other Tribunal members have addressed the same issue. If the application for maternity and parental EI benefits were clear and unambiguous, there would not be so many files with similar fact scenarios.

[48] While I cannot direct the Commission to take any particular action, I encourage it to review the body of similar cases and consider options to clarify this recurring situation.

## **Conclusion**

[49] The appeal is allowed. I find the Claimant elected to be paid standard parental benefits.

Candace R. Salmon  
Member, General Division – Employment Insurance Section

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<sup>12</sup> *Canada Employment Insurance Commission v. J.H.*, 2021 SST 292 at paragraph 28 says, “the General Division’s analysis is not restricted to confirming that a claimant clicked the button for one benefit or the other. The General Division must also weigh the claimant’s assertion of his or her original intention, together with other available evidence from which it may infer the claimant’s original intention. The General Division must determine whether the choice on the form actually represented the claimant’s true intention.”

<sup>13</sup> *Employment Insurance Act*, subsection 23(1.2)