



Citation: *FV v Canada Employment Insurance Commission*, 2021 SST 868

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

**Decision**

**Appellant:** F. V.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (438443) dated November 8, 2021 (issued by Service Canada)

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**Tribunal member:** Leanne Bourassa  
**Type of hearing:** Videoconference  
**Hearing date:** December 16, 2021  
**Hearing participants:** Appellant  
**Decision date:** December 20, 2021  
**File number:** GE-21-2341

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that he selected the standard benefits option. However, I find this election was not valid because the application did not give him all the information he needed to make his choice. He can choose extended parental benefits.

## Overview

[3] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."<sup>1</sup>

[4] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays benefits at a lower rate for up to 61 weeks. Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

[5] Once you start receiving parental benefits, you can't change options.<sup>2</sup>

[6] A claimant who elects standard benefits can only receive benefits during the period that starts the week in which their child is born and ends 52 weeks after that week.<sup>3</sup> I will refer to this time period as the parental benefits window.

[7] On his application, the Claimant chose standard parental benefits. He started receiving benefits at the standard rate the week of August 29, 2021. The Commission made a last benefit payment to him on September 24, 2021. This was the 52<sup>nd</sup> week after his child was born. So, the Claimant received only 3 weeks worth of benefit payments.

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

<sup>2</sup> Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

<sup>3</sup> Section 23(2) of the EI Act.

[8] The Claimant says that he always planned to take 16 weeks of benefits starting when his son was about 11 months old. His understanding was that he could take his benefits anytime up to 78 weeks after his child's birth. If he had understood that standard benefits would not be available after 52 weeks after his son was born he would have chosen to take extended parental benefits so he could take his leave later and still receive benefits.

[9] The Canada Employment Insurance Commission (Commission) says that since the Claimant had chosen the standard benefits, he could not receive any benefits more than 52 weeks after the birth of his son. They also say that the Claimant made his choice of benefits and that it was too late to change it once he had already started receiving benefits.

[10] The Claimant disagrees and says that he should not be penalized for his misunderstanding. He says the application is not clear and he should be able to change to get the remaining benefits he is entitled to.

## **Issue**

[11] Can the Claimant collect extended parental benefits?

## **Analysis**

[12] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>4</sup> The law says that you can't change options once the Commission starts paying parental benefits.<sup>5</sup>

[13] To decide which type of parental benefits the Claimant actually wanted when he made his choice on the application, I need to consider the evidence about that choice. In other words, the option the Claimant chose on his application matters, but it isn't the only thing to consider. For example, the number of weeks of benefits the Claimant

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<sup>4</sup> Section 23(1.1) of the EI Act says that, when you make a claim for benefits under that section, you have to choose to receive benefits over a maximum of 35 or 61 weeks.

<sup>5</sup> Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

wanted to receive or how long the Claimant planned to be off work might be things to consider too.

[14] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant's choice when they filled out their application.<sup>6</sup> I am not bound by these decisions. In other words, I don't have to base my decision on them. But, I find them persuasive, and I am choosing to follow them.

[15] In this case, I will apply a two-step approach that was set out by the Tribunal Appeal Division:

- (1) Which kind of benefits did the claimant chose on their application? The choice should be clear. If it isn't clear, then I should look at all of the circumstances and decide which kind of parental benefits the claimant likely chose.
- (2) Was the claimant's choice valid? Did they have all the information needed to make a choice or did the Commission give misleading information? If the decision was based on misleading information, then the election can be made again.<sup>7</sup>

### **What the Claimant meant to choose on the application**

[16] The option that the Claimant meant to choose on the application when he actually filled it out is important. At that moment, did he mean to choose the standard or extended option?

[17] I find that the Claimant intended to choose standard parental benefits.

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<sup>6</sup> See *MC v Canada Employment Insurance Commission*, 2019 SST 666; *Canada Employment Insurance Commission v JH*, 2020 SST 483; *Canada Employment Insurance Commission v TB*, 2019 SST 823; *MH v Canada Employment Insurance Commission*, 2019 SST 1385; *VV v Canada Employment Insurance Commission*, 2020 SST 274; *ML v Canada Employment Insurance Commission*, 2020 SST 255; *RC v Canada Employment Insurance Commission*, 2020 SST 390.

<sup>7</sup> *Canada Employment Insurance Commission v. MO*, 2021 SST 435

## **The parties' arguments**

[18] The Commission says that what the Claimant chose on the application tells us which option he wanted. It argues that it is too late to change options now.

[19] The Claimant says that the application form is not clear that the parental benefits window is counted from the date of the birth of the child. If he had known that was the case, he would have chosen extended benefits to allow him to get benefits after his son was a year old.

[20] The Claimant's application for benefits was completed on August 31, 2021. On the form he said that his child was born on X. He also said he wanted to claim 16 weeks of benefits and that he planned to return to work on December 17, 2021.

[21] I note that the Claimant's Record of Employment does not show that the Claimant was to return to work on December 17, 2021. So I turn to the Claimant's testimony to clarify his intentions.

[22] The Claimant says that when he filled out the application for benefits, he wanted 16 weeks of parental benefits at the standard rate. Based on information from his employer, he thought he had up to 78 weeks after the birth of his son to take this time and collect benefits. He testified that his intention was always to take his parental leave when his son was almost a year old. Since he only wanted 16 weeks of benefits, it seemed obvious to him that he did not need to choose the extended option since the standard option allowed for 31 weeks of benefits.

[23] I find that the Claimant's election of standard parental benefits was clear.

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

[24] I find that the Claimant's choice of standard parental benefits was not 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.

[25] At the hearing, the Claimant said that he wanted to take 16 weeks of parental leave from work around the time his child was one year old. He wanted to collect EI benefits during this parental leave. The application didn't tell him that the parental benefit window started at the date of his child's birth. He thought that it began on the date he applied for benefits. He didn't know that the parental benefit window meant that he could not collect all 16 weeks of benefits because some of it would be claimed 52 weeks after his son was born.

[26] The Commission included a copy of the application form. I have looked at it carefully and I agree with the Claimant: there is no information about the parental benefit window preventing you from receiving standard benefits more than 52 weeks after the birth of your child.

[27] I believe the Claimant when he says that he would have chosen extended parental benefits if he had known that he could only claim standard benefits until the week 52 weeks after the birth of his son. He wanted 16 weeks of benefits and thought he was taking the most conservative option to ensure he was covered.

[28] The Appeal Division says that an election made with misleading information from the Commission isn't a valid election.<sup>8</sup>

[29] I acknowledge that the Claimant did rely on information that he received from his employer that lead him to believe he could claim benefits up to 78 weeks after the birth of his child. I do not consider that this is the Commission's responsibility. However, if the Commission had included clear information on the application form, the Claimant would not have needed the information provided by his employer. The Claimant was misled by the Commission's lack of information about the parental benefit window.

[30] I find the Claimant didn't make a valid election because the Commission didn't give him enough information to make the proper decision.

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<sup>8</sup> See *Canada Employment Insurance Commission v. SA*, 2021 SST 406, which is very similar to the present appeal.

[31] The Appeal Division says that if a claimant's election is not valid, they can make a new one. I find that the Claimant's first election was not valid. So, I find he can make a new election and he has elected extended parental benefits.

### **Conclusion**

[32] The Claimant's election of standard parental benefits was not valid and he can make a new election. He may choose extended parental benefits.

[33] This means that the appeal is allowed.

Leanne Bourassa  
Member, General Division – Employment Insurance Section