

Citation: *NN v Canada Employment Insurance Commission*, 2021 SST 878

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

Decision

Appellant: N. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (427968) dated July 6, 2021 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: August 18, 2021

Hearing participants: Appellant

Decision date: September 13, 2021

File number: GE-21-1323

Decision

[1] I am allowing the Claimant's appeal. I find that his intention was to choose employment insurance (EI) standard parental benefits.

[2] The Claimant made a mistake on his application form when he clicked on the extended parental benefits option. He has shown that he meant to choose the standard option since this is consistent with the length of his planned parental leave from work.

Overview

[3] On May 20, 2021, the Claimant applied for parental benefits and clicked on the extended benefits option. When you fill out your parental benefits application, you need to "elect" (choose) between two options: the standard option and the extended option.¹

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

[5] Once you start receiving parental benefits, you cannot change options.²

[6] The Canada Employment Insurance Commission (Commission) says the Claimant chose the extended option because he clicked on that button on the online application form. It says he made his choice and that choice is irrevocable (meaning, it cannot be changed) because he already started receiving his parental benefits.

[7] The Claimant disagrees. He says he always intended to claim standard parental benefits but chose the wrong option by mistake on the application form. He says clicking on the extended parental benefits option does not reflect his choice of options because

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

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

he had only arranged for an eight-month parental leave from work. He could not explain why he chose 52 weeks from the drop-down menu of extended benefit options.

Post-hearing documents

[8] After the hearing, the Claimant submitted an email from his employer confirming that he was due to return to work on February 25, 2022, eight months after his claim for parental benefits began.

[9] The Claimant also submitted a copy of a bank statement showing that the first payment of his parental benefits reached his account on June 24, 2021.

[10] I shared this information with the Commission and invited a response but it made no further comment.

Issue

[11] Which type of parental benefits did the Claimant want when he made his choice on the application?

Analysis

[12] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.³ The law says that you cannot change options once the Commission starts paying you parental benefits.⁴

[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 that the Claimant chose on the application matters, but it is not the only thing to consider. For example, the number of weeks of benefits he wanted to receive or how long he planned to be off work might be things to consider too.

³ 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.

⁴ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

[14] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant's choice when they fill out their application.⁵ I am not bound by these decisions. In other words, I do not have to base my decision on them but I find them persuasive and choose to follow them in this appeal.

What the Claimant meant to choose on the application

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

[16] I cannot base my decision on the Claimant's thoughts alone. Equally, I cannot rely solely on his benefit selection either. That is because there is more to a claimant's choice than simply clicking on a button on an online form. I must consider any inconsistencies, such as a claimant choosing the extended option where the evidence shows a return-to-work date that matches the standard option.

The parties' arguments

[17] The Commission says what the Claimant chose on the application tells us which option he wanted. It argues that it is too late to change options now since it issued the first payment on June 22, 2021, and he only called to request a change to standard benefits on June 24, 2021.

[18] The Claimant is a first-time applicant for parental benefits with limited English skills. He says he did not know that he had made a mistake when he completed his application on May 20, 2021. He argues that he only found out from his bank account statement that on June 24, 2021, the Commission paid him the lower benefit rate that applies to extended benefits. He submitted a bank statement confirming that payment did not reach his bank account until June 24, 2021.

⁵ 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.

[19] The Commission agrees that the Claimant called the Commission on June 24, 2021, to correct his mistake.

[20] The Claimant argues that he had always planned to apply for standard parental benefits. He explains that the employer did not put a return-to-work date on his Record of Employment because he wanted to leave the door open to return earlier than eight months, depending on his financial situation. He says his apparent election of extended benefits does not reflect his choice of benefits and does not match his eight-month parental leave from work.

[21] The Claimant says that he was expecting payment of 35 weeks of standard benefits because that matched the maximum eight months of parental leave he had arranged with his employer. He submitted an email from the employer confirming that he left on parental leave on June 25, 2021, with a return-to-work date of February 25, 2022. He could not explain why he had chosen 52 weeks of extended benefits from the drop-down menu.

So, which option did the Claimant mean to choose when he applied?

[22] I find that the Claimant has proved, on a balance of probabilities, that he meant to choose the standard option when he applied for parental benefits.

[23] I agree with the Commission that the law says an election of parental benefits cannot be changed once payment of those benefits begins. However, I do not agree that clicking on a box on an application form is the only relevant information to consider to decide what choice a claimant made.

[24] This appeal turns on what it means to elect a type of parental benefit. Is the box the Claimant clicked on the application form the only relevant evidence? A decision from the Tribunal's Appeal Division confirms that I must consider all relevant evidence to decide, on a balance of probabilities, what kind of parental benefits he chose.⁶

⁶ The Appeal Division says the General Division has the authority to decide what kind of parental benefits a claimant elected to receive, considering all of the relevant evidence (see *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823).

[25] Looking at this relevant evidence, I find that the Claimant had already arranged to return to work after eight months at the most. The employer's email confirms this. Choosing extended benefits was inconsistent with this plan.

[26] Before finding that the Claimant chose standard parental benefits, I considered the recent case law from the Federal Court (Court). In *Karval*,⁷ the Court addressed the situation of a claimant whose circumstances might appear to be similar to those of the Claimant.

[27] The claimant in *Karval* filed a claim for extended parental benefits and later wanted to change to standard benefits. But there are significant differences between *Karval* and the appeal before me. Here are a few.

[28] Ms. Karval requested the full 61 weeks of extended benefits. She only asked to change to standard benefits six months after her extended benefits began even though her benefit rate had dropped significantly.

[29] The Claimant in this appeal had a documented return-to-work date that aligned with the standard benefit option. And he contacted the Commission right after he saw that payment of his benefits had started at a lower rate than he expected. He did not wait six months as in *Karval*.

[30] That prompt action shows that the Claimant in this appeal was alarmed by an outcome so different from the one he had intended. It makes it more likely than not that he meant to request the standard option when he applied for parental benefits. He had no way of knowing that he had made a mistake until the day benefit payments began since that was the first time the Commission had communicated with him since he filed his application for benefits.

[31] In allowing this appeal, I put most weight on the Claimant's sworn testimony that he had always wanted to claim standard parental benefits. I found his testimony credible

⁷ *Karval v Attorney General of Canada*, 2021 FC 395.

because he testified in a direct and straightforward manner and there were no obvious contradictions in his statements.

[32] I acknowledge that the Claimant gave no compelling reason for choosing 52 weeks from the drop-down menu for extended benefits. That choice made no sense since it did not fit with the length of his parental leave from work. Given his language difficulties, I find it more likely than not that he misunderstood the questions on the parental benefits application form.⁸ That is not unusual for claimants struggling with the English language.

Conclusion

[33] The Claimant chose standard parental benefits.

[34] This means that I am allowing his appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

⁸ I note that the Claimant needed help from an interpreter during his hearing.