



Citation: *DB v Canada Employment Insurance Commission*, 2022 SST 134

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

Decision

Appellant: D. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (420769) dated April 20, 2021
(issued by Service Canada)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: February 16, 2022

Hearing participant: Appellant

Decision date: February 21, 2022

File number: GE-21-700

Decision

[1] The appeal is dismissed. The Claimant cannot receive parental benefits after April 10, 2021 because it is more than 52 weeks after his child's birth.

Overview

[2] The Claimant's son was born on X and he applied for parental benefits a few months later, on December 2, 2020.¹ In his application for benefits, he picked the "standard" benefit option and asked for 35 weeks of parental benefits.² However, the Claimant only received 20 of the 35 weeks he asked for because the parental benefit payment window ended.³

[3] The Claimant asked the Commission to extend the parental benefit window so that he could collect the remaining 15 weeks of parental benefits.⁴ The Commission decided that it was not possible because the 52 week parental benefit window started when his child was born.⁵

[4] The Claimant argues that an exception should be made in his case. His child was born abroad and he was unable to see his child during the pandemic because flights out of the country were paused.⁶ He submits that he made multiple calls to Service Canada and was told not to apply until he was united with his child.

Matter I have to consider first

Charter case

[5] This case was previously scheduled for a regular hearing.⁷ It was adjourned on that date due to technical difficulties and because the Claimant wanted to make an appeal based on the *Canadian Charter of Rights and Freedoms* (Charter). A pre-

¹ See application for benefits at GD3-3 to GD3-14.

² See GD3-8 to GD3-9.

³ See payment chart at GD3-18.

⁴ See request for reconsideration at GD3-19 to GD3-20.

⁵ See reconsideration decision dated April 20, 2021 at GD3-22 to GD3-23.

⁶ See notice of appeal forms at GD2-1 to GD2-15.

⁷ See notice of hearing at GD1-1 to GD1-4

hearing conference was scheduled to discuss the dates for submitting the Charter argument notice form.⁸

[6] The Claimant complied by submitting the Charter argument notice form.⁹ The Commission provided their submissions in response.¹⁰ I decided that the Claimant's appeal did not raise a Charter issue and provided my reasons in an interlocutory decision.¹¹ The hearing was then scheduled for a regular hearing.¹²

Issue

[7] Can the parental benefit window be extended?

Analysis

[8] The EI parental benefits program offers financial support for parents who are not working while they care for their newborn or newly adopted child. A Claimant can pick either the standard or extended parental benefit option. Depending on which option is picked, the Claimant can also pick the number of weeks they want to collect, up-to a maximum amount.

[9] There are some differences depending on which parental benefit option is picked by a claimant. For example, the maximum number of weeks for the standard option is 35-weeks and the extended parental benefit option is 61-weeks.¹³

[10] Also, parental benefits under the standard option are paid at a rate of 55% of the weekly insurable earnings up to a maximum amount.¹⁴ Under the extended option,

⁸ See pre-hearing conference notice at GD10-1 to GD10-4; section 20(1)(a) of the *Social Security Tribunal Regulations*.

⁹ See letter dated June 15, 2021 at GD13-1 to GD13-3; See Claimant's section 20 notice at GD14-1 to GD14-7.

¹⁰ See Commission's reply at GD15-1 to GD15-15.

¹¹ See interlocutory decision dated December 23, 2021 at GD17-1 to GD17-7.

¹² See new notice of hearing at GD19-1 to GD19-3.

¹³ Subsection 12(4.1)(a)(b) of the *Employment Insurance Act*; Subsection 23(1.1) of the *Employment Insurance Act*.

¹⁴ Subsection 14(1) of the *Employment Insurance Act*.

parental benefits are paid at a rate of 33% of the weekly insurable earnings up to a maximum amount.¹⁵

[11] The parental benefit window is different depending on whether the standard or extended option is picked. If a Claimant picks the standard option, then the parental benefit window is 52 weeks from the date of the child's birth.¹⁶ If a Claimant picks the extended option, then the parental benefit window is 78 weeks from the date of the child's birth.¹⁷

[12] There are some exceptions that would extend the parental benefit window beyond the 52 week period. For example, if a child or children are hospitalized, or if a Claimant is part of the Canadian forces and their parental leave is deferred or they are directed to return to duty from parental leave, then the period can be extended.¹⁸

[13] Once a claimant picks either standard or extended parental benefit option it cannot be changed once parental benefits have been paid under either option.¹⁹

Agreed Facts

[14] The parties agree to the following:

- a) The Claimant's child was born on X
- b) The Claimant applied for parental benefits on December 2, 2020
- c) The Claimant requested 35 weeks of parental benefits under the standard option
- d) The benefit period was made retroactively effective on November 15, 2020
- e) The Claimant was paid 20 weeks of parental benefits

¹⁵ Subsection 14(1) of the *Employment Insurance Act*.

¹⁶ Subsection 23(2)(b) of the *Employment Insurance Act*.

¹⁷ Subsection 23(3.21) of the *Employment Insurance Act*.

¹⁸ Subsection 23(3) of the *Employment Insurance Act*; Subsection 23(3.01) of the *Employment Insurance Act*.

¹⁹ Subsection 23(1.2) of the *Employment Insurance Act*.

The parental benefit window cannot be extended

[15] I find that the Claimant's parental benefit window period was correctly decided by the Commission. The child's date of birth was X, so the parental benefit window is 52 weeks starting from April 5, 2020 to April 10, 2021.

[16] I find that none of the exceptions in law apply in this case, specifically his child was not hospitalized and he was not in the Canadian Forces.²⁰ This is not disputed between the parties. This means that the benefit period cannot be extended.

[17] I accept that the Claimant did make ongoing efforts to contact the Commission to ask about the parental benefit program. The Commission told him that he could not apply until he was united with his child. He applied once he was able to make arrangements for medical insurance, to be off from work and to fly abroad to be with his child.

[18] The Claimant has presented compassionate circumstances. He could not be reunited with his child who was born abroad. It is clear that it was not his fault that flights were paused during the pandemic. I acknowledge the hardship this caused for him and his family.

[19] The Claimant noted that there were other legislative changes during the pandemic that allowed for laws to be applied flexibly, however I note there were no legislative changes to the applicable sections in this case. The law as stated does not give me any discretion, flexibility or authority to extend the 52 week parental benefit window, even in unique or unusual circumstances.

²⁰ Subsection 23(3) of the *Employment Insurance Act*; Subsection 23(3.01) of the *Employment Insurance Act*.

Conclusion

[20] The appeal is dismissed. This means that the Claimant cannot collect parental benefits after the parental benefit window period ended.

Solange Losier
Member, General Division – Employment Insurance Section