



Citation: *EL v Canada Employment Insurance Commission*, 2021 SST 939

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

Decision

Appellant: E. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (431303) dated August 18, 2021
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Videoconference

Hearing date: December 8, 2021

Hearing participants: Appellant

Decision date: December 20, 2021

File number: GE-21-1785

Decision

[1] I am allowing the Claimant's appeal in part.

[2] Her benefit period is extended until January 15, 2022, because of the 28 days that her baby was hospitalized. This will give her four more weeks of benefits.

Overview

[3] After losing her job on December 20, 2020, the Claimant applied for EI regular benefits. Her benefit period began on that date. On June 28, 2021, she made a renewal claim for maternity and parental benefits. She requested 15 weeks of maternity benefits and 35 weeks of standard parental benefits.

[4] The Canada Employment Insurance Commission (Commission) says the Claimant can only get 13 weeks of parental benefits before her 52-week benefit period ends on December 18, 2021. It says she received 22 weeks of regular benefits before her 15 weeks of maternity benefits began. It argues that there are no grounds to extend her benefit period to pay her more weeks of parental benefits because she already received regular benefits during that benefit period.

[5] The Claimant says she should get all 35 weeks of her parental benefits. She argues that the government promised pregnant women would not have their parental benefits cut if they needed benefits due to COVID-19 before their maternity leave began. She says losing 22 weeks of parental benefits puts her family at financial risk.

[6] The Claimant argues that she desperately needs all her parental benefits since her baby was born with a rare disease. He was hospitalized for 28 days after birth. She says she cannot return to work because she has to provide intensive home care for him, such as helping him with his breathing and feeding him through a tube.

The issue I must decide

[7] Can the Claimant's benefit period be extended beyond the usual 52 weeks to allow her to collect more weeks of benefits?

Post-hearing documents

[8] After the hearing, the Claimant submitted her baby's discharge papers following his extended hospital stay. I accepted this document as relevant to her appeal. I shared it with the Commission and invited a response but it submitted nothing further.

Analysis

[9] Claimants who qualify can receive benefits for each week of unemployment in their benefit period, up to the maximum number of weeks allowed under the *Employment Insurance Act* (EI Act).

[10] Maternity and parental benefits are special benefits. The maximum number of weeks of maternity benefits is 15 weeks. The maximum number of weeks of parental benefits is 35 weeks of regular parental benefits or 61 weeks of extended benefits, as chosen by the claimant.¹

[11] When a claimant applies for benefits, a benefit period is established.² A claimant's benefit period is usually 52 weeks.³ In some cases, it can be extended.⁴

[12] Where claimants receive special benefits—including sickness, maternity and parental benefits—the benefit period can be extended so they can receive the maximum number of weeks of each kind of benefit. However, a benefit period cannot be extended for that reason where claimants have already received regular benefits during the same benefit period.⁵

[13] A benefit period can be extended in certain other limited circumstances. For example, if a baby is hospitalized during the claimant's benefit period, that period is extended by the number of weeks during which the child is hospitalized.⁶

¹ S 12(3) of the *Employment Insurance Act* (EI Act).

² S 9 of the EI Act.

³ S 10(2) of the EI Act.

⁴ A benefit period is 52 weeks unless it is extended under sections 10(10) to 10(15) of the EI Act.

⁵ S 10(13) of the EI Act.

⁶ See ss 10(12) and 23(3) of the EI Act.

[14] The Commission says the Claimant's benefit period ends on December 18, 2021. It says she cannot receive any more weeks of parental benefits after that date. It argues that she does not meet any of the conditions to extend her benefit period beyond the usual 52 weeks.

[15] I find that the Commission correctly determined that the Claimant's benefit period ran from December 20, 2020, to December 18, 2021.

[16] However, I disagree that there are no grounds to extend the Claimant's benefit period beyond 52 weeks. The evidence she submitted after the hearing shows that her baby was hospitalized for 28 days, from September 25, 2021, to October 22, 2021.⁷

[17] This means the Claimant meets the exception to have her benefit period extended by those 28 days.⁸ So, she can receive four additional weeks of benefits.

[18] I understand the Claimant's disappointment that she cannot receive all her parental benefit weeks. She thought she was covered by the government's promise that pregnant women would be able to stay home with their babies for a full year even if they first had to claim benefits due to a COVID-related job loss.

[19] However, that could only happen where claimants were able to access a benefit other than EI regular benefits when they first lost their jobs, such as the Canada Emergency Response Benefit (CERB).

[20] Based on the date the Claimant lost her job (December 20, 2020), she did not have the option of claiming CERB because that program ended on October 3, 2020.

[21] The Canada Recovery Benefit (CRB) was in place when the Claimant applied for benefits. However, she did not qualify for CRB because that benefit only gave income support to those who were not entitled to EI benefits. Since the Claimant was eligible for EI, she started receiving regular benefits and her 52-week benefit period began.

⁷ GD8-3.

⁸ See ss 10(12) and 23(3) of the EI Act.

[22] I feel for the Claimant as she tries to manage her baby's illness with the added pressure of her benefits ending shortly. But unfortunately I do not have the power to change or ignore the law, even in cases that cry out for compassion.⁹ As currently written, the law says a benefit period that includes regular benefits cannot be extended beyond 52 weeks unless it meets one of the listed exceptions.

[23] This means that the only extension to the Claimant's benefit period that I can allow is the one related to her baby's hospitalization.

Conclusion

[24] The Claimant's benefit period can be extended by the 28 days her baby was hospitalized. This will allow her to get four more weeks of benefits. No further extensions are possible.

[25] This means that I am only able to allow the Claimant's appeal in part.

Lilian Klein

Member, General Division – Employment Insurance Section

⁹ *Canada (Attorney General) v Knee*, 2011 FCA 301; *Canada (Attorney General) v Lévesque*, 2001 FCA 304