



Citation: *KZ v Canada Employment Insurance Commission*, 2022 SST 300

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

**Decision**

**Appellant:** K. Z.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (441287) dated November 25, 2021 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Videoconference

**Hearing date:** January 24, 2022

**Hearing participant:** Appellant

**Decision date:** January 25, 2022

**File number:** GE-21-2493

## Decision

[1] The appeal is dismissed.

[2] The Claimant chose extended parental benefits, which was always her intention at the time she applied.

[3] I also cannot change her parental benefits to standard, as she requested the change after she had been paid parental benefits and the law does not allow a change after benefits have been paid.

## Overview

[4] 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>

[5] 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. Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

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

[7] On her application, the Claimant chose extended parental benefits.<sup>3</sup> She started receiving benefits at the lower rate on October 22, 2021.<sup>4</sup>

[8] The Claimant says that when she first applied her plan was to take the extended parental benefits as her employer would top her up for twelve months to 93% of her normal pay.

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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> GD03-9

<sup>4</sup> GD03-22

[9] However, on October 24, 2021, her employer informed her their policy had changed and with extended parental benefits she would only get topped up to 55.8% of her income.

[10] The Claimant says she cannot afford this so she called to get her benefits changed as soon as she found out.

[11] The Canada Employment Insurance Commission (Commission) says that the Claimant made her choice and that it is too late to change it because she has already started receiving benefits on October 22, 2021, and she called them on October 26, 2021.

## **Issue**

[12] Can the Claimant change her benefit type?

## **Analysis**

[13] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>5</sup> The law says that you can't change options once the Commission starts paying parental benefits.<sup>6</sup>

[14] The Commission says the Claimant selected extended benefits on her application and her first payment of extended benefits was issued on October 22, 2021.<sup>7</sup>

[15] The Commission says the Claimant called them on October 26, 2021, which is after they had paid her parental benefits, so they cannot change her benefit type.<sup>8</sup>

[16] The Claimant says that her original plan was to take 14 months off from work. This is what she told her employer she wanted to do.

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<sup>5</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>6</sup> Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

<sup>7</sup> GD04-4

<sup>8</sup> GD04-4

[17] The Claimant says she planned to apply for extended parental benefits, as her employer would top her up to 93% of her income for twelve months. After that, she would be on leave without pay for two months, getting only her EI payments, and then she would return to work.

[18] The Claimant says that unbeknownst to her, in July 2021, her employer had actually changed their policy, retroactive to May, so that now they would only top you up to 55.8% of your income if you were getting extended benefits and there was no longer a leave without pay option.

[19] The Claimant says her employer did not tell her about this until October 24, 2021, which was well after she had initially applied for benefits in July 2021.

[20] The Claimant says as soon as she found out about this she called the Commission to ask them to change her benefit type to standard as she cannot afford to have her income cut down to 55.8% due to being on extended benefits.

[21] The Claimant says she is extremely frustrated, as if her employer had told her of the new policy from the start, or if they had even told her a few days earlier, it would have been no trouble for her to change her benefit type.

[22] I have no doubt the Claimant would have handled her maternity and parental leave differently had she known about the change in her employer's policy before she applied for benefits.

[23] However, there can be no doubt, based on the Claimant's testimony, that her plan was always to apply for extended parental benefits.

[24] Further, while I have immense sympathy for the Claimant's situation, I cannot change her benefits from extended to standard as she asked for the change on October

26, 2021,<sup>9</sup> which was after she was paid extended parental benefits on October 22, 2021.<sup>10</sup>

[25] The law is clear that once parental benefits have been paid the type of parental benefits cannot be changed,<sup>11</sup> and I cannot rewrite the law or interpret it in a manner contrary to its plain meaning.<sup>12</sup>

## **Conclusion**

[26] The Claimant always intended to choose extended parental benefits when she applied and I cannot change her benefits to standard as she asked for the change after she had already been paid benefits.

[27] This means that the appeal is dismissed.

Gary Conrad  
Member, General Division – Employment Insurance Section

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<sup>9</sup> GD03-19

<sup>10</sup> GD03-22

<sup>11</sup> Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

<sup>12</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301