



Citation: *TW v Canada Employment Insurance Commission*, 2022 SST 236

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

Decision

Appellant: T. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (444691) dated December 2, 2021 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: February 22, 2022

Hearing participant: Appellant

Decision date: February 25, 2022

File number: GE-22-142

Decision

[1] T. W. is the Claimant. The Canada Employment Insurance Commission (Commission) says she can't receive standard parental Employment Insurance (EI) benefits. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am allowing the Claimant's appeal. I find that the Commission should respect her choice and pay standard parental benefits. I have two reasons for making this decision, which I will explain in more detail below.

Overview

[3] The Claimant applied for EI sickness, maternity, and parental benefits. She planned to return to work about a year after her child's birth, but she was confused about which kind of parental benefits would be best for her. On her application, she asked for extended parental benefits. The Claimant contacted the Commission by phone several times with different instructions about her parental benefits. Finally, the Claimant contacted the Commission on September 13, 2021 and asked for standard parental benefits. But the Commission had already started to process her first parental benefit payment. So the Commission said it was too late to change the type of parental benefits. The Commission said she had chosen extended parental benefits and couldn't change her decision.

[4] The Commission argues that the Claimant elected extended parental benefits in June 2021. The Commission says the Claimant's request for standard on September 13, 2021 was too late because it had already paid benefits.

[5] The Claimant says she was confused about the difference between the two kinds of parental benefits. She says that a Commission agent left her feeling even more confused after she called in June 2021. She says she made her last request for standard parental benefits before she received any benefits.

Issues

[6] I must decide if the Claimant chose (or elected) standard parental benefits before parental benefits were paid.

[7] I will also look at whether the Claimant made a valid choice when she spoke to the Commission in June 2021.

Analysis

[8] When you apply for parental benefits, you must choose between two different kinds of parental benefits:

- Extended parental benefits. The Commission pays up to 61 weeks of benefits at the rate of 33% of your weekly earnings.
- Standard parental benefits. The Commission pays up to 35 weeks of benefits at the rate of 55% of your weekly earnings.¹

[9] When you choose a type of benefits, the law calls this an “election.” Once you have received parental benefits, you cannot change your election.²

Did the Claimant elect standard benefits before parental benefits were paid?

[10] I find that the Claimant elected standard parental benefits before parental benefits were paid.

[11] As I noted above, the law doesn’t let you change your election after a certain point. But here is the exact phrase in the law:

The election is irrevocable **once benefits are paid**³

¹ Paragraph 12(3)(b) and subsection 14(1) of the *Employment Insurance Act*.

² Subsection 23(1.2) of the *Employment Insurance Act*.

³ Subsection 23(1.2) of the *Employment Insurance Act*. I have added my own emphasis.

[12] The law doesn't explain what it means by benefits being paid. But I am generally supposed to interpret EI matters in a way that lets someone receive benefits.⁴ I think this means that I should interpret any ambiguous parts of the law in a way that favours the Claimant.

[13] So how should I interpret the phrase, "once benefits are paid"? I think I should interpret this in the simplest possible way. I find that benefits have been paid when the Claimant actually receives the payment. Because she chose direct deposit, I find that benefits are paid when the Claimant actually has the money in her bank account.

[14] The Claimant and the Commission agree that the Claimant contacted the Commission on September 13, 2021. She asked the Commission to pay standard parental benefits.

[15] At the hearing, the Claimant said that she hadn't yet received any parental benefits on September 13, 2021, when she contacted the Commission to ask for standard parental benefits.

[16] I asked the Commission for evidence of when it paid the Claimant's first parental benefits. The Commission gave me a number of different dates. The Commission says it processed the biweekly claimant report that included the Claimant's first week of parental benefits on September 10, 2021. The Commission issued the payment on September 13, 2021 and the Claimant's bank redeemed the payment on September 15, 2021.

[17] So, the Commission's evidence shows me that the Claimant had the payment available to her in her bank account on September 15, 2021. The Claimant agrees that she hadn't received any parental benefits when she spoke to the Commission on September 13, 2021. I have already decided that I will interpret the phrase "once benefits are paid" to mean that benefits are paid when the Claimant actually has the

⁴ Once the general criteria of eligibility have been met, "eligibility is the rule and ineligibility should be the exception" (*Canada (Canada Employment and Immigration Commission v. Gagnon*, [1988] 2 SCR 29).

money in her bank account. So, this means that I find that benefits were paid to the Claimant on September 15, 2021.

[18] The Claimant elected standard benefits on September 13, 2021. She made this election before benefits were paid, and so I find that the Claimant should receive standard parental benefits.

Did the Claimant make a valid election in June 2021?

[19] I have already decided that the Claimant elected standard benefits on September 13, 2021, and that she made this election before the Commission paid parental benefits.

[20] But I understand that this is a complicated issue and the case law is always evolving. I think there is a second reason why the Commission should respect the Claimant's choice of standard parental benefits. This is because I don't think the Claimant made a valid election of extended parental benefits when she spoke to the Commission in June 2021. So, to be as clear as possible, I am also going to include my reasons for this decision.

[21] At the hearing, the Claimant spoke about her confusion about the difference between standard and extended parental benefits. She said she arranged to take about a year of maternity and parental leave from her job. She wanted EI benefits to cover her leave, but she didn't understand which option would work best for her. When she applied for EI benefits, she asked for extended parental benefits. But she was still confused about which would be the best option for her. So, she contacted the Commission in April 2021, before her maternity benefits started, and asked for standard parental benefits.

[22] The Claimant said she made this request because she looked at everything again and decided that standard parental benefits were better for her. But then she continued to be confused about which kind of parental benefit she wanted. The Commission hadn't yet changed her parental benefits to standard benefits. So, she contacted the Commission again on June 1, 2021.

[23] At the hearing, the Claimant said this conversation with a Commission agent didn't help her understand the difference between standard and extended parental benefits. She said the Commission agent seemed confused by her questions and the conversation left her even more confused than she was before. She was frustrated because she didn't understand which kind of parental benefits she wanted. So, the Claimant told the agent that he should just leave things as they were without making any changes.

[24] The Commission's record of this conversation is short. It only says that the Claimant wants to keep her original election of extended parental benefits. The record of conversation doesn't include any information about the Claimant's confusion or whether she struggled to understand the difference between standard and extended parental benefits. It doesn't say what kind of information the Commission agent gave her to help her understand the difference between standard and extended parental benefits.

[25] But I believe the Claimant. I believe that she was confused about the difference between standard and extended parental benefits. She called the Commission for help with understanding the difference and choosing the option that would work best for her. I think it is likely that the Claimant didn't get useful information from the Commission that would help her make a valid election. To put it simply, I find that the Claimant's election of extended parental benefits on the June 1, 2021 call with the Commission was based on misinformation from the Commission.

[26] The Appeal Division says that if you make an election based on misinformation from the Commission, then you didn't make a valid election.⁵

[27] I am going to follow the Appeal Division's guidance on this point. So, I find that the Claimant didn't make a valid election when she asked for extended parental benefits on June 1, 2021. This means that the Commission should respect her prior election.

⁵ *Canada Employment Insurance Commission v. MO.*, 2021 SST 435.

[28] The Claimant asked for standard parental benefits on April 14, 2021. Nothing in the file makes me think that this wasn't a valid election. There is no evidence showing that the Claimant relied on misleading information from the Commission when she made this election.

[29] So, I find that the Commission should respect Claimant's valid election of standard parental benefits.

What kind of benefits did the Claimant elect?

[30] I find that the Claimant elected standard parental benefits. I have two reasons for making this decision. First, I find that the Claimant asked for standard parental benefits before benefits were paid. Second, I find that the Claimant's request for extended parental benefits on June 1, 2021 wasn't valid because she made this election based on misinformation from the Commission.

Conclusion

[31] I am allowing the Claimant's appeal. The Commission should respect her choice and pay standard parental benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section