



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AK v Canada Employment Insurance Commission*, 2018 SST 1443

Tribunal File Number: GE-18-2571

BETWEEN:

A. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Maria Marchese

HEARD ON: October 23, 2018

DATE OF DECISION: November 21, 2018

DECISION

[1] The appeal is dismissed. The Appellant received his full entitlement to parental employment insurance benefits according to s. 23(2) of the *Employment Insurance Act* (Act).

OVERVIEW

[2] The Appellant applied for 17 weeks of employment insurance parental benefits on March 4, 2018 stating that he left his employment on March 2, 2018 to care for his child who was born on March 4, 2017. The Canada Employment Insurance Commission (Commission) determined that benefits could not be paid because the Appellant had applied for benefits outside the 52-week window that allows payment of employment insurance parental benefits. The Appellant requested reconsideration of the Commission's initial decision asking for his claim to be allowed on compassionate grounds, and adding that his child had been hospitalized for a total of three weeks during the 52-week period after the child's birth. The Commission modified its initial decision and extended the Appellant's parental benefit period by three weeks because the Appellant's child had been hospitalized, thereby allowing the Appellant to receive two weeks of parental benefits after the one week waiting period. The Appellant appealed to the Social Security Tribunal (Tribunal) asking for the full 17 weeks of benefits on compassionate grounds.

PRELIMINARY MATTERS

[3] The hearing was originally scheduled to be heard at the same time as another of the Appellant's appeals, on September 18, 2018. Because the Appellant had not received the hearing material, and no proof of service was on file confirming that the material had been delivered, the hearing was adjourned to allow the Tribunal to re-issue the hearing docket.

ISSUE

[4] Did the Appellant receive his full entitlement to parental employment insurance benefits?

ANALYSIS

[5] The relevant legislative provisions are reproduced in the Annex to this decision.

[6] Section 23(2) of the Act provides that employment insurance parental benefits are payable for each week of unemployment in the period a) that begins with the week in which the child is born; and b) that ends 52 weeks after the week in which the child is born. However, if the child is hospitalized during the period referred to in s. 23(2) of the Act, the period is extended by the number of weeks during which the child is hospitalized (see s. 23(3) of the Act).

[7] The Tribunal finds that the Appellant was entitled to three weeks of employment insurance parental benefits and received two weeks of benefits after serving the one week waiting period.

[8] The Appellant explained that when his child was born, on March 4, 2017, he was not planning to take paternity leave but his wife became ill and could no longer look after the child which necessitated the Appellant's leave to look after his child. During the reconsideration stage of his appeal, the Appellant advised the Commission that his child was hospitalized for two consecutive days in the first week of February 2018, two consecutive days in the second week of February 2018, and seven consecutive days in the third week of February 2018. As a result of this new information, the Commission extended the Appellant's benefit period by three weeks: March 4, 2018; March 11, 2018; and March 18, 2018. The Tribunal finds that after serving a one week waiting period, for the week of March 4, 2018, the Appellant received two weeks of benefits.

[9] The Tribunal finds that the Appellant's child was born on March 4, 2017 but he waited 52 weeks before applying for parental benefits. While the Appellant's explanation, that he did not apply for benefits sooner because the Appellant was not needed to provide care earlier as his wife was doing so, is understandable, the Tribunal finds that the Act provides a limited period of time within which a claimant may apply for parental benefits, which the Appellant failed to do.

[10] The Appellant submitted a medical note dated June 8, 2018 advising that the Appellant had to stay home to care for his newborn baby from February 2018 onward because the mother of the child was not capable of doing so. At the hearing, the Appellant confirmed that the June 8, 2018 medical note was the only medical document he had to support his claim for a further extension. The Appellant also testified that he was requesting benefits based on his wife's incapacitation, and not for reasons related to his child's health. Because the Act allows for an

extension of the benefit period if a child is hospitalized during the 52-week window following the child's birth, by the number of weeks of hospitalization, the Commission considered and granted an extension of the benefit period by three weeks. Since the Appellant testified that he had no additional medical information to support any further hospitalization for his child beyond the three weeks already granted, the Tribunal finds that the Appellant is not entitled to any further extension.

[11] In the Appellant's appeal to the Tribunal he asked for his benefit period to be extended on compassionate grounds. The Federal Court of Appeal has re-affirmed the principle that adjudicators are not permitted to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning (*Canada (A.G.) v. Kne*, 2011 FCA 301), and therefore the Tribunal has no authority to grant benefits on compassionate grounds.

[12] The Tribunal finds that the Appellant was entitled to three weeks of parental benefits and further finds that the Appellant received his full entitlement to parental benefits under ss. 23(2) and 23(3) of the Act.

CONCLUSION

[13] The appeal is dismissed.

Maria Marchese

Member, General Division - Employment Insurance Section

HEARD ON:	October 23, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. K., Appellant

ANNEX

THE LAW

Employment Insurance Act

23(2) Subject to section 12, benefits under this section are payable for each week of unemployment in the period

(a) that begins with the week in which the child or children of the claimant are born or the child or children are actually placed with the claimant for the purpose of adoption; and

(b) that ends 52 weeks after the week in which the child or children of the claimant are born or the child or children are actually placed with the claimant for the purpose of adoption.

23(3) If the child or children referred to in subsection (1) are hospitalized during the period referred to in subsection (2), the period is extended by the number of weeks during which the child or children are hospitalized.