



Citation: *RK v Canada Employment Insurance Commission*, 2022 SST 387

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

Decision

Appellant: R. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (445311) dated January 4, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: March 8, 2022

Hearing participant: Appellant

Decision date: March 9, 2022

File number: GE-22-365

Decision

[1] The appeal is dismissed. The Claimant cannot be paid the weeks of parental benefits he requested as they are outside the time period from the birth of his child in which standard parental benefits can be paid.

Overview

[2] If a child is born on or after March 17, 2019, it is possible for extra weeks of parental benefits to be collected by the parents of the child.¹

[3] The Claimant's child was born on August 27, 2020, and his wife had applied for, and received, standard parental benefits.

[4] The Claimant applied for his weeks of standard parental benefits on November 10, 2021, but did not receive any benefits.

[5] The Commission decided the Claimant could not be paid any parental benefits as standard parental benefits can only be paid up to one year from the birth of the child and the Claimant's application would be outside that 52 week period to pay benefits.

[6] The Claimant says he was told by the Commission when he called them on November 10, 2021, that it would be no problem for him to collect his parental benefits.

[7] The Claimant says it was because of this misinformation from the Commission that he ended up taking the time off of work as he assumed he would get paid benefits, but instead he was denied so he had to borrow money to survive.

Issue

[8] I must decide whether the Claimant can receive the standard parental benefits he has requested.

¹ Subsection 23(4) of the *Employment Insurance Act*

Analysis

[9] I find the Claimant cannot be paid the weeks of standard parental benefits he is requesting as his request is outside the 52 week time limit from the birth of his child in which standard parental benefits can be collected.

[10] The law says benefits are payable to a claimant to care for one or more new-born children.²

[11] The law says, in a claim for parental benefits, it is possible for both parents to claim benefits and divide the weeks of benefits between them. If standard parental benefits are selected the parents can divide a total of 40 weeks between them,³ with no one parent being able to take more than 35 weeks of parental benefits.⁴

[12] The law says that when paying standard parental benefits they begin with the week in which the child is born and end 52 weeks after the week in which the child is born.⁵

[13] The Claimant says that before he completed his application for benefits, on November 10, 2021, he called the Commission to make sure he would be able to get the weeks of parental benefits he was requesting as, if he could not, he would just go back to work.

[14] The Claimant says he was told by the Commission that he would qualify and they even spoke to his wife and checked her account and confirmed again that he would qualify for the parental benefits he was applying for.

[15] The Claimant says that because of this misinformation he sent in his application for parental benefits, and did not go back to work, but, since he did not get the benefits he was expecting, he had to borrow money to stay afloat while he was off of work.

² Subsection 23(1) of the *Employment Insurance Act*

³ Subsection 23(4) of the *Employment Insurance Act*

⁴ Subsection 23(4.11) of the *Employment Insurance Act*

⁵ Subsection 23(2) of the *Employment Insurance Act*

[16] The Commission submits the Claimant's child was born on August 27, 2020 and the Claimant had 52 weeks to receive standard parental benefits. Unfortunately, the Claimant's benefit period commencement is November 07, 2021, which is beyond the 52 weeks from when the baby was born.

[17] I note that no party disputes the Claimant's child was born on August 27, 2020, therefore I accept that is the birth date of the Claimant's child for which he wishes to claim parental benefits.

[18] I find I accept that the Claimant's wife selected standard parental benefits when she applied for benefits as she testified as such.

[19] According to the law, this means the Claimant must choose standard parental benefits as well, which he did, as he is bound by the choice of his wife since she was the first to collect parental benefits.⁶

[20] The law states that the period in which standard parental benefits can be paid ends 52 weeks from the child's birth.⁷

[21] I find the Claimant's application was made on November 10, 2021, with a benefit period commencing November 7, 2021, which puts him outside the timeline in which to collect benefits as November 7, 2021, is more than 52 weeks from the birth of his child.

[22] I have no doubt the Claimant called the Commission on November 10, 2021.

[23] I also accept his testimony that he was given incorrect information and was told he would qualify for parental benefits if he applied.

[24] However, the Claimant being given misinformation by the Commission does not change the law, or mean that the law does not apply. The law is clear on the 52 week timeline in which standard parental benefits can be paid and no matter what

⁶ Subsection 23(1.3) of the *Employment Insurance Act*

⁷ Subsection 23(2) of the *Employment Insurance Act*

misinformation was given to the Claimant I cannot change the law nor interpret it in a manner contrary to its plain meaning.⁸

Conclusion

[25] The appeal is dismissed. I find the Claimant cannot be paid the additional weeks of standard parental benefits he wishes as his request for said benefits falls outside the time limit in which standard parental benefits can be paid.

Gary Conrad

Member, General Division – Employment Insurance Section

⁸ *Canada (Attorney General) v Knee*, 2011 FCA 301