Citation: *CF v Canada Employment Insurance Commission*, 2022 SST 547

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant (Claimant):	C. F.
Respondent (Commission):	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (444874) dated December 31, 2021 (issued by Service Canada)

Tribunal member:	Gerry McCarthy
Type of hearing:	Teleconference
Hearing date:	February 16, 2022
Hearing participants:	Appellant
Decision date:	February 17, 2022
File number:	GE-22-208

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option. The Claimant argues that she made a mistake and actually wanted the standard benefits option. The Claimant has shown that she actually meant to choose that option.

Overview

[3] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."[1]

[4] 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.

[5] Once you start receiving parental benefits, you can't change options.[2]

[6] On her application, the Claimant chose extended parental benefits. She started receiving benefits at the lower rate on October 8, 2021. But, she actually wanted standard parental benefits.

[7] The Claimant says she always wanted to receive standard parental benefits, but chose the wrong option by mistake on the application.

[8] The Canada Employment Insurance Commission (Commission) says the Claimant made her choice and that it was too late to change it, because she had already started receiving benefits.

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[1] Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."
[2] Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

[9] The Claimant disagrees and says that she selected “52-weeks” on her application, because she planned to return to her employer in one-year (specifically June 14, 2022). The Claimant says that she didn’t realize she was to automatically receive the 15-weeks of maternity benefits when applying. She says she indicated 52-weeks under the extended parental option, because the standard parental option was for 35-weeks while she needed 52-weeks.

Issue

[10] Which type of parental benefits did the Claimant actually want when she made her choice on the application?

Analysis

[11] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.[3] The law says that you can’t change options once the Commission starts paying parental benefits.[4]

[12] To decide which type of parental benefits the Claimant actually wanted when she made her choice on the application, I need to consider the evidence about that choice. In other words, the option the Claimant chose on he application matters but it isn’t the only thing to consider. For example, the number of weeks of benefits the Claimant wanted to receive or how long the Claimant planned to be off work might be things to consider too.

[13] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant’s choice when they filled out their application.[5] I am not

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[3] 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.
[4] Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.
[5] See *MC v Canada Employment Insurance Commission*, 2019 SST 666; *Canada Employment Insurance Commission v JH*, 2020 SST 483; *Canada Employment Insurance Commission v TB*, 2019 SST 823; *MH v Canada Employment Insurance Commission*, 2019 SST 1385; *VV v Canada Employment Insurance Commission*, 2020 SST 274; *ML v Canada Employment Insurance Commission*, 2020 SST 255; *RC v Canada Employment Insurance Commission*, 2020 SST 390.

bound by these decisions. In other words, I don't have to base my decision on them. However, I find them persuasive, and I am choosing to follow them.

What the Claimant meant to choose on the application

[14] The option that the Claimant meant to choose on the application when she actually filled it out is important. At that moment, did she mean to choose the standard or extended option?

The parties' arguments

[15] The Commission says what the Claimant chose on the application tells us which option she wanted. The Commission argues that it was too late to change options now.

[16] The Claimant says she didn't realize she was to automatically receive the 15-weeks of maternity benefits when applying, and chose the extended parental option because the standard parental option was for 35-weeks and she required 52-weeks. The Claimant further says her child was born five-weeks early and that's why the employer didn't indicate a return-to-work date on her Record of Employment.

[17] I find the Claimant meant to choose the standard option when she applied for maternity and parental benefits for the following reasons:

[18] First: The Claimant specifically indicated "52-weeks" on her application for maternity and parental benefits under the question: "How many weeks do you wish to claim?" (GD3-8). The Claimant's selection would coincide with her plan to return to the employer 52-weeks after the birth of her child. The Claimant testified that she didn't know she would automatically receive 15-weeks of maternity benefits and thought the 35-weeks would be too short, because her return-to-work date would be 52-weeks after the birth of her child. I realize the Minister submitted that the Claimant's Record of Employment did not reflect the expected return-to-work date and therefore it was uncertain if she was required to resume her work in June 2022. However, I accept as credible the Claimant's testimony that she and her employer planned for her to return-to-work 52-weeks after the birth of her child. I accept the Claimant's testimony on this matter, because her statements were plausible and detailed. Furthermore, the

Claimant's child was born 5-weeks earlier than expected and by the time the Claimant applied for maternity and parental benefits on June 23, 2021, the employer had already issued the Record of Employment on June 17, 2021 (GD3-18).

[19] Second: The circumstances around the birth of the Claimant's child are important to consider. For example, the Claimant was provided an initial due date of June 24, 2021. The Claimant's due date then changed to July 8, 2021, and finally to July 20, 2021. The Claimant was still working for the employer on Friday June 11, 2021, when she was advised by her doctor that she was ready to give birth. The Claimant's child was born Monday June 14, 2021, and the Claimant applied for maternity and parental benefits on June 23, 2021. In short, the Claimant's initial plan was to keep working for the employer until the beginning of July 2021 and then have the employer indicate a return-to-work date of early July 2021. The fact that the Claimant gave birth five-weeks earlier changed the timeline for her return to work. The employer had already issued the Claimant's Record of Employment before she applied for maternity and parental benefits on June 23, 2021.

Additional submissions from the Commission

[20] I recognize the Commission submitted that the Claimant selected maternity benefits as the benefit type on the application and stated she wanted to receive parental benefits after maternity benefits. The Commission further submitted that the 15-weeks of maternity benefits were what was requested and were not automatically given as argued by the Claimant. Still, I accept that the Claimant meant to select the standard option because she specifically indicated "52-weeks" on her application as the number of weeks she wished to claim. During her oral testimony, the Claimant consistently explained that her plan was to return to the employer 52-weeks after the birth of her child. Furthermore, the Claimant testified that her intent was to select the standard option when she applied for maternity and parental benefits. I accept the Claimant's testimony on this matter as credible because her statements were plausible, forthright, detailed, and consistent.

So, which option did the Claimant mean to choose when she applied?

[21] I find the Claimant has proven that she meant to choose standard parental benefits when she applied.

Conclusion

[22] The Claimant chose standard parental benefits.

[23] This means that the appeal is allowed.

Gerry McCarthy

Member, General Division – Employment Insurance Section