



Citation: *AB v Canada Employment Insurance Commission*, 2022 SST 596

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

## Decision

**Appellant:** A. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (466073) dated April 8, 2022 (issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Videoconference

**Hearing date:** June 15, 2022

**Hearing participant:** Appellant

**Decision date:** June 16, 2022

**File number:** GE-22-1386

## Decision

[1] A.B. is the Claimant in this case. The Tribunal disagrees with the Claimant. The Claimant cannot change her parental benefit election.

[2] The appeal is dismissed.

## 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.”<sup>1</sup>

[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. Once you start receiving parental benefits, you cannot change options.<sup>2</sup>

[5] On her application, the Claimant chose extended parental benefits.<sup>3</sup> She started receiving benefits at the lower rate the week of December 31, 2021.<sup>4</sup> But, she actually wanted standard parental benefits.

[6] 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 parental benefits.<sup>5</sup>

[7] The Claimant disagrees and says that she always wanted to receive standard parental benefits but she made an honest mistake and picked the wrong option on the application.<sup>6</sup>

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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> See GD3-9.

<sup>4</sup> See GD3-21.

<sup>5</sup> See GD4-1 to GD4-5; GD3-31.

<sup>6</sup> See GD2-1 to GD2-12.

## Issue

[8] Can the Claimant change her election from extended parental benefit option because she made a mistake when she picked it?

## Analysis

[9] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>7</sup> The law says that you cannot change options once the Commission starts paying parental benefits.<sup>8</sup>

[10] Specifically, subsections 23(1.1) and 23(1.2) of the *Employment Insurance Act* state:

### **Election by claimant**

**23 (1.1)** In a claim for benefits made under this section, a claimant shall elect the maximum number of weeks referred to in either subparagraph 12(3)(b)(i) or (ii) for which benefits may be paid.

### **Irrevocability of election**

**(1.2)** The election is irrevocable once benefits are paid under this section or under section 152.05 in respect of the same child or children.

### **Choix du prestataire**

**23 (1.1)** Dans la demande de prestations présentée au titre du présent article, le prestataire choisit le nombre maximal de semaines, visé aux sous-alinéas 12(3)b)(i) ou (ii), pendant lesquelles les prestations peuvent lui être versées.

### **Irrévocabilité du choix**

**(1.2)** Le choix est irrévocable dès lors que des prestations sont versées au titre du présent article ou de l'article 152.05 relativement au même enfant ou aux mêmes enfants.

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<sup>7</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>8</sup> Section 23(1.2) of the EI Act says that the choice is irrevocable (that is, final) once you receive benefits.

## The Claimant's election for extended parental benefits

[11] The Claimant testified that her child was born on September 13, 2021. She applied for benefits on September 21, 2021 and asked for extended parental benefits for 52 weeks.<sup>9</sup>

[12] She said that she had a difficult labour with some post partum medical complications. She explained that she was not in a proper state of mind when she read and completed her application for benefits.<sup>10</sup>

[13] The Claimant works as a math teacher for a school. She had planned to be off from work for 52 weeks, until September 1, 2021. She identified her return to work date in her application for benefits and it was also shown in the record of employment prepared by the employer.<sup>11</sup>

[14] The Commission said that the first parental benefit payment was issued on December 31, 2021.<sup>12</sup> The Claimant agrees that she received her first parental benefit payment in early January 2022.<sup>13</sup>

[15] The Claimant noticed that the payment was a lower amount, but figured the reduction was connected to taxes, or the first January 2022 payment, or that something else had changed.<sup>14</sup> She did not follow up with the Commission to ask and does not recalling using "My Account" to verify any information about her benefits.<sup>15</sup>

[16] Part of what the Claimant argues is that she always intended to pick the standard parental benefit option because she only planned to take one year off from work. She also thought that maternity benefits and parental benefits were combined. She submits that the Commission has a responsibility to verify applications and they should have

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<sup>9</sup> See GD3-8 to GD3-9.

<sup>10</sup> See GD3-3 to GD3-17.

<sup>11</sup> See GD3-6; GD3-18.

<sup>12</sup> See GD3-21; GD4-2.

<sup>13</sup> See GD3-21.

<sup>14</sup> See GD3-22; the extended parental benefit rate was \$357.00 per week. Prior to that, she received 15 weeks of maternity benefits at \$524.00 per week.

<sup>15</sup> See GD3-23 to GD3-24; this is a sample screenshot of the My Account screen.

alerted her to the error in her application before the parental benefit payment was issued. She is asking for an exception to be made in her situation for compassionate reasons and wants to retroactively receive parental benefits under the standard option.

### **The Federal Court**

[17] The Federal Court issued a decision called *Karval v Canada (Attorney General)* that dealt with a parental benefits election case.<sup>16</sup>

[18] In the *Karval* decision, the court distinguishes between people who lack the knowledge to answer clear questions and those who are misled by relying on incorrect information that the Commission provides. They say it is the responsibility of the Claimant to carefully read and attempt to understand their entitlement options, and, if still in doubt, to ask necessary questions.

[19] The *Karval* decision essentially decided that there is no legal remedy available to a Claimant who bases their election on a misunderstanding of the parental benefit scheme.

[20] I find that the *Karval* decision applies in this case because while there may be some factual differences such as the return to work date, there are some similarities. For example, both Claimants asked for extended benefits and contacted the Commission after they were already paid benefits under the extended option over a period of a few months.

[21] There was no evidence that the Claimant was misled by relying on incorrect information provided by the Commission, but rather she admitted that she was confused and made a mistake when she filled out her application. She did not follow up with the Commission to inquire about her options before making her election.

[22] There was no basis for the Claimant's confusion or misunderstanding around the application. In my view, the application form provides enough information for the Claimant by outlining the differences between standard and parental benefits. She

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<sup>16</sup> See *Karval v Canada (Attorney General)*, 2021 FC 395.

chose to have maternity benefits for 15 weeks and for 52 weeks of extended parental benefits to follow.

[23] The first parental benefit payment under the extended option was issued on December 31, 2021 and the Claimant only contacted the Commission on March 17, 2022.<sup>17</sup> The Claimant tried to amend her election after parental benefits were already paid, but the law prevents her from changing her election.<sup>18</sup>

[24] There is a more recent Federal Court decision called *Canada (Attorney General) v Hull* that also dealt with parental benefits election.<sup>19</sup> This case said that the word “elect” means is what a Claimant indicates as their choice on the application form for benefits.

[25] The Hull decision also says that once a Claimant has chosen the parental benefit and number of weeks on the application form and once payment of those benefits have started, it is impossible for the Claimant, the Commission, the General Division or Appeal Division of the Tribunal to revoke, alter, or change the election.

### **I cannot change the Claimant’s election**

[26] I am bound by Federal Court decisions.

[27] I find that the Claimant chose extended parental benefits when she applied and asked for 52 weeks. She cannot change her election because parental benefits have already been paid under the extended option. Her election is irrevocable based on the law.

[28] I understand that the Claimant wants an exception to be made in her case. However, the law and courts are clear that the option cannot be changed once you have received parental benefits. While I sympathize with the Claimant’s situation, I have no

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<sup>17</sup> See GD3-25.

<sup>18</sup> See section 23(1.2) of the EI Act.

<sup>19</sup> See *Canada (Attorney General) v Hull, 2022 FCA 82*.

authority or discretion to change her election even though she has presented very compassionate circumstances.<sup>20</sup>

## **Conclusion**

[29] This means that the appeal is dismissed.

Solange Losier

Member, General Division – Employment Insurance Section

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<sup>20</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.