



Citation: *DE v Canada Employment Insurance Commission*, 2022 SST 1030

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

Decision

Appellant: D. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (475607) dated May 5, 2022 (issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Teleconference

Hearing date: August 3, 2022

Hearing participant: Appellant

Decision date: August 16, 2022

File number: GE-22-1882

Decision

[1] The appeal is allowed in part. I find the Claimant is entitled to receive one additional week of parental employment insurance benefits.

Overview

[2] The Claimant applied for 15 weeks of standard parental employment insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) determined he was only eligible to receive 11 weeks of benefits because the benefit window, meaning the 52-week window after the birth of his child, expired. The Claimant appeals the decision to the Social Security Tribunal (Tribunal).

Issue

[3] Is the Claimant entitled to receive any further parental benefits?

Analysis

[4] Yes. I find the Claimant is entitled to receive one additional week of parental benefits.

[5] Parental benefits are payable to a claimant to care for their newborn child.¹ The *Employment Insurance Act* contains a provision stating that parental benefits are payable for each week of unemployment in the period that begins with the week in which the child is born, and ends 52 weeks after the week in which the child was born.² The 52-week period may be extended in certain circumstances. One of the circumstances is if the newborn child is hospitalized during the 52-week period.³

[6] The Claimant applied for 15 weeks of parental benefits on December 18, 2021. His child was born on February 26, 2021. The Commission determined he was only entitled to 10 weeks of parental benefits because the benefit window ended when his

¹ *Employment Insurance Act*, subsection 23(1).

² *Employment Insurance Act*, subsection 23(2).

³ *Employment Insurance Act*, subsections 23(3) and 23(3.01) say that if the child in question was hospitalized during the 52-week period, or if the Claimant experienced a deferral of parental leave or they are directed to return to duty in accordance with the *National Defence Act*, the 52-week period is extended.

child turned one year old. It paid him 10 weeks of benefits from December 19, 2021, until February 26, 2022.

[7] The Claimant contacted the Commission on March 16, 2022. He said that his child was hospitalized at birth for one week, from February 26, 2021, until March 6, 2021. The Commission determined he was eligible for one additional week of benefits, because his child was hospitalized for one week.

[8] The Claimant requested reconsideration of the Commission's decision. He submitted that he should be able to receive the additional four weeks of parental benefits. He cited multiple reasons, such as his child being born early due to complications and his wife's employer directing her to start benefits on March 1, 2021. The Commission upheld its decision, finding he was not entitled to the additional four weeks of benefits because the benefit window expired.

[9] The Claimant appealed to the Tribunal. In the Notice of Appeal, he stated that he should be able to receive the additional four weeks of EI benefits because he is entitled to them and is losing out for no other reason than where the weeks fell in relation to his son's birth. He added that it's, "unfair that such rigid adherence is being applied," and notes that the Commission's decision did not provide any reasons. He also finds the Commission's website misleading with respect to parental benefit elections.

[10] At the hearing, the Claimant reiterated much of what he stated to the Commission. He said this was his first EI claim, and he thought he was claiming his allotted benefits. He also stated that when he applied it wasn't clear that he and his wife would have to overlap their benefits to be able to claim the full entitlement. He added that he is asking for, "a little bit of compassion, based on the fact that it wasn't clear and we thought we followed the rules."

[11] The Commission submits that it made a mistake during reconsideration. It submits that the initial benefit window was set as February 21, 2021, until February 26, 2022. It was extended by one week, to March 6, 2022, to account for the one-week hospitalization of the Claimant's child. However, the Claimant's child was hospitalized from February 26,

2021, until March 6, 2021. The parental benefit window may be increased by one week for each week *or part week* during which the child was hospitalized.

[12] For the purposes of EI benefits, weeks begin on Sunday. This means the child was hospitalized for two part-weeks: Friday, February 26, 2021, until Saturday, February 27, 2021, and Sunday, February 28, 2021, until Saturday, March 6, 2021. The Commission submits that it should have extended the benefit period by two weeks, to end on March 12, 2022, instead of March 6, 2022. I agree with the Commission's submission, because the benefit window extension should have reflected the two partial weeks the child was hospitalized, by allowing two additional weeks of benefits.

[13] With respect to the additional three weeks of parental benefits, I find the Claimant is not eligible to receive these weeks because the benefit window closed as of March 12, 2022.

[14] The *Employment Insurance Act* says that parental benefits are payable for the period that begins with the week when the child was born, and ends 52 weeks after the week when the child was born.⁴ With the two-week extension relating to his child being hospitalized, I find the Claimant's parental benefit window ran for 54 weeks from the child's birth, meaning it ran from February 26, 2021, until March 12, 2022.⁵ I further find that after March 12, 2022, the Claimant could not be paid parental benefits because his window for receiving parental benefits was only 54 weeks in length. This means the Claimant cannot be successful in the appeal for three additional weeks of parental benefits.

[15] I recognize the Claimant believes that the parental benefit window should be more flexible, and should be more clearly explained by the Commission. However, I have no jurisdiction to change the law, and must apply it as it is written. Since the law is clear

⁴ *Employment Insurance Act*, subsection 23(2)(b).

⁵ Benefit weeks run from Sunday to Saturday, so the usual benefit period starts on the Sunday in the week when the child was born, and ends on the Saturday 52 weeks later. In this case, two additional weeks were allowed.

about the window to claim parental benefits and the exceptions available to extend the window, I must dismiss the remainder of this appeal.

[16] In the Notice of Appeal the Claimant asked, as part of the remedy, that I direct the Commission to amend the information on its website relating to shared parental benefits. I have no authority to direct the Commission to make such a change. However, it submitted that it updated its website on June 1, 2022, reflecting the Claimant's concerns.⁶

[17] I am sympathetic to the Claimant's situation, but there is no legal basis for me to order that he may receive parental benefits after his benefit window expired. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has found:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.⁷

Conclusion

[18] The appeal is allowed in part. I find the Claimant is entitled to receive one additional week of parental employment insurance benefits, bringing his total payable to 12 weeks. He is not entitled to the additional three weeks he requested.

Candace R. Salmon
Member, General Division – Employment Insurance Section

⁶ See GD4-5.

⁷ *Canada (Attorney General) v. Knee*, 2011 FCA 301 at paragraph 9