



Citation: *SG v Canada Employment Insurance Commission*, 2022 SST 1149

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

Decision

Appellant: S. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (485952) dated May 20, 2022
(issued by Service Canada)

Tribunal member: Candace R. Salmon

Decision date: August 18, 2022

File number: GE-22-1923

Introduction

[1] The Appellant is asking to receive standard parental employment insurance (EI) benefits instead of extended parental EI benefits.

[2] The Appellant initially applied for extended parental benefits. The Canada Employment Insurance Commission (Commission) started paying extended parental benefits to the Appellant on May 1, 2022. On May 4, 2022, she asked the Commission to change her parental benefits from extended to standard because she made a mistake on the application form. The Commission refused to change the parental benefit election.

Issue

[3] I must decide whether the appeal should be summarily dismissed.

The law

[4] I must summarily dismiss an appeal if I am satisfied that the appeal has no reasonable chance of success.¹

[5] Before summarily dismissing an appeal, I must give notice in writing to the Appellant and allow the Appellant a reasonable period to make submissions.²

[6] The Appellant appealed to the Tribunal on June 1, 2022. After reviewing the file, I determined that the appeal had no reasonable chance of success. I sent a letter to the Appellant on August 4, 2022, advising that I intended to summarily dismiss the appeal. I provided until August 19, 2022, for the Appellant to submit any further information that may be relevant to her appeal.

[7] The Appellant submitted a letter on August 17, 2022. I find the requirements of the *Social Security Tribunal Regulations* were met because the Appellant had an opportunity to make submissions.

¹ See section 53(1) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 22 of the *Social Security Tribunal Regulations*.

Evidence

[8] The Appellant elected to receive 53 weeks of extended parental benefits. The first payment of extended parental benefits was paid to her on May 1, 2022.

[9] The Appellant asked to convert her claim from extended to standard parental benefits on May 4, 2022. The Commission declined to make this change, because parental benefits had already been paid to the Appellant.

Submissions

[10] The Appellant submitted that she planned to take a 12-month leave, and made a mistake on the application form. She says she did not intend to choose extended benefits. She submits the Commission's decision is "unfair" because she intended to receive standard benefits, and provided return to work information supporting that she intended to be off work for only 12 months.

[11] The Commission submitted that the Appellant cannot change her benefit election from extended to standard parental benefits because benefits have already been paid on the claim. It added that the Appellant was informed about the difference between standard and extended parental benefits on the initial application for benefits, and was told that the decision between the two types was irrevocable after benefits were paid.

Analysis

[12] When a person applies for parental benefits, they have to choose between two options: the "standard option" and the "extended option."³ The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays almost the same amount of benefits at a lower rate for up to 61 weeks. Overall, the amount of money stays nearly the same, it is just stretched over a different number of weeks.

³ Section 23(1.1) of the *Employment Insurance Act* calls this choice an "election."

[13] Once you start receiving parental benefits, you can't change options.⁴ The Appellant submits that the application form does not state that the decision is irrevocable.⁵ While the word "irrevocable" may not be stated on the form, it does state that the election cannot be changed once benefits are paid.⁶

[14] The Appellant was paid the first payment of extended parental benefits on May 1, 2022. She first asked to change her benefit election on May 4, 2022.⁷ The law is clear that once parental benefits are paid on a claim, the decision between standard and extended benefits becomes irrevocable. This means the Appellant cannot change her election.

[15] I must decide whether the appeal should be summarily dismissed.

[16] To summarily dismiss the appeal, the law says I must be satisfied that the appeal has no reasonable chance of success.⁸

[17] The issue is whether it is plain and obvious on the record that the appeal is bound to fail.

[18] The question is **not** whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that could be presented at a hearing.⁹

[19] When I apply the law and the legal tests described above, I can only conclude that the Appellant's appeal has no reasonable chance of success. The Appellant received

⁴ Section 23(1.2) of the *Employment Insurance Act* says that the election is irrevocable (that is, final) once you receive benefits.

⁵ See GD 5-2.

⁶ See GD3-10. The application form states in bold, "**You cannot change options (standard or extended) once any parent has received parental benefits.**"

⁷ See GD3-28.

⁸ See subsection 53(1) of the DESD Act.

⁹ The Tribunal explained this in *AZ v Minister of Employment and Social Development*, 2018 SST 298.

parental benefits before she asked to change her election from extended to standard. The law is clear that this is not allowed.¹⁰

[20] I want to acknowledge some of the Appellant's other submissions. My job is to review decisions made by the Canada Employment Insurance Commission. I have to review those decisions based on the law, which is mainly the *Employment Insurance Act* and its regulations. The law says that once a claimant has received a payment of parental benefits, the choice between standard and extended is irrevocable. The application form warns of this in bolded font. There are no exceptions in the legislation to this requirement—once you receive parental benefits, you can't change your election. I have no jurisdiction to change the law, and must apply it as it is written.

[21] The Appellant also submitted that the law making parental benefit elections irrevocable once paid seems like “a hoax” or something designed to keep benefits away from claimants. I cannot speak to the intention of the legislation. However, the Federal Court of Appeal has recently addressed this issue and explained why the law is drafted to make the parental election irrevocable:

The purpose of irrevocability allows certainty for Service Canada, certainty for the other spouse who may have also applied for benefits, certainty for the claimant's employer and I would add certainty for the spouse's employer. All of these parties may be affected by the claimant's election once benefit payments have started.

The importance of this certainty was confirmed in the Minutes of the Standing Committee on Finance. Mr. Andrew Brown, the witness from Employment and Social Development Canada, testified that “if people were changing their selection of the duration of the leave, and also the payment rate, whether the lower 33% or the higher 55%, it could result in incorrect payments to claimants, which we would subsequently have to recover, and in challenges for their employers dealing with both the leave and any top-ups they needed to provide to those employees”.

¹⁰ This is stated in the *Employment Insurance Act*, but also confirmed in case law. *Karval v The Attorney General of Canada*, 2021 FC 395 at paragraph 8 confirms the appellant Karval was not entitled to change her parental election after she received benefits. This is also confirmed in *Attorney General of Canada v Hull*, 2022 FCA 82.

Therefore, apart from ensuring certainty and efficiency for the Commission once payments have started, these other parties are equally deserving of certainty and efficiency in their financial planning.¹¹

[22] I am sympathetic to the Appellant's situation. I recognize that she made a mistake on the application form. It was human error. However, there is no legal remedy available to claimants who make a mistake when claiming parental benefits. I understand the repercussion of this decision is significant to the Appellant and recognize her argument that these benefits are available to support new parents and should not be so difficult or confusing to claim. Even if I agree with that proposition, the law doesn't allow any flexibility on this point, and I have no jurisdiction to make decisions based on what is fair or equitable.

[23] 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.¹²

[24] I find the appeal has no reasonable chance of success; therefore, it must be summarily dismissed.

Conclusion

[25] The appeal has no reasonable chance of success; therefore, it is summarily dismissed

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

¹¹ *Attorney General of Canada v Hull*, 2022 FCA 82, paragraphs 57 to 59.

¹² *Canada (Attorney General) v Knee*, 2011 FCA 301 at paragraph 9.