



Citation: *CF v Canada Employment Insurance Commission*, 2022 SST 1561

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

Decision

Claimant: C. F.
Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (459162) dated March 4, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell
Type of hearing: Teleconference
Hearing date: May 3, 2022
Hearing participant: Claimant
Decision date: May 5, 2022
File number: GE-22-897

Decision

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

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that he selected the standard benefits option.

[3] The Claimant argues that he made a mistake and actually wanted the extended benefits option. And, he has shown that he actually meant to choose that option.

Overview

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

[5] 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.

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

[7] On his application, the Claimant chose standard parental benefits. He wanted to claim 10 weeks of parental benefits. He started receiving benefits at the normal rate the week of January 23, 2022. But, he actually wanted extended parental benefits, because he applied for EI parental benefits one week before his baby's first birthday and would return to work on March 28, 2022.

[8] The Canada Employment Insurance Commission (Commission) says that the Claimant made his choice and that it is too late to change it because he has already started receiving benefits.

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 says that he always wanted to receive the option of parental benefits that would allow him to receive 10 weeks of parental benefits from when his baby was 50 weeks old, but chose the wrong option by mistake on the application because the application form wasn't clear.

Issue

[10] Which type of parental benefits did the Claimant actually want when he made his 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 he made his choice on the application, I need to consider the evidence about that choice. In other words, the option the Claimant chose on his 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 bound by these decisions. In other words, I don't have to base my decision on them. But, I find them persuasive, and I am choosing to follow them.

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.

What the Claimant meant to choose on the application

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

The parties' arguments

[15] The Commission says that what the Claimant chose on the application tells us which option he wanted. They argue that it is too late to change options now.

[16] The Claimant says that he intended to take 10 weeks of parental leave when his baby was 50 weeks old. He said that if the application form had said that standard parental benefits end after his baby turns 52 weeks old, he would have selected the extended option so that he could get parental benefits for the full 10 weeks that he was on parental leave.

[17] I find that the Claimant meant to choose the extended parental benefits option for reasons that follow.

[18] When he completed his application for benefits, the Claimant said that his baby was born on January 27, 2021. He said that he wanted to claim 10 weeks of parental benefits, and that he would return to work on March 28, 2022. His employer issued a record of employment showing that he was taking parental leave. It shows also shows March 28, 2022 as the return to work date.

[19] The Claimant testified that when he was completing the application and reached the part with the standard and extended parental benefits options, he wasn't really sure which one to choose. He said that he read the available information and it didn't explain that there was a cut-off to the standard option at 52 weeks. He argued that it makes no sense to apply for standard benefits, knowing that in his circumstances, he would get only two weeks of the 10 weeks of benefits he wanted to claim.

[20] In their submissions, the Commission referred to the 52-week parental window in which parental benefits are payable.⁶ They say that based on the date the Claimant's baby was born, the parental window ended on January 29, 2022. For this reason, the Commission says they could only pay the Claimant one week of standard parental benefits, and that the remaining nine weeks fell outside the 52-week window.

[21] The Commission is correct about the parental window. However, I find that the application for benefits is deficient. It does not give enough information to claimants in certain circumstances to allow them select the option suitable to their intentions.

[22] The Claimant sent a screenshot of his claim summary from his My Service Canada Account. He submits that nowhere does it show that he would not be paid the 10 weeks of parental benefits he requested. It shows the date he will return to work, and that his claim will end on January 14, 2023.

[23] The Claimant testified that he knew from the application for benefits that he couldn't change the option for parental benefits after they were paid. However, he reiterated that the application didn't say anything about the parental window and payment of standard parental benefits ending at 52 weeks.

[24] The Claimant says that the Commission knew his baby's date of birth. He said that they knew his return to work date. He argues that based on these dates, his application should have been flagged because what he applied for didn't make sense.

[25] I agree with the Claimant. The benefit rate is higher for standard than it is for extended parental benefits. However, I find that it does not makes sense that a claimant would elect for one week of standard parental benefits at a higher rate, instead of 10 weeks of extended parental benefits at a lower rate.

[26] I have no reason to doubt the Claimant's testimony. I believe him when he says that the absence of information about the parental window in the application for benefits caused him to make an incorrect choice. I find that he meant to choose the option for

⁶ See section 23(2) of the Act.

parental benefits to align with his request to claim 10 weeks of benefits and his plan to return to work on March 28, 2022, namely extended parental benefits.

[27] The Claimant referred to two Tribunal decisions that he believes are similar to his circumstances. One is a General Division decision and the other is a decision of the Appeal Division concerning the same case.⁷ In that case, the claimant had chosen to receive 17 weeks of standard parental benefits. He applied for these benefits within days of his child's first birthday.

[28] The General Division allowed the claimant's appeal of the Commission's decision that the claimant's choice of standard parental benefits was irrevocable. The Tribunal Member found that the claimant's election of standard parental benefits was invalid because the application misled him and did not give enough information to make a proper decision. The Appeal Division refused the Commission's application for leave (permission) to appeal the General Division decision.

[29] Again, I am not bound by other Tribunal decisions. However, I do find both are persuasive given the similarity to the Claimant's case. This is also a case where the Commission did not avoid providing misleading information about the Claimant's choice of parental benefits options, and did not follow-up when his choice was unclear given the dates he gave and the number of weeks of benefits he wanted to claim.

[30] The Claimant testified about trying to confirm that he had selected the right benefits option. He said that he got a general email from Service Canada telling him that his application had been approved and that he would have to report every two weeks. He then he called Service Canada on January 28, 2022 to ask about reporting. The Claimant said that he asked one more question, namely whether all of his parental benefits payments would be okay, and the agent confirmed that the payments would be fine.

⁷ See *IV v. Canada Employment Insurance Commission*, 2021 SST 867 and *Canada Employment Insurance Commission v IT*, 2022 SST 34).

[31] The Claimant said in his request for reconsideration that there were no examples on the Commission's website that fit his situation, so he was not clear which option for payment of parental benefits to choose.

[32] I accept the Claimant's evidence as fact. I find that he tried make sure he selected the right option by checking at the Commission's website and by speaking to an agent of the Commission. The agent that he spoke to didn't say anything about the parental window and how this would affect his intent to claim 10 weeks of parental benefits. Had the agent done so, the Claimant could have fixed his mistake before the first payment of benefits was processed.

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

[33] I find that the Claimant has proven that he meant to choose extended parental benefits when he applied.

[34] The Claimant chose extended parental benefits.

[35] This means that the appeal is allowed.

Audrey Mitchell

Member, General Division – Employment Insurance Section