



Citation: *SB v Canada Employment Insurance Commission*, 2022 SST 1194

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

Decision

Appellant: S. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (476458) dated May 17, 2022 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: October 5, 2022

Hearing participant: Appellant

Decision date: October 13, 2022

File number: GE-22-2962

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

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

[3] The Claimant argues that she made a mistake and actually wanted the standard benefits option. But, she hasn't shown that she actually chose 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 her application, the Claimant chose extended parental benefits. She started receiving benefits at the lower rate starting the week of February 27, 2022. But, she wanted standard parental benefits.

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

[9] The Canada Employment Insurance Commission (Commission) says the Claimant made her choice and it is too late to change it because she 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.

[10] The Claimant disagrees and says she just made a mistake. She said in her application for benefits that she would return to work on November 1, 2022. This would mean she would be off work for one year.

Matter I have to consider first

The Claimant didn't send the Commission's reconsideration decision

[11] The Claimant has to send the Tribunal a copy of the Commission's decision with her notice of appeal.³ She didn't do so. I have a copy of the Commission's file that has this decision. So, I don't need the Claimant to send it.⁴

Issue

[12] Which type of parental benefits did the Claimant elect to receive?

Analysis

[13] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.⁵ The law says that you can't change options once the Commission starts paying parental benefits.⁶

[14] The law uses the word "elect" to refer to a claimant's choice between the standard option and the extended option. This means what a claimant chooses on the application for benefits form. Once a claimant chooses either the standard option or the extended option for payment of parental benefits on the application, and once parental benefits are paid, it is impossible to revoke, alter or change the election.⁷

Which type of benefits did the Claimant elect to receive?

[15] The Claimant elected to receive extended parental benefits.

³ Paragraph 24(1)(b) of the *Social Security Regulations* .

⁴ Paragraph 3(1)(b) of the *Social Security Regulations*.

⁵ 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.

⁶ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

⁷ See *Canada (Attorney General) v Hull*, 2022 FCA 82.

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

[17] The Claimant says that she simply made a mistake when she clicked the extended option for payment of parental benefits. She says she has always said she wanted to take a year off and that's what her record of employment (ROE) says also.

[18] For reasons that follow, I find that the Claimant elected to receive extended parental benefits.

[19] On the application for benefits, the Claimant selected the extended option for payment of parental benefits. She indicated that her last day of work was October 31, 2021 and that she was expecting to return to work on November 1, 2022. This is the same date shown on the ROE. The Claimant confirmed that she completed the application form herself, and had no help with it.

[20] The Claimant said in her application for benefits that she would claim 52 weeks of extended parental benefits. She says this was a mistake. She said she was confused and doing the application quickly. She was thinking she was taking a year off work, so she had to take the extended option since the standard option has a maximum of 35 weeks.

[21] The Claimant testified that as soon as she received the lower benefit payment, she called Service Canada. She said she understands the law, but people have the power to change it. She reiterated that she made a simple, honest mistake, and it was never her intention to take extended parental benefits. She highlighted that throughout all her documents, everything matches her intent to take standard parental benefits.

[22] I accept the Claimant's evidence that she made a simple, honest mistake. It is clear that she intended to return to work after taking a year of maternity leave. This is what she put in her application for benefits, and this is what the ROE shows. While she chose the extended parental benefits option, saying she would claim 52 weeks of benefits supports her testimony that she had completed the application quickly and may have been confused.

[23] I find that if the Claimant had been confused, she could have contacted Service Canada to get help with her choice. There is not evidence that she did so before trying to correct her mistake.

[24] The Federal Court has said a claimant may be able to get relief if they rely on official, incorrect information, and are misled by it.⁸ But I don't find this to be so in the Claimant's case. She completed the application for benefits form by herself. She intended to take one year off work, but selected the extended option for parental, albeit by mistake. Given what she chose on the application form, I find she elected to receive extended parental benefits.

[25] I find from her testimony and the Commission's evidence that the Claimant asked to change her election from the extended option to the standard option after she received the first payment of parental benefits. Since parental benefits had been paid, I find her election of extended parental benefits is irrevocable.

[26] I understand that the Claimant wants to receive standard parental benefits. But, the law is clear that the option can't be changed once you have received benefits. While I sympathize with the Claimant's situation, I can't change the law.⁹

Conclusion

[27] The Claimant chose extended parental benefits.

[28] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section

⁸ See *Karval v Canada (Attorney General)*, 2021 FC 395.

⁹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.