



Citation: *MV v Canada Employment Insurance Commission*, 2023 SST 938

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

Decision

Appellant: M. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (560206) dated December 28, 2022 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Teleconference

Hearing date: May 2, 2023

Hearing participant: Appellant

Decision date: May 3, 2023

File number: GE-23-211

Decision

[1] The appeal is dismissed.

[2] The Appellant isn't entitled to parental benefits outside the parental benefit window (as that term is explained, below).

Overview

[3] The Appellant had a child on October 24, 2021. He applied for five weeks of standard parental benefits on October 23, 2022.

[4] Prior to applying for benefits, the Appellant consulted the Service Canada website, spoke to his employer and to his wife's employer, and spoke to a Service Canada agent. The information he received from all of these sources led him to believe that he could take his parental leave at the end of his wife's parental leave. So, he made his decision about when to take his leave on that basis. His last day of work was October 21, 2022.

[5] The Canada Employment Insurance Commission (Commission) wrote to him on October 28, 2022 (the decision letter). It told him it had approved his claim for five weeks of parental benefits starting on October 23, 2022.

[6] Several weeks later, the Appellant noticed he had only received one of the five weeks of benefits he applied for. He called Service Canada to find out why. He was told it was because the one-year parental benefit window had ended.

[7] The Appellant believes he should be paid all five weeks of benefits he applied for. He says he was misinformed by the Service Canada agent he spoke with when he was planning his leave. And, he relied on the decision letter. By the time he found out that he couldn't get benefits outside the parental benefit window, and that the decision letter was a mistake, it was too late for him to do anything about it. Had he been given correct information, he would have arranged his leave differently.

[8] He claims that not getting all the weeks of benefits he thought he would get has caused his family financial hardship.

[9] I have to decide if the Appellant is entitled to the additional four weeks of benefits he applied for, but didn't receive.

[10] I will also address whether the Commission can be held accountable for its mistakes.

Issue

[11] Is the Appellant entitled to receive any additional weeks of parental benefits?

[12] Should the Commission be held accountable for its mistakes?

Analysis

[13] I find that the Appellant isn't entitled to receive any additional weeks of parental benefits. This is because the additional weeks he is claiming fall outside of the parental benefit window.

[14] Although I believe the Commission should be held accountable for its mistakes, unfortunately, it isn't within my jurisdiction (in other words, authority) to do this. I can't compensate the Appellant for the harm he has suffered as a result of its mistakes.

[15] My reasons follow, below.

What is a parental benefit window?

[16] Parental benefits are paid to eligible claimants while they care for newborn or newly adopted children.¹

[17] There are two types of parental benefits; standard and extended. Parents who elect (in other words, choose) standard parental benefits get up to 40 weeks of parental benefits to share.² However, an individual parent can't collect more than 35 weeks of

¹ See section 12(3)(b) of the Act.

² See section 12(4)(b)(i) of the Act.

standard parental benefits.³ This means that there are five extra weeks of benefits for the second parent if the first parent takes 35 weeks.

[18] The *Employment Insurance Act* (Act) sets out the period when parental benefits can be paid. This is often called the **parental benefit window** (as that term is explained, below), although that phrase doesn't appear in the Act.

[19] The parental benefit window begins with the week your child is born, and usually ends 52 weeks later.⁴ It can be longer than 52 weeks if:

- you have chosen extended parental benefits⁵
- your child is hospitalized during the window⁶
- you are a member of the Canadian Forces and are required to defer your leave, or are directed to report for duty, during the window⁷
- you are collecting more than one type of special benefits⁸
- you are collecting certain combinations of regular and special benefits⁹

[20] The 40 weeks of shared benefits I referred to, above, can only be collected within the parental benefit window.¹⁰

What is the parental benefit window in the Appellant's case?

[21] I find that the Appellant's benefit window started on October 24, 2021. It ended 52 weeks later.

³ See section 12(3)(b)(i) of the Act.

⁴ See section 23(2) of the Act.

⁵ See section 23(3.21) of the Act.

⁶ See section 23(3) of the Act.

⁷ See section 23(3.01) of the Act.

⁸ See section 23(3.2)

⁹ See section 23(3.22) of the Act.

¹⁰ See section 23(2) of the Act.

[22] The Appellant says his child was born on October 24, 2021. The Commission agrees, and I see no evidence that contradicts this. So, I accept as fact that the child was born on that date. This means the parental benefit window began on October 24, 2021.¹¹

[23] None of the circumstances that would allow the parental benefit window to be extended apply in the Appellant's case. He and his wife didn't elect to get extended parental benefits, his child wasn't hospitalized, he isn't in the Canadian Forces, and he wasn't collecting any other type of benefits. So, his parental benefit window is 52 weeks.

Is the Appellant entitled to additional weeks of benefits?

[24] I find that the Appellant isn't entitled to any of the additional weeks of benefits he claimed.

[25] The Appellant can only receive employment insurance benefits if he can prove that he is entitled to them.

[26] The law says that he can only receive parental benefits for weeks of parental leave that fall within the parental benefit window.¹²

[27] The Appellant's parental benefit window began October 24, 2021. The window closed 52 weeks later. The Appellant's last day of work prior to taking his leave was October 21, 2022. He was paid benefits for the week of October 23, 2022. The other four of the five weeks of benefits he claimed fall outside the parental benefit window.

[28] It's clear to me that the Appellant didn't know about the parental benefit window when he made the decision to take his leave after his wife ended hers. This is despite the fact that he did everything that he could to understand how parental benefits work.

¹¹ His child was born on a Sunday, so the window starts on that day (see section 2(1) of the Act, which defines "week" as a seven day period that begins on a Sunday).

¹² See section 23(2) of the Act.

[29] But as unfair as it may seem, especially since the law governing parental benefits is quite confusing, claimants are expected to know the law.¹³

[30] Although I have sympathy for his situation, I must follow the law.¹⁴ I can't order the Commission to pay him additional parental benefits if the law doesn't allow him to receive those benefits.¹⁵

[31] So, the Appellant isn't entitled to the other four weeks of benefits he applied for.

Should the Commission be held accountable for its mistakes?

[32] I think the Commission should be held accountable for its mistakes. But, I unfortunately don't have the authority to hold it accountable. I can't order it to compensate the Appellant by paying him an amount equivalent to the benefits he expected to receive.

[33] The Appellant took steps to inform himself about his entitlement to parental benefits when he was planning his leave. From the information he had obtained, he understood that he could take his leave after his wife completed her leave.

[34] He says that he and his wife contacted the Commission to verify their understanding. The agent they spoke with confirmed that the five weeks of parental leave he wanted to take were "additional" weeks and could be taken after his wife completed her leave. But, this was a mistake.¹⁶

[35] He claims he would have organized himself differently had he been given the correct information.

¹³ See *Canada (Attorney General) v Albrecht*, 1985 CanLII 5582 (FCA), *Canada (Attorney General) v Caron*, 69 N.R. 132 (1986), *Canada (Attorney General) v Carry*, 2005 FCA 367, *Canada (Attorney General) v Bryce*, 2008 FCA 118, *Canada (Attorney General) v Somwaru*, 2010 FCA 336, and *Canada (Attorney General) v Hull*, 2022 FCA 82.

¹⁴ *Canada (Attorney General) v Pannu*, 2004 FCA 90.

¹⁵ *Canada (Attorney General) v Knee*, 2011 FCA 301.

¹⁶ Although the agent wasn't mistaken when they used the term "additional", he was mistaken when he advised the Appellant that he could take his leave after his wife completed hers. Also, even though the law provides for 5 extra weeks that can be taken by the second parent when the first parent receives the maximum number of weeks of parental benefits, the term "additional" is misleading if the agent failed to also explain the parental benefit window.

[36] The Appellant's understanding that he could receive benefits if he took his leave after his wife completed hers was confirmed by the Commission, once again, on October 28, 2022. That is the date he received the decision letter. It confirmed that he was entitled to five weeks of parental benefits, beginning October 23, 2022.

[37] The Commission says that this was a mistake. The decision letter should have said he was only entitled to one week of benefits as of that date.

[38] The Appellant says that had he been notified on October 28, 2022, that he was only entitled to one week of benefits, he would have immediately returned to work. It was only during his last week of parental leave that he learned that he would only receive one week of benefits.¹⁷ At that point, he had already taken the time off work. It was too late to do anything about it.

[39] The Appellant says that because he was misinformed by the Commission, he didn't receive \$2552 of benefits that he was told he would receive. And, his employer now wants him to repay the top-up it paid him during his leave. He argues that the Commission's mistakes have caused him harm, and he should be compensated accordingly.

[40] I found the Appellant's testimony to be sincere. It was consistent with the written evidence in the record. I believe that he reviewed the Service Canada website and spoke with a Service Canada agent to understand his entitlement to parental benefits.¹⁸ I accept that he was led to believe that he could take his leave after his wife completed hers, and that he made the decision about when to take his leave on that basis. I have no doubt that the Appellant would have arranged things differently if he had been told he had to take his leave within 52 weeks of his child's birth. And, I believe that he would

¹⁷ He only learned that his claim fell outside the parental benefit window when he called the Commission to understand why payment of his claim was delayed. At first, he was told it was because he had mistakenly indicated in his application that his wife had received benefits under the Quebec Parental Insurance Plan.

¹⁸ Although the Commission says it has no evidence that such a call occurred, I have no reason to believe that it didn't.

have gone back to work if he hadn't received the decision letter confirming his entitlement to five weeks of benefits.

[41] However, case law says that reliance on misinformation from the Commission or on the Service Canada website doesn't entitle a claimant to benefits that they aren't entitled to under the law.¹⁹

[42] Although the Commission clearly made mistakes, my jurisdiction is limited under the law. Regrettably, I don't have the power to order the Commission to compensate the Appellant for the harm he has been caused by its mistakes.

[43] Although the Commission aims to provide claimants with accurate information,²⁰ it didn't do so in this case. Although I'm unable to provide the Appellant with a remedy, if the Commission caused him harm by providing him with mistaken information, he may have recourse before the civil courts.²¹

Conclusion

[44] The Appellant isn't entitled to any additional weeks of parental benefits. This is because the additional weeks he is claiming fall outside of the parental benefit window.

[45] So, the appeal is dismissed.

Elyse Rosen

Member, General Division – Employment Insurance Section

¹⁹ *Canada (Attorney General) v. Shaw*, 2002 FCA 325 and *Mauchel v Canada (Attorney General)*, 2012 FCA 202.

²⁰ See the section of the application form entitled **Service Canada's responsibilities** (GD3-12).

²¹ The jurisdiction of civil courts is much broader than that of the Tribunal.