



Citation: *AH v Canada Employment Insurance Commission*, 2023 SST 1150

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

Decision

Appellant: A. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (546338) dated October 7, 2022 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Videoconference

Hearing date: January 31, 2023

Hearing participant: Appellant

Decision date: February 1, 2023

File number: GE-22-3769

Decision

[1] The appeal is dismissed. This means I disagree with the Claimant.

[2] The Claimant's appeal cannot be successful because she can't change her choice of parental benefit term once parental benefits are paid.

Overview

[3] The Claimant applied for maternity and parental benefits. There are two types of parental benefits available. Her application form shows that she chose the extended parental benefit option. But she says she actually wanted standard parental benefits.

[4] She asked the Canada Employment Insurance Commission (Commission) to change her election from extended to standard benefits, after she had already received extended benefits.

[5] The Commission refused to make this change. The Claimant has appealed to the Tribunal because she must have made a mistake when she chose the extended option on her application form. She was unable to fix this error because the information on the confirmation page said her benefits would end after one year.

Issue

[6] Can the Claimant change her parental benefit election?

Analysis

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

[8] 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.

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

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

[10] On her application, the Claimant chose extended parental benefits.³ She was paid her first payment of extended parental benefits by August 6, 2021.⁴ On August 10, 2022, the Claimant asked to change her election from extended to standard parental benefits.⁵

[11] The Claimant told the Commission and the Tribunal that she intended to take one year off from work. She intended to select standard parental benefits on her application form. And she believed that she had chosen standard parental benefits. The confirmation page on the application form said that her benefits would end after one year. This was what she wanted, so it led her to believe that she had chosen her benefits correctly.

[12] The Claimant returned to work after one year, but her spouse noticed that EI benefits were still being deposited into their bank account. She tried to log into the Service Canada website, but her account was not accessible. She tried to contact Service Canada by phone, but the wait times were excessive. She was unable to remain on the line for hours while at work. Eventually, her spouse finally was able to speak to an officer about an unrelated issue, and the officer agreed to speak to the Claimant about her parental benefits, as well.

[13] The Commission told the Claimant that she had selected extended benefits, and since she was now working, she would have to repay some of the benefits she had been paid. It sent her a notice of debt for the amount of benefits she was paid since she returned to work.

² Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

³ See GD3-9.

⁴ See GD3-22 to GD3-23.

⁵ See GD4-2 and GD3-26 to GD3-28.

[14] The Claimant believed that she had selected standard benefits and asked to be switched from extended to standard, so she could be paid the EI benefit rate that she had asked for and she would not have to repay the benefits that she didn't intend to receive.

[15] The Commission says the Claimant made her choice and it is too late to change it because she had already started receiving benefits. It adds that the law is unambiguous that once the choice of parental benefit term is made and benefits paid, the choice cannot be changed.

[16] The Tribunal has previously overturned some cases regarding parental benefit election on appeal. But, the Federal Court and Federal Court of Appeal have now made precedent-setting decisions that direct the Tribunal's analysis of these cases.⁶

[17] Regrettably, I find the Claimant cannot be successful in this appeal. The Courts have said that the parental benefit election made on the application for EI benefits is the election and it cannot be changed after benefits are paid. And the law is clear that once parental benefits are paid on a claim, the decision between standard or extended parental benefits is irrevocable.

[18] The Claimant gave compelling testimony about the difference in the amount of EI benefits that she received as a result of this mistaken selection on her application form. While I recognize the huge financial impact this decision has had on the Claimant there is no provision in the law that allows me to consider that as relevant to this decision.

[19] I understand the Claimant's situation. However, there is no legal basis for me to order that she may change her election from what she selected on her application form. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has said:

...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.

⁶ See *Karval v Canada (Attorney General)*, 2021 FC 395; *Canada (Attorney General) v Hull*, 2022 FCA 82; and *Canada (Attorney General) v Variola*, 2022 FC 1402.

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

[20] The appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section

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