



Citation: *ES v Canada Employment Insurance Commission*, 2023 SST 1896

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (569212) dated February 6, 2023 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: In person

Hearing date: May 25, 2023

Hearing participant: Appellant

Decision date: May 31, 2023

File number: GE-23-698

Decision

[1] E. S. is the Appellant. The Canada Employment Insurance Commission (Commission) says it can't pay Employment Insurance (EI) parental benefits. The Appellant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I must dismiss the Appellant's appeal. He applied for EI parental benefits outside of the window of time when the law says he can collect these kinds of benefits. The law doesn't let him collect EI parental benefits outside of this window, and he doesn't meet any of the conditions to extend the window in a way that would let him collect EI parental benefits.

Overview

[3] The Appellant and his wife had a baby on July 30, 2021. Their baby needed special medical care, and his wife collected maternity, parental, and family caregiver benefits while caring for their child. After she had collected all of these benefits, the Appellant applied for EI parental benefits. But the Commission said it couldn't pay any EI parental benefits.

[4] The Commission says it can't pay EI parental benefits to the Appellant. The Commission says he applied for parental benefits outside of the parental benefit window. And the Commission says it can't extend the parental benefit window in a way that would let him collect parental benefits.

[5] The Appellant disagrees with the Commission's decision. He says the Commission extended his wife's entitlement window in a way that let her collect several different kinds of EI benefits. He says that he needed to take time away from work to care for his child because his wife needed a break for her mental health. He also says that Commission officers gave him misleading information about his entitlement to EI parental benefits.

Issues

[6] I have to decide if the Appellant can collect EI parental benefits. To make this decision, I will look at the two following questions:

- When is the Appellant's parental benefit window?
- Can the Appellant collect EI parental benefits?

Analysis

[7] You can collect EI parental benefits if you are caring for a newborn child.¹ But you can only collect parental benefits within the parental benefit window. The parental benefit window begins with the week your child is born and usually ends 52 weeks later.²

[8] In some cases, the parental benefit window can be longer than 52 weeks. If your child was in the hospital³, or if you are a member of the Canadian Forces who must return to duty⁴, the Commission can extend the parental benefit window. The Commission can also extend the parental benefit window if you are collecting more than one kind of special benefits.⁵

When is the Appellant's parental benefit window?

[9] The Commission says the Appellant's parental benefit window runs from July 25, 2021 to September 3, 2022. The Commission says it can only extend the parental benefit window by five weeks because his child was in the hospital.

[10] The Appellant disagrees. He says that the Commission extended his wife's parental benefit window to pay different kinds of special benefits. He says the Commission should extend his parental benefit window too.

¹ Section 12(3)(b) of the *Employment Insurance Act*.

² Section 23(2) of the *Employment Insurance Act*.

³ Section 23(3) of the *Employment Insurance Act*.

⁴ Section 23(3.01) of the *Employment Insurance Act*.

⁵ Section 23(3.2) of the *Employment Insurance Act*.

[11] I agree with the Commission. I find that the Appellant's parental benefit window runs from July 25, 2021 to September 3, 2022.

[12] The Appellant and the Commission agree that his child was born on July 30, 2021. This means that his parental benefit window starts on July 25, 2021. This is because this is the Sunday of the week his child was born.

[13] Normally, his parental benefit window would end 52 weeks later. But the Appellant told the Commission that his child was in the hospital from July 30 to August 9, 2021, and again from September 10 to September 15, 2021.

[14] The Commission decided that this meant that his child was in the hospital during five calendar weeks:

- July 25 to July 31, 2021
- August 1 to August 7, 2021
- August 8 to August 14, 2021
- September 5 to September 11, 2021
- September 12 to September 18, 2021

[15] The Commission included partial weeks when it calculated how many weeks the Appellant's child was in the hospital.

[16] To account for the weeks the Appellant's child was in the hospital, the Commission extended his parental benefit window by five weeks. This means that the Commission decided that the Appellant's parental benefit window ended on September 3, 2022.

[17] The Appellant didn't give the Commission any more information about other times his child was in the hospital. At the hearing, he said his child was in the hospital on other dates, but he didn't have details about the dates.

[18] And the Appellant didn't say that any of the other conditions for extending the parental benefit window applied to him. He didn't say he was in the Canadian Forces, and he didn't claim more than one kind of special benefit. He only applied for EI parental benefits.

[19] So, I find that the Commission correctly calculated the length of the Appellant's parental benefit window. He is entitled to a five-week extension because of the dates his child was in the hospital. But he doesn't meet any of the other conditions to extend his parental benefit window beyond this. I find that his parental benefit window runs from July 25, 2021 to September 3, 2022.

Can the Appellant collect EI parental benefits?

[20] The Appellant says that he should get EI parental benefits. He says he needed the benefits to care for his child because his wife needed extra support. He also says that Commission officers gave him incorrect advice about his entitlement to parental benefits.

[21] The Commission says it can't pay EI parental benefits outside of the parental benefit window. It says the Appellant can't get EI parental benefits because he applied outside of the parental benefit window.

[22] I agree with the Commission. I find that the Appellant applied for EI parental benefits outside of the parental benefit window. This means he can't get EI parental benefits. I can't make exceptions to the law, even in sympathetic circumstances. And even if Commission officers gave the Appellant incorrect advice, he can't get EI benefits if the law doesn't allow for it.

[23] The Appellant applied for EI parental benefits on November 17, 2022. His last day of work was October 10, 2022, and so the Commission started his benefit period on October 9, 2022.

[24] But his parental benefit window ended on September 3, 2022. This means that the Appellant's benefit period started after his parental benefit window had already ended.

[25] No one can get EI parental benefits outside of the parental benefit window. So, this means that the Appellant can't get EI parental benefits.

[26] The Appellant gave me a letter from his wife's counsellor. The letter describes his wife's mental health and how it has been difficult for her to care for her child. The letter says that his wife needed a break and so the Appellant had to take time off work to care for their child.

[27] I believe that the Appellant's wife and child needed his support. But I can't make exceptions to the law, even in the most sympathetic circumstances. I can't interpret the law in any other way, other than its plain meaning.⁶ The Appellant can only get EI parental benefits during the parental benefit window. I can't make any exceptions to the law on this point.

[28] I also understand that the Appellant says that Commission officers gave him incorrect information about his entitlement to EI parental benefits. He says that he called the Commission to ask for advice, but no one told him he wouldn't be entitled to EI parental benefits.

[29] I believe him when he says he got misleading advice about his situation. But that doesn't mean that I can allow his appeal.

[30] Sometimes Commission officers make mistakes. They might give a person incorrect or misleading information about their benefits. But even if a Commission officer makes a mistake, this does not mean that a person can receive benefits. The

⁶ See *Canada (Attorney General) v Knee*, 2011 FCA 301, at paragraph 9. See also *Canada (Attorney General) v Pannu*, 2004 FCA 90, at paragraph 4.

Commission can only pay benefits if the law allows them to pay benefits. A Commission officer's mistake does not override the Commission's obligation to follow the law.⁷

[31] This means that I can't order the Commission to pay him EI parental benefits if the law doesn't allow him to receive these kinds of benefits.

[32] The Appellant may be entitled to other kinds of family caregiver benefits. I ask that the Commission contact the Appellant to discuss the entitlement conditions for benefits to care for a critically ill adult or a critically ill child.

[33] But he hasn't proven that he is entitled to EI parental benefits. This is because he can't get EI parental benefits outside of the parental benefit window.

Conclusion

[34] I am dismissing the Appellant's appeal. He can't get EI parental benefits outside of the parental benefit window. So, he can't get EI parental benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section

⁷ In *Canada (Attorney General) v. Shaw*, 2002 FCA 325, the Federal Court of Appeal explains that misinformation from the Commission does not give a claimant relief from the provisions of the *Employment Insurance Act*. Similarly, in *Granger v. Canada Employment Insurance Commission*, A-684-85, the Federal Court of Appeal explains that Commission officers do not have the power to amend the law. An individual Commission officer cannot promise to pay benefits in a way that is contrary to the law.