



Citation: *RA v Canada Employment Insurance Commission*, 2024 SST 455

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: R. A.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (641586) dated January 26, 2024
(issued by Service Canada)

Tribunal member: Susan Stapleton
Type of hearing: Videoconference
Hearing date: April 2, 2024
Hearing participant: Appellant
Decision date: April 5, 2024
File number: GE-24-717

Decision

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

[2] The law doesn't allow for the Appellant's parental benefit election to be changed from standard parental benefits to extended parental benefits.

[3] The Appellant can only be paid benefits during the parental benefit window, which ended on December 9, 2023.

Overview

[4] The Appellant's child was born on December 7, 2022. The Appellant applied for 12 weeks of standard parental benefits on November 27, 2023.

[5] The Canada Employment Insurance Commission (Commission) decided that the Appellant was entitled to receive standard parental benefits, and paid him benefits on December 8, 2023, for the week of December 3-9, 2023. The Appellant only received benefits for that one week.

[6] The Appellant contacted the Commission on December 27, 2023, and asked that his election be changed from standard parental benefits to extended parental benefits, to allow him to receive benefits after December 9, 2023.

[7] The Commission looked at the date of the Appellant's child's birth and decided that the Appellant could only be paid parental benefits until December 9, 2023, because his parental benefits window ended on that date. The Commission also found that the Appellant couldn't change his election from standard parental benefits to extended parental benefits, because he had already received a parental benefit payment on December 8, 2023.

[8] The Commission says that the Appellant's election of standard parental benefits became irrevocable as of December 8, 2023, the date when parental benefits were paid.¹

[9] The Commission also says that the Appellant's parental benefit window ends on December 9, 2023, 52 weeks after his child's birth on December 7, 2022. It says that even though he was approved for 12 weeks of standard parental benefits, the Appellant can't receive any additional benefits after the parental benefit window end date of December 9, 2023. It says he doesn't meet any of the conditions set out in the law that would allow his parental benefit window to be extended.²

[10] The Appellant disagrees. He says he mistakenly applied for standard parental benefits. He didn't realize when he applied that he would only receive one week of standard parental benefits, and that if he elected extended parental benefits, he would receive 12 weeks of benefits. He would have corrected his error sooner, but he got a letter from the Commission showing that his claim was approved for 12 weeks of benefits. He only realized in mid-December 2023, that only one payment was made. This was the first time he ever made a claim for EI, and he has paid in to EI since 2012 when he first started working. He wants his election to be changed to extended parental benefits, so he can be paid 12 weeks of benefits.³

Issues

[11] Can the Appellant's election be changed from standard parental benefits to extended parental benefits?

[12] Can the Appellant be paid parental benefits beyond December 9, 2023?

¹ See GD4-3.

² See GD4-3-4.

³ See GD2-9-10.

Analysis

Issue 1 - Can the Appellant's election be changed from standard parental benefits to extended parental benefits?

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

[14] 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.

[15] Once you start receiving parental benefits, you cannot change options.⁵

[16] On his application, the Appellant chose standard parental benefits.⁶ He was paid standard parental benefits on December 8, 2023, for the week of December 3-9, 2023.⁷ He contacted the Commission on December 27, 2023, and asked to change his choice to extended parental benefits, to allow him to receive benefits beyond December 9, 2023.

[17] The Appellant told the Commission that he misunderstood the Commission's website, and thought he could get standard parental benefits until the first year, and then it would switch to extended parental benefits. He would have applied for extended benefits if he had understood it better.⁸

[18] After his request for reconsideration was unsuccessful, the Appellant told the Commission that he made a mistake when he applied for standard parental benefits. He said he was approved for 12 weeks of benefits, but he only received one week of benefits. He said he would repay the benefits he received and start a new claim. The Commission officer advised him that his election of standard benefits could not be

⁴ Section 23(1.1) of the *Employment Insurance Act* (Act) calls this choice an "election."

⁵ Section 23(1.2) of the Act says that the election is irrevocable (that is, final) once you receive benefits.

⁶ See GD3-9.

⁷ See GD3-21.

⁸ See GD3-19.

changed to extended, and he couldn't repay the benefits he received and start a new claim for extended benefits.⁹

[19] The Appellant testified as follows:

- He made a mistake when he selected the standard parental benefits option on his application for benefits.
- He thought that if he was taking parental leave for less than 52 weeks, he was supposed to select the standard parental benefits option.
- He thought that if he was going to take parental leave from the date of his child's birth, for more than 52 weeks, he was supposed to select the extended parental benefits option.
- He was taking a 12-week parental leave from work, so it was his understanding that he was supposed to select the standard parental benefits option.
- He and his family planned for months in advance for him to take a 12-week parental leave. His wife wasn't eligible for EI parental benefits, so he was the only parent who would be applying for benefits.
- He chose to take parental leave when his child was a year old. Until then, he and his wife had family helping them care for their child. So, it made sense for him to wait to take his parental leave and apply for parental benefits at the one-year mark.
- He didn't take parental leave after his first child was born. So, he had no prior experience applying for EI parental benefits.
- His employer provided a top-up while he received EI parental benefits. It didn't matter whether he received the standard parental benefits rate, or the extended

⁹ See GD3-27.

parental benefits rate - his employer would provide a top-up to the same amount. So, he didn't think it mattered which parental benefits option he chose, because he believed he would receive 12 weeks of parental benefits, topped up by his employer, either way.

- When he completed his application, he requested 12 weeks of standard parental benefits. He didn't realize that he wouldn't receive 12 weeks of benefits if he elected the standard option.
- After he submitted his application for benefits, it showed as confirmed on his Service Canada account that he had requested 12 weeks of benefits, which he took to mean he had been approved to receive (and would be paid) 12 weeks of benefits. It didn't say on his account that he would only receive benefits until December 9, 2023, because he elected the standard option. If it had, he would have contacted the Commission right away to correct his error.
- He received a payment of parental benefits on December 8, 2023. When he didn't receive a second payment, he called the Commission, on December 27, 2023. He was told a second payment hadn't been issued, because he had to submit a report. When he checked his Service Canada account on December 27, 2023, he had a message saying that he had to submit a report. He had asked to be exempted from the requirement to submit reports on his application for benefits. The person he spoke to at the Commission told him they updated his file and his payments should resume. When he still hadn't received another payment 4-5 days later, he called the Commission again. He was then told that his benefit period had ended. After he spoke to the Commission, the message on his Service Canada account changed to "last payment made."
- He believes his election should be changed from standard parental benefits to extended parental benefits because his intention was very clear. He wouldn't have taken a 12-week parental leave if he knew he wasn't going to be paid benefits for the whole 12-week period.

- He even offered to repay the benefits he received, cancel his claim and make a new claim, but the Commission told him that wasn't an option.
- The Service Canada website has a section titled "mistakes happen." He feels there should be some allowance for when mistakes happen. He feels that the Commission has taken a very hard stance, when he simply mistakenly chose the wrong option.

[20] The Commission says the Appellant's election of standard parental benefits is irrevocable as of December 8, 2023, when parental benefits were paid.¹⁰

[21] The Appellant testified that he understands that the law says you can't change the parental benefit option you selected once benefits have been paid. He could understand not being able to change his election if he had received benefits for a long period of time. But he only received benefits for a period of less than one week. He asks that his claim be changed to extended parental benefits, so he can be paid for the entire 12-week period of his parental leave.¹¹

[22] I recognize that the Appellant took a 12-week parental leave from his job, and that he believed that he would receive 12 weeks of EI parental benefits. I understand his position that he wouldn't have taken a 12-week leave if he thought he would only receive EI parental benefits for one week. I also recognize that he didn't know that selecting standard parental benefits would mean that he couldn't receive benefits beyond December 9, 2023. I sympathize with his situation. But I find that he is bound by his election of standard parental benefits, which became irrevocable when he was paid parental benefits on December 8, 2023.

¹⁰ See GD4-3.

¹¹ See GD2-9.

[23] 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.¹²

[24] 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. The law is clear that once parental benefits are paid on a claim, the decision between standard or extended parental benefits is irrevocable. This means the Appellant could not change his parental benefits from standard to extended after December 8, 2023. This is when he received the payment of parental benefits, and so the election of standard parental benefits became binding on him on that date.

Issue 2 - Can the Appellant receive parental benefits beyond December 9, 2023?

[25] Parental benefits can only be paid for a certain period after the date of a claimant's child's birth.¹³ This is referred to as the "parental benefit window." The parental benefit window for both types of parental benefits begins the week in which the child is born or placed for adoption.¹⁴ The window for standard parental benefits ends 52 weeks later.¹⁵ If a claimant selects extended parental benefits, the parental benefit window is extended by a further 26 weeks.¹⁶

[26] The Appellant's child was born on December 7, 2022. He applied for standard parental benefits on November 27, 2023. The Appellant says that when he applied for benefits, he understood that because his total benefit duration would be less than 52 weeks (12 weeks in his case), he could apply for and receive standard benefits up until

¹² 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.

¹³ The parental window starts at either the week of the child's birth or the week of the child's placement with a claimant for the purpose of adoption. This is set out in section 23(2) of the Act.

¹⁴ See section 23(2)(a) of the Act.

¹⁵ See section 23(2)(b) of the Act.

¹⁶ See section 23(3.21) of the Act.

78 weeks from the birth of his child. So, he thought he would be entitled to receive benefits throughout the 12 weeks he would be off work.

[27] As outlined above, parental benefits can only be paid within the parental benefit window. In this case, the Appellant elected to receive standard parental benefits. This means the parental benefit window ended on December 9, 2023, which is 52 weeks after the week of his child's birth.

[28] There is no evidence to show that the Appellant qualified for an extension of his parental benefit window.¹⁷ The Appellant testified that he does not dispute that he doesn't meet the requirements to extend his parental benefit window.

[29] So, the Appellant can not be paid parental benefits after December 9, 2023.

[30] I understand the Appellant's frustration. However, there is no legal basis for me to order that he can change his election from what he selected on his application for benefits. His election of standard parental benefits is irrevocable. Because he selected standard benefits, his benefit window ended on December 9, 2023, which is 52 weeks after the week of his child's birth.

[31] 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. 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.¹⁸

¹⁷ The criteria for an extension to the parental benefit window are set out in sections 23(3) and 23(3.01) of the Act.

¹⁸ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.

Conclusion

[32] The law doesn't allow for the Appellant's parental benefit election to be changed from standard parental benefits to extended parental benefits.

[33] The Appellant can only be paid benefits during the parental benefit window, which ended on December 9, 2023.

[34] This means that the appeal is dismissed.

Susan Stapleton

Member, General Division – Employment Insurance Section