

[TRANSLATION]

Citation: *M. E. v. Canada Employment Insurance Commission*, 2013 SSTGDEI 2

Appeal No.: GE-13-725

BETWEEN:

M. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Normand Morin

HEARING DATE: October 30, 2013

TYPE OF HEARING: Teleconference

DECISION: Appeal dismissed

PERSONS IN ATTENDANCE

[1] The Appellant, M. E., participated in the telephone (teleconference) hearing held on October 30, 2013.

DECISION

[2] The Social Security Tribunal (the Tribunal) finds that the appeal of the Employment Insurance Commission (the Commission) decision regarding the Appellant's ineligibility for compassionate care benefits (Employment Insurance compassionate care benefits) is not justified under section 23.1 of the *Employment Insurance Act* (the Act) and section 41.11 of the *Employment Insurance Regulations* (the Regulations).

INTRODUCTION

[3] On August 22, 2013, the Appellant appealed to the Employment Insurance Section of the Tribunal's General Division the Commission's decision dated July 30, 2013, denying him compassionate care benefits starting on November 19, 2012, because the medical certificate submitted did not support that his family member was facing a significant risk of death within 26 weeks.

TYPE OF HEARING

[4] The hearing was held by teleconference for the reasons set out in the notice of hearing dated October 16, 2013 (Exhibits GD1-1 and GD1-2).

ISSUE

[5] The Tribunal must determine whether the appeal of the Commission's decision to deny the Appellant compassionate care benefits is justified under section 23.1 of the Act and section 41.11 of the Regulations.

APPLICABLE LAW

[6] The provisions with respect to the payment of compassionate care benefits are stated in section 23.1 of the Act and section 41.11 of the Regulations.

[7] In *Knee (2011 FCA 301)*, Justice John M. Evans of the Federal Court of Appeal (the Court) stated the following: “. . . 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.”

EVIDENCE

[8] The evidence in the file is as follows:

- (a) On September 17, 2012, the Appellant filed an initial claim for benefits effective September 16, 2012. The Appellant stated that he worked for employer René Matériaux Composites Ltée from February 24, 2012 to September 15, 2012 inclusive, and that he stopped working for that employer because of a shortage of work. The Appellant specified that he will return to work for that employer but that the date is unknown for the moment. The Appellant stated that he also worked for employer Saputo Boulangerie Inc. from June 14, 2012 to July 13, 2012 (Exhibits GD3-2 to GD3-12);
- (b) A Record of Employment (ROE), dated July 17, 2012, shows that the Appellant worked for employer Saputo Boulangerie Inc. from June 18, 2012 to July 13 inclusive, and stopped working for that employer for a reason under “Other” (Code K – Other) (Exhibit GD3-13);
- (c) An ROE, dated September 18, 2012, shows that the Appellant worked for employer René Matériaux Composites Ltée from February 24, 2012 to September 15, 2012 inclusive, and that he stopped working for that employer due to a work shortage (Code A – Shortage of work / End of contract or season) (Exhibit GD3-14);

- (d) On December 17, 2012, the Appellant filed a claim for compassionate care benefits, for a six-week period, starting on November 18, 2012, to take care of his child, J. E. Dr. Rachid Ouaritni, a pediatrician, completed the document entitled *Medical Certificate for Employment Insurance Compassionate Care Benefits* and specified that he had examined the Appellant's child on December 17, 2012. He certified that the child was not seriously ill, but specified that the child required the care and support of one or more family members over the next six months. A medical certificate was attached to the claim (Exhibits GD3-15 to GD3-19);
- (e) On January 18, 2013, the Commission informed the Appellant that it could not pay him Employment Insurance compassionate care benefits as of November 19, 2012, because the medical certificate submitted did not support that his family member had a significant risk of death within 26 weeks (Exhibit GD3-20);
- (f) An amended or replaced ROE, dated March 12, 2013, shows that the Appellant worked for employer René Matériaux Composites Ltée from February 24, 2012 to September 15, 2012 inclusive, and that he stopped working for that employer after leaving there voluntarily (Code E – Quit) (Exhibit GD3-21);
- (g) An amended or replaced ROE, dated March 14, 2013, shows that the Appellant worked for employer René Matériaux Composites Ltée from February 24, 2012 to September 15, 2012 inclusive, and that he stopped working for that employer for a reason under “Other” (Code K – Other) (Exhibit GD3-22);
- (h) On May 23, 2013, the Appellant filed a benefit renewal claim effective May 19, 2013 (Exhibits GD3-23 to GD3-31);
- (i) On July 8, 2013, the Appellant submitted a *Request for Reconsideration of an Employment Insurance (EI) Decision*. In his request, the Appellant explained that he was requesting reconsideration concerning the Employment Insurance compassionate care benefits. He stated that he was not verbally informed of the decision made in respect of him on

January 14, 2013, because he was absent from Quebec at the time. The Appellant reiterated the reasons for his claim for compassionate care benefits. The Appellant stated that he was temporarily absent from Quebec—leaving on November 22, 2012 and returning May 18, 2013. The Appellant explained that he went to Morocco to take care of his critically ill daughter. The Appellant stated that he spoke to someone at Service Canada in June 2013, but that no verbal or written decision concerning his file was provided (Exhibits GD3-32 and GD3-33);

- (j) On July 30, 2013, the Commission informed the Appellant that a new type of Employment Insurance benefit for parents of a critically ill child had been in effect since June 9, 2013, specifying that the said Appellant had returned to Canada in May 2013 (Exhibit GD3-34);
- (k) On July 30, 2013, the Appellant requested clarification from the Commission concerning his eligibility for compassionate care benefits or benefits for parents of a critically ill child (Exhibit GD3-35);
- (l) A document entitled *Full Text Screens – Payments*, reproduced on September 26, 2013, describes the regular Employment Insurance benefits paid to the Appellant during the period from the report week starting June 16, 2013 to the report week ending September 29, 2012 (Exhibit GD3-36);
- (m) On July 30, 2013, the Commission informed the Appellant that it was upholding the decision in respect of him dated January 18, 2013, concerning the payment of compassionate care benefits (Exhibit GD3-37);
- (n) In its submissions, the Commission specified that, when the appeal docket is returned, it [translation] “will examine the possibility of giving the claimant a period of 7 days of benefits under Regulation 55(1)(d)” (Exhibit GD4-4) (Exhibits GD4-1 to GD4-9);
- (o) On August 22, 2013, the Appellant filed a notice of appeal with the Employment Insurance Section of the Social Security Tribunal’s General Division. In a letter of explanation, the Appellant reiterated the reasons for his claim (Exhibits GD2-1 to GD2-5);

- (p) In a letter dated October 16, 2013, the Tribunal informed the Appellant that his hearing was scheduled for October 30, 2013 (Exhibits GD1-1 and GD1-2).

[9] The evidence presented at the hearing is as follows:

- (a) The Appellant reiterated the main elements in the file;
- (b) The Appellant explained that he took the initiative to communicate with Service Canada before he left for Morocco in November 2012 to inform them of the purpose of his trip and to request that his regular Employment Insurance benefits be terminated during that time. He specified that he received a form, which he had a doctor in Morocco complete, and that he completed a form as well. He stated that he then returned the two forms duly completed to Service Canada;
- (c) He stated that he had no news from Service Canada upon his return from Morocco on May 18, 2013, and that no funds had been paid into his account in relation to his claim for benefits. He added that his last conversation with a Service Canada representative was in June 2013;
- (d) He stated that the doctor who completed the medical certificate (Exhibits GD3-18 and GD3-19), Dr. Rachid Ouaritni, a pediatrician, is the doctor who has cared for his daughter since birth. He stated that, when he saw Dr. Ouaritni, the doctor stated that his daughter was very ill, that she was in a [translation] “lamentable state”, that she could get better, but that there was also a risk of death;
- (e) He stated that, in a telephone conversation with a Service Canada representative, he was then informed of the existence of a benefits program for parents of a critically ill child and of its coming into force on June 9, 2013 (Exhibits GD3-34 and GD3-35);
- (f) He specified that he did not return to Morocco after his return to Quebec on May 18, 2013, because he did not have the means to do so;
- (g) He reiterated that the Commission stated in its submissions that he may be

entitled to receive benefits for a period of seven days under Regulation 55(1)(d) (Exhibit GD4-4).

SUBMISSIONS OF THE PARTIES

[10] The Appellant presented the following observations and submissions:

- (a) He explained that he sent Service Canada a medical certificate stating that his daughter was ill and required care;
- (b) He pointed out the fact that even if the doctor he saw did not state in the medical certificate that he completed that his daughter was critically ill and had a risk of death within 26 weeks (Exhibit GD3-18), he had verbally told him that there was a risk of her dying;
- (c) He argued that he may be entitled to benefits for the parents of a critically ill child (PCIC), effective since June 9, 2013, even if his visit to see his daughter in Morocco was prior to that date (Exhibits GD3-34 and GD3-35);
- (d) He submitted that the Commission's submissions state that he may qualify for benefits for a period of seven days under paragraph 55(1)(d) of the Regulations (Exhibit GD4-4).

[11] The Commission presented the following observations and submissions:

- (a) The Commission stated in its submissions that [translation] “compassionate care benefits are available for qualified claimants so that they can provide care and support to a critically ill family member whose risk of death within 26 weeks is significant.” (Exhibit GD4-2);
- (b) The Commission explained that the Appellant did not demonstrate that the family member in respect of whom compassionate care benefits were requested is critically ill to the point where the risk of death is significant within 26 weeks of the issuance of the medical certificate (Exhibit GD4-2);
- (c) The Commission explained that the Appellant was not eligible to receive

benefits for parents of a critically ill child (PCIC), which have been in force since June 9, 2013, because the Appellant did not file a specific claim in that regard;

- (d) The Commission pointed out the fact that the Appellant did not provide a medical certificate from a medical practitioner licensed to practise in Canada supporting that the child is critically ill and requires the care of a parent;
- (e) The Commission submitted that the Appellant is not eligible to receive compassionate care benefits, but specified that it could give him a period of seven days of benefits under Regulation 55(1)(d) (Exhibit GD4-4).

ANALYSIS

[12] Subsection 23.1(2) of the Act specifies the requirements for the payment of compassionate care benefits as follows:

“Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant if a medical doctor has issued a certificate stating that

- (a) a family member of the claimant has a serious medical condition with a significant risk of death within 26 weeks
 - (i) from the day the certificate is issued,
 - (ii) in the case of a claim that is made before the day the certificate is issued, from the day from which the medical doctor certifies the family member’s medical condition, or
 - (iii) in the case of a claim that is regarded to have been made on an earlier day under subsection 10(4) or (5), from that earlier day; and
- (b) the family member requires the care or support of one or more other family members.”

[13] Subsection 41.11(2) of the Regulations specifies the classes of persons included in the definition “family member” for compassionate care benefits as follows:

“The following classes of persons, in relation to an individual, are prescribed for the purposes of paragraph 23.1(1)(d) of the Act and paragraph (d) of the definition “family member” in subsection 152.01(1) of the Act: (a) a child of the individual’s parent or a child of the spouse or common-law partner of the individual’s parent . . .”

[14] Paragraph 55(1)(d) of the Regulations also sets out the following for claimants who are not in Canada:

“(1) Subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada:

(d) for a period of not more than seven consecutive days to visit a member of the claimant’s immediate family who is seriously ill or injured.”

1. Compassionate care benefits

[15] In this case, the Appellant submitted, with his claim for compassionate care benefits, the document entitled *Medical Certificate – Employment Insurance Compassionate Care Benefits* duly completed on December 17, 2012, by Dr. Rachid Ouaritni, pediatrician (Exhibits GD3-15 to GD3-19).

[16] In that document, the doctor clearly stated that the Appellant’s child was not critically ill, but specified that the child required the care and support of one or more family members over the next six months.

[17] Even if the Appellant argued, during the hearing, that his daughter’s doctor had told him that she was very ill and that there was a risk of her dying, Dr. Ouaritni responded in the negative to the question on whether the child (the patient) [translation] “is critically ill and is likely to die within 26 weeks (6 months)” (Exhibit GD3-18).

[18] The evidence in the file demonstrates that the Appellant did not meet the requirements set out in subsection 23.1(2) of the Act that would allow him to be eligible to receive compassionate care benefits starting on November 19, 2012.

[19] In its submissions, the Commission also summarized the requirements as follows:

[translation]

“The Act stipulates that a qualified claimant must submit a medical certificate signed by a medical doctor, or by a medical practitioner, who is treating the critically ill family member. The medical doctor, or medical practitioner, must confirm that his or her patient (the critically ill family member) presents the following two conditions: **a. The patient is in serious condition with a significant risk of death within 26 weeks;** b. The patient requires the care or support of one or more family members” (Exhibits GD4-2 and GD4-3).

2. Benefits for parents of a critically ill child (PCIC)

[20] Moreover, the Appellant argued that, further to information obtained from Service Canada, he could qualify for Employment Insurance benefits for parents of a critically ill child (PCIC), according to the new legislation that came into effect on June 9, 2013.

[21] In that regard, the Tribunal reiterates that the new provisions set out in subsection 23.2(1) of the Act stipulate the following:

“Despite section 18, but subject to this section, benefits are payable to a major attachment claimant, who is the parent of a critically ill child, in order to care for or support that child if a specialist medical doctor has issued a certificate that

(a) states that the child is a critically ill child and requires the care or support of one or more of their parents; and

(b) sets out the period during which the child requires that care or support.

(2) In the circumstances set out in the regulations, the certificate referred to in subsection (1) may be issued by a member of a prescribed class of medical practitioners.

(3) Subject to subsection (4) and section 12, benefits under this section are payable for each week of unemployment in the period

(a) that begins on the first day of the week in which either of the following falls:

(i) the day on which the first certificate is issued in respect of the child that meets the requirements of subsection (1) and is filed with the Commission, or

(ii) in the case of a claim that is made before the day on which the certificate is issued, the day from which the specialist medical doctor certifies that the child is critically ill; and

(b) that ends on the last day of the week in which any of the following occurs:

(i) all benefits payable under this section in respect of the child are exhausted,

(ii) the child dies, or

(iii) the expiry of 52 weeks following the first day of the week referred to in paragraph (a).”

[22] Moreover, subsection 41.4(1) of the Regulations sets out the following provisions for payment of benefits to parents of a critically ill child:

“A critically ill child is a person who is under 18 years of age on the day on which the period referred to in subsection 23.2(3) or (4) or 152.061(3) or (4)

of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

- (2) For the purposes of subsections 23.2(1) and 152.061(1) of the Act,
- (a) a parent is a person who, in law, is a parent (including an adoptive parent) of a critically ill child, has the custody of or, in Quebec, parental authority over the child, or is the guardian of the child or, in Quebec, the tutor to the person of the child, or a person with whom the child is placed for the purposes of adoption under the laws governing adoption in the province in which the person resides; and
 - (b) a specialist medical doctor is a medical doctor who is licensed to practise medicine in Canada as a specialist.”

[23] In its submissions, the Commission also stated the requirements under which benefits could be paid as part of the parents of a critically ill child (PCIC) benefits program in force as of June 9, 2013 (Exhibits GD3-34, GD4-3 and GD4-4).

[24] The Commission thus summarized the eligibility requirements for this program:

[translation]

“In order to receive PCIC benefits, the client must meet the following eligibility requirements, among other things:

- Be the legal parent (including adoptive parent) or legal guardian or have a child who is placed in their home for the purposes of adoption.
- Have a child who is critically ill or injured under the age of 18.
- Submit a medical certificate completed and signed by a **medical doctor who is licensed to practise medicine in Canada as a specialist**. The Canadian-licensed pediatrician or Canadian-licensed medical specialist doctor must attest that the child is critically ill or injured and requires the care or support of his/her parents; and

- File a claim for PCIC benefits within the 52-week window that has been established based on the date provided on the medical certificate.”

(Exhibit GD4-3).

[25] The Tribunal specifies that it does not have jurisdiction to hear the matter relating to the payment of benefits for parents of a critically ill child (PCIC) because the Commission did not render a decision concerning that type of benefit, as the Appellant did not file a claim in that respect (Exhibit GD4-4).

[26] Although entirely sympathetic to the Appellant’s cause, the Tribunal is bound by very clear legislation that does not allow it to establish his eligibility for compassionate care benefits or PCIC benefits.

[27] The Tribunal finds that the Commission’s refusal to pay the Appellant compassionate care benefits is justified under section 23.1 of the Act and section 41.11 of the Regulations.

[28] However, the Tribunal notes that the Commission stated in its submissions that, when the appeal docket is returned, it [translation] “will examine the possibility of giving the claimant a period of 7 days of benefits under Regulation 55(1)(d)” (Exhibit GD4-4).

[29] The appeal on this issue has no merit.

CONCLUSION

[30] The appeal is dismissed.

Normand Morin

Member, General Division

DATE OF REASONS: November 6, 2013