Citation: ***A. K. v. Canada Employment Insurance Commission*****, 2015 SSTGDEI 63**

Date: April 8, 2015

File number: GE-15-198

GENERAL DIVISION – Employment Insurance Section

Between:

A. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Teresa Jaenen, Member, General Division - Employment Insurance Section

Heard In person on March 20, 2015, Regina, Saskatchewan

REASONS AND DECISION

PERSONS IN ATTENDANCE

Ms. A. K., the Appellant (Claimant) attended the hearing.

INTRODUCTION

[1] On October 22, 2014 the Claimant made a claim for employment insurance benefits. On October 31, 2014 the Canada Employment Insurance Commission (Commission) denied the Claimant special benefits because she did have sufficient hour of insurable employment to qualify. On December 1, 2014 the Claimant made a request for reconsideration. On December 16, 2014 the Commission maintained their decision and the Claimant appealed to the *Social Security Tribunal of Canada* (Tribunal).

[2] The hearing was held by In person for the following reasons:

- The complexity of the issue under appeal;
- The information in the file, including the nature of gaps or need for clarification in the information; and
- The cost-effectiveness and expediency of the hearing choice.

ISSUE

[3] The Tribunal must determine if the Claimant has sufficient hours of insured employment to qualify for employment insurance benefits pursuant to section 7 of the *Employment Insurance Act* (Act) and subsection 93(1) of *the Employment Insurance Regulations* (Regulations).

THE LAW

[4] Subsection 7(1) of the Act states:

(1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

[5] Subsection 7(2) of the Act states:

(2) An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person:

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

[6] Subsection 7(3) of the Act states:

> (3) An insured person who is a new entrant or a re-entrant to the labour force qualifies to receive benefit if the person
>
> (a) has had an interruption of earnings from employment; and
>
> (b) has had 910 or more hours of insurable employment in their qualifying period.

[7] Subsection 7(4) of the Act states:

> (4) An insured person is a new entrant or re-entrant to the labour force if, during the last 52 weeks before their qualifying period, the person has had fewer than 490
>
> (a) hours of insurable employment,
>
> (b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;

[8] Subsection 8(1) of the Act states subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

> (a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and
>
> (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

[9] Subsection 8(2) states a qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

> (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;

(b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;

(c) receiving assistance under employment benefits; or

(d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

[10] Subsection 93(1) of the Regulations states an insured person who does not qualify to receive benefits under section 7 of the Act and who is claiming special benefits qualifies to receive the special benefits if the person

(a) has had an interruption of earnings from employment; and

(b) has had 600 or more hours of insurable employment in their qualifying period.

EVIDENCE

[11] In her Notice of Appeal (NOA) the Claimant stated her case is an exceptional circumstance and that she should be entitled to benefits for Parents with Critically Ill Children. She stated due to a technicality she does not qualify for benefits that were put in place for such a reason. It is clear the program is flawed. She stated she is not appealing for just her own son and family but for all families in Canada who face tragedy when their child becomes critically ill. In her case she is required to have 600 hours of insurable earnings which she does not have because she had only returned to work after her maternity/parental leave for 8 days before her son became ill (GD2-2).

[12] A record of employment indicates the Claimant was employed with Government of the Province of Saskatchewan Cancer Foundation between August 12, 2014 to September 5, 2014 and she left her employment to care for family (GD3-19).

[13] On November 24, 2014 the Claimant stated to the Commission that she had returned to work for 8 days after a parental leave and then her child became ill. She stated she was under a

great deal of stress and that she believes if she hadn't returned to work for those few days her claim would have been extended or converted (GD3-23).

[14] An Authorization to Release a Medical Certificate for Employment Insurance Benefits for Parents of Critically Ill Children was dated November 18, 2014 (GD3-24 to GD3-25).

[15] In her request for reconsideration the Claimant stated she did not accumulate the necessary hours however she had worked full time for many years prior to her maternity leave. She requests her situation be considered due to exceptional circumstances (GD3-31 to GD3-32).

[16] On December 16, 2014 the Claimant confirmed to the Commission her maternity/parental claim had expired, she had returned to work but did not have time to accumulate enough hours for a new claim when her son became seriously ill. The Commission stated to the Claimant that had her son become ill at some point during her parental leave her claim may have been extended (GD3-35).

SUBMISSIONS

[17] The Appellant submitted that:

a) She realized that the "Benefits for Parents of Critically Ill Children (PCIC) are very new but there are some kinks that need to be worked out;

b) PCIC was designed to be available for families with critically ill children and it is not;

c) She understands that she is required to have 600 hours of insurable hours to qualify, however she was not able to obtain this before her child became ill;

d) She had completed her parental leave and returned to work for only 8 days before her child became critically ill;

e) Had her son become ill while she was still on a parental leave her benefit claim could have been extended, however there was no way for her to know her child would become ill;

f) Her spouse is self-employed so the option of him applying for benefits did not exist;

g) The Government did a good thing by implementing this program however there needs to be some consideration to unique cases;

h) It is the child that suffers when parents are denied the benefits;

i) When it is a child's life that is at stake there needs to be another level in the system that can deal with compassion and understanding in special circumstances; and

j) These benefits may be small to government but they are huge to family with a critically ill child.

[18] The Respondent submitted that:

a) The Commission determined the Claimant was not a new or re-entrant because she had at least 490 hours of labour force attachment in the 52 weeks preceding the qualifying period;

b) In this case the minimum requirement pursuant to subsection 7(2) of the Act, the Claimant would require 700 hours of insurable employment to qualify for regular benefits or 600 hours as specified in paragraph 93(1)(b) of the Regulations to qualify for "Benefits for Parents of Critically Ill Children (PCIC);

c) Unfortunately the Claimant falls short of the alternate provision of subsection 93(1) of the Act as she has only accumulated 139 hours in her qualifying period from October 20, 2013 to October 18, 2014; and

d) Even though the Claimant has contributed to Employment Insurance for a long period of time or has not made any claims for benefits, this does not automatically allow payment of benefits, no matter how serious the Claimant's situation is. The Claimant must first meet the qualifying conditions outlined in the legislation. The Commission cannot ignore the legislation or amend the requirements regardless of the Claimant's individual circumstances.

ANALYSIS

[19] In his case the evidence on the file along with the Claimant oral evidence supports that she made a claim for special benefits, specifically for Benefits for Parents of Critically Ill Children (PCIC). The evidence supports that the qualifying period was established to be from October 20, 2013 to October 18, 2014 and that the Claimant had accumulated 139 hours of insurable hours.

[20] The Tribunal finds that the Claimant was not considered to be a new or re-entrant because in accordance with subsection 7(4) because she had at least 490 hours of labour force attachment in the 52 weeks preceding the qualifying period. Therefore in accordance with paragraph 93(1)(b) of the Regulations to qualify for PCIC she would require 600 hours of insurable hours. Extremely unfortunate, the Claimant has only 139 hours of insurable hours of employment, and therefore does not qualify for these benefits.

[21] The Claimant presents that due her circumstances and that her son became ill while she was still on her parental leave she would have qualified for an extension of her claim.

[22] The Tribunal finds from the Claimant's oral evidence that she had been on a maternity/parental leave and had exhausted her claim. She stated she then returned to work but after only being back 8 days her son became critically ill. She stated her employer provided her with some compassionate leave, however once that was exhausted her son had still not recovered, and the prognosis of his recovery would be lengthy.

[23] The Tribunal sympathies with the Claimant, immensely, however because the Claimant had exhausted her previous claim, the previous claim cannot be extended as per the legislation set out in subsections 8(1) and 8(2) of the Act. The Tribunal acknowledges the Claimant's disappointment and frustration with a simple technicality of the timing of her son's illness, and the Tribunal cannot agree more one cannot choose when an illness occurs; however the Tribunal does not have the authority to alter the legislation.

[24] The Tribunal finds that the Claimant had received her maternity and parental benefits based on her previous qualifying period, and therefore is not entitled to receive benefits a

second time based on the same qualifying period. The Tribunal finds the same weeks of insurable employment cannot be used more than once to establish benefit periods.

[25] The Claimant presents the argument that she knows she does not have sufficient hours to qualify but she believes her situation is exceptional and that that her circumstances should be looked at differently and that there should be some flexibility to the legislation as it is written. She argues that the Government has implemented a very good program but there are some kinks that need to be addressed.

[26] The Federal Court of Appeal has affirmed that neither the Commission nor the Tribunal or Court has authority to exempt a claimant from the qualifying provisions of the Act, no matter how sympathetic or unusual the circumstances. (*Levesque* 2001 FCA 304 (CanLII).

[27] The Claimant presents the argument that she has paid into the employment insurance program for many years and until her maternity/parental claim had never applied for benefits, therefore her past history should be taken into consideration.

[28] The Tribunal sympathies with the Claimant's situation however the Tribunal cannot ignore or change the legislation as it is presently written and change it to include the fact a claimant has accumulated years of insurable earnings. The Federal Court of Appeal affirmed that past hours, outside of the qualifying period cannot be used to qualify the claimant for benefits (*Haile* 2008 FCA 193 (CanLII)).

[29] The Tribunal understands the Claimant's situation to be extremely stressful and financially draining, however unfortunately she is not entitled to Benefits for Critically Ill Children because she has not accumulated the 600 hours of insurable employment pursuant to section 7 of the Act and section 93 of the Regulations to qualify.

CONCLUSION

[30] The appeal is dismissed.

Teresa Jaenen
Member, General Division – Employment Insurance Section