

**[TRANSLATION]**

**Citation: *C. G. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 184**

**Date: November 5, 2015**

**File: GE-15-1737**

**GENERAL DIVISION - Employment Insurance Section**

**Between:**

**C. G.**

**Appellant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Charline Bourque, Member, General Division – Employment Insurance Section**

**Hearing by teleconference on September 17, 2015**

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

C. G., the claimant, attended the hearing by teleconference.

### **INTRODUCTION**

[1] The Appellant filed an employment insurance claim to start on March 2, 2014. On April 24, 2014, the Canada Employment Insurance Commission (the “Commission”) informed the claimant that she was not entitled to employment insurance benefits starting on March 2, 2014 because her province provides its own parental insurance plan and the claimant was entitled to benefits under that plan. The Commission also pointed out that the claimant had received \$15,197.00 in severance pay and that that amount would be deducted from her benefits of February 23, 2014 to June 14, 2014. On April 27, 2015, in response to her request for reconsideration, the Commission informed the claimant that the decision on the number of weeks of benefits<sup>1</sup> had been changed. The Commission would extend her employment insurance claim by two weeks since the claimant had received funds from her employer for the permanent termination of her employment. Given that the maximum number of employment insurance benefits is 50 weeks for a combination of special (sickness, maternity and parental) and regular benefits, the last week of regular benefits was the week of March 1, 2015. The claimant appealed that decision to the Social Security Tribunal of Canada (the “Tribunal”) on May 25, 2015.

[2] This appeal was heard by the teleconference form of hearing for the following reasons:

- a) The complexity of the issue or issues;
- b) The fact that credibility does not appear to be a determinative issue;
- c) The fact that the Appellant will be the only party in attendance;
- d) The information in the file, including the need for additional information;

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<sup>1</sup> The Commission indicated that the issue identified as the benefit period was incorrect because the claimant is actually contesting the number of weeks of employment insurance benefits to which she is entitled (GD4-1).

- e) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

## **ISSUES**

[3] The issues are as follows:

- a) Is the claimant eligible for regular employment insurance benefits after receiving maternity benefits under the Quebec Parental Insurance Plan (the “QPIP”)?
- b) Did the claimant receive the maximum number of weeks of benefits to which she was entitled?

## **THE LAW**

[4] Section 12 of the *Employment Insurance Act* (the “Act”) reads as follows:

(1) If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

(2) . . . the maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

(3) The maximum number of weeks for which benefits may be paid in a benefit period

(a) because of pregnancy is 15;

(b) because the claimant is caring for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption is 35;

(c) because of a prescribed illness, injury or quarantine is 15;

(d) because the claimant is providing care or support to one or more family members described in subsection 23.1(2) is 26; and

(e) because the claimant is providing care or support to one or more critically ill children described in subsection 23.2(1), is 35.

(4) The maximum number of weeks for which benefits may be paid

(a) for a single pregnancy is 15; and

(b) for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is 35.

(4.01) If a claim is made under this Part in respect of a child or children referred to in paragraph (4)(b) and a claim is made under section 152.05 in respect of the same child or children, the maximum number of weeks of benefits payable under this Act in respect of the child or children is 35.

...

(6) In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of benefits to which the claimant is entitled because of a reason mentioned in subsections (2) and (3), but the total number of weeks of benefits shall not exceed 50<sup>2</sup> . . . .

[5] Section 76.09 of the *Employment Insurance Regulations* (the "Regulations") states:

(1) Subject to subsection (2), every claimant is disentitled to be paid benefits under section 22 or 23 of the Act if they are entitled to receive provincial benefits under a provincial plan.

(2) Subsection (1) does not apply if, at the request of the claimant, it is determined by the Commission that the amount of provincial benefits the claimant is entitled to receive under the provincial plan is not substantially equivalent to or greater than the amount of benefits that they are entitled to receive under section 22 or 23 of the Act.

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<sup>2</sup> The Tribunal notes that the Commission does not cite the correct section of the Act, that cited by the Commission at page GD4-8 having been changed.

(3) Every claimant who has received, or has applied for and is entitled to receive, provincial benefits under a provincial plan in respect of any week is disentitled to be paid benefits in respect of that same week under

(a) Part I of the Act, other than benefits under section 22 or 23 of the Act; or

(b) the *Employment Insurance (Fishing) Regulations*.

(4) For greater certainty, subsections (1) to (3) apply in respect of a claimant who has applied for and is entitled to receive provincial benefits under a provincial plan even if the claimant, after making that application, ceases to reside in the province where that plan was established.

(5) For greater certainty, if two persons are caring for the same child or children and one of them is a claimant referred to in subsection (4),

(a) subsections (1) to (3) apply in respect of the other person if that other person is an insured person; and

(b) subsections 76.36(1) to (3) apply in respect of the other person if that other person is a self-employed person.

[6] Section 76.19 of the Regulations states:

(1) Subject to subsection (2), the provincial benefits paid to a claimant in respect of a week in a benefit period are considered to be benefits paid in respect of a week under the Act if the claimant would have been entitled to the corresponding types of benefits under the Act, and any week in respect of which the claimant receives provincial benefits counts as a week for the purpose of calculating:

(a) the overall maximum number of weeks for which benefits may be paid in a benefit period under paragraphs 12(3)(a) and (b) of the Act taken together; and

(b) the maximum number of weeks for which benefits may be paid under subsection 12(4) of the Act.

(2) Where a provincial plan provides for the optional payment of provincial benefits at an accelerated rate, such that the maximum amount of a particular type of provincial benefit payable under the plan may be paid to the claimant over fewer weeks, and the claimant is paid those benefits at the accelerated rate, the number of weeks of benefits that those weeks of provincial benefits represent under the Act shall be determined by multiplying the number of weeks of the particular type of provincial benefits paid to the claimant by the result obtained by dividing the maximum number of such weeks of benefits payable at the nonaccelerated rate by the maximum number of such weeks of benefits payable at the accelerated rate.

(3) If the determination of the number of weeks under subsection (2) results in a number that contains a fraction of a week, the number shall be rounded to the nearest multiple of one week or, if the amount is equidistant from two multiples of one week, to the higher multiple.

[7] Subsection 40(6) of the Regulations states:

(6) The Commission may waive the waiting period in respect of the benefit period of a claimant if

(a) the claimant qualifies to receive benefits in that benefit period by reason of an interruption of earnings as described in subsection 14(2) or section 14.01; . . .

[8] Subsection 14(2) of the Regulations adds:

(2) An interruption of earnings from an employment occurs in respect of an insured person at the beginning of a week in which a reduction in earnings that is more than 40% of the insured person's normal weekly earnings occurs because the insured person ceases to work in that employment by reason of illness, injury or quarantine, pregnancy, the need to care for a child or children referred to in subsection 23(1) of the Act or the need to provide care or support to a family member referred to in subsection 23.1(2) of the Act or to a critically ill child.

[9] Subsection 23(1) of the Act adds:

(1) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.

## **EVIDENCE**

[10] The evidence in the file indicates that:

- a) On March 10, 2015, the claimant contacted the Commission to obtain information on the denial of her employment insurance benefits when she had been told a year ago that she could receive them after the QPIP (GD3-20).
- b) On April 23, 2015, the Commission contacted the claimant in response to her request for reconsideration. The Commission stated: [Translation] “In your letter for reconsideration you mention that Service Canada had confirmed that you were entitled to all of your employment insurance benefits at the end of your QPIP.” The Commission explained that it was true that she was entitled to all of her employment insurance benefits when the QPIP benefits ended, but that no more than 50 weeks of benefits in total may be received (maternity-QPIP-sickness and regular). In addition, the Commission explained that, on her claim beginning on March 2, 2014, she had received 15 weeks (maternity), 32 weeks (QPIP) and 2 weeks (regular) for a total of 49 weeks. The Commission told her that, given that her claim ended in the week of February 22, 2015, her claim would be extended by two weeks because of the money received at the time of the permanent termination of her employment on February 28, 2014, and she would be paid the 50<sup>th</sup> week, specifically the week of March 1, 2015 in regular benefits (GD3-26).

[11] The evidence adduced at the hearing through the Appellant’s testimony was as follows:

- a) The claimant indicated that she had received QPIP benefits as follows:
  - From March 2, 2014 to July 5, 2014: 18 weeks of maternity benefits

- From July 6, 2014 to August 23, 2014: 7 weeks of parental benefits at 75% of her weekly earnings
  - From August 24, 2014 to February 14, 2015: 25 weeks of parental benefits at 55% of her weekly earnings.
- b) The claimant indicated that, based on her calculations, she had allegedly received 53 weeks of employment insurance benefits.

## **PARTIES' ARGUMENTS**

[12] The Appellant argued that:

- a) She was misinformed by the Commission that had indicated that she could receive regular employment insurance benefits because of her lack of work after her QPIP benefits.
- b) She wanted entitlement to regular employment insurance benefits because she had lost her employment at the same time that she started her maternity leave. She indicated that she would have started looking for work despite being on parental leave if she had known that she could not receive regular employment insurance benefits following her maternity and parental benefits. In addition, she stated that the situation had a major impact on her situation.
- c) The claimant also wondered if she had received the correct number of weeks if employment insurance benefits given that she believes that she received a total of 53 weeks of benefits.

[13] The Respondent argued as follows:

- a) The claimant was able to receive benefits under the Quebec Parental Insurance Plan because she had provided a record of employment that indicated that she had stopped working because of maternity leave on February 28, 2014. Under section 76.09 of the Regulations, the employment insurance claim was established on March 2, 2014, the date that the claimant began receiving QPIP benefits. A person cannot receive benefits

from two plans at the same time. This means that the same record of employment may not be used to establish a QPIP claim and then a new employment insurance claim.

- b) In this case, the Commission commented to the Tribunal that the employer issued two records of employment for the same period of employment. The facts show that the claimant left for maternity leave but was also permanently laid off for lack of work and the Employer paid her the amounts related to her termination.
- c) Under subsection 12(6) of the Act, the total number of weeks of regular and special employment insurance benefits (maternity and parental) may not exceed 50 weeks per claim.
- d) This means that the claimant received QPIP benefits equivalent to the maximum of 15 weeks of maternity employment insurance benefits and 32 weeks of parental employment insurance benefits. The total of her parental and maternity benefits was therefore 47 weeks. Accordingly, the claimant was entitled to only 3 weeks of regular benefits on her claim that started on March 2, 2014 in order to not exceed the 50-week maximum allowed under subsection 12(6) of the Act. Her claim starting March 2, 2014 ended on March 7, 2015, that is, after she had received her 3 weeks of regular benefits for a total of 50 weeks of benefits.
- e) Based on the evidence in the file, the claimant accumulated 1820 insurable hours in total in her reference period. The claimant resides in the Montréal area where the unemployment rate is 8.1%.
- f) In her request for administrative review and in her appeal to the Tribunal, the claimant mentioned that she had been informed that her maternity and parental benefits replaced regular benefits. The Commission wished to inform the Tribunal that, while in Quebec the payment of maternity and parental benefits had been delegated to the provincial government, that payment is still under the employment insurance plan for the rest of Canada, which means that, if the claimant had resided elsewhere in Canada, the situation would be exactly the same because the payment resulting from the combination of special and regular benefits may not exceed 50 weeks. This means that, on

March 2, 2014, she would have started her employment insurance claim for 15 weeks of maternity benefits, then 32 weeks of parental benefits and then ended with 3 weeks of regular benefits for a total of 50 weeks of benefits.

- g) Moreover, the Commission wanted to clarify the fact that the claimant had been told initially that she was not entitled to any benefits but, after the administrative review of her file, she was entitled to three weeks of regular benefits.
- h) Initially, the only record of employment in the file referred to a termination due to a lack of work. The claimant was therefore required to serve a two-week waiting period. She was unable to serve that period at the start of her claim because she was receiving QPIP benefits. She reactivated her claim for employment insurance benefits on February 15, 2015 and it was then that she served her two-week waiting period. Because there was no extension of the benefit period at that time, this waiting period covered the two weeks of the benefit period that should normally have ended on February 28, 2015.
- i) Subsequently, following her March 10, 2015 appeal (GD3-20), the Commission verified the real reason for the separation from employment and the Employer confirmed that, while it was a permanent layoff, it coincided with the time that the claimant left for maternity leave. The Employer then issued a record of employment with this statement (Code F). This meant that the Commission could waive the waiting period thus entitling the claimant to two weeks of regular benefits, for the weeks from February 15, 2015 to February 28, 2015. No extension had been granted up until then.
- j) The claimant filed her request for administrative review. That was when the benefit period was extended in the claimant's case because of the amounts paid by the Employer for being permanently terminated. However, at that time, the claimant had already received 49 of the 50 weeks for which she was eligible, so that only one additional week could be paid to her, namely, the week of March 1 to 7, 2015
- k) In the claimant's case, the Commission is sorry that she may have received incorrect information but argues, unfortunately, that the file is in compliance with the Act and the case law and, accordingly, there was no error by the Commission.

- 1) Despite being sympathetic regarding the claimant's situation, the Commission may not override subsection 12(6) of the Employment Insurance Act which states that the current maximum number of combined weeks of benefits paid to the claimant may not exceed 50.

## **ANALYSIS**

[14] The claimant would like entitlement to regular employment insurance benefits after her maternity and parental leave because she also lost her employment because the office where she worked closed. She argued that she was penalized because her maternity and parental leave was to care for her child and that she finds herself in an exceptional situation having lost her job at the same time as she had her baby and began her maternity and parental leave. In addition, she argued that she was misinformed by the Commission that had confirmed that she could receive regular employment insurance benefits following her maternity and parental leave.

[15] The claimant testified that she had received the following QPIP benefits:

- From March 2, 2014 to July 5, 2014: 18 weeks of maternity benefits
- From July 6, 2014 to August 23, 2014: 7 weeks of parental benefits at 75% of her weekly earnings
- From August 24, 2014 to February 14, 2015: 25 weeks of parental benefits at 55% of her weekly earnings.

[16] Subsection 76.19 of the Regulations states:

(1) Subject to subsection (2), the provincial benefits paid to a claimant in respect of a week in a benefit period are considered to be benefits paid in respect of a week under the Act if the claimant would have been entitled to the corresponding types of benefits under the Act, and any week in respect of which the claimant receives provincial benefits counts as a week for the purpose of calculating:

- (a) the overall maximum number of weeks for which benefits may be paid in a benefit period under paragraphs 12(3)(a) and (b) of the Act taken together; and

(b) the maximum number of weeks for which benefits may be paid under subsection 12(4) of the Act.

[17] Subsection 12(6) of the Act states:

(6) In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of benefits to which the claimant is entitled because of a reason mentioned in subsections (2) and (3), but the total number of weeks of benefits shall not exceed 50.

[18] Subsection 12(3) provides at paragraphs (a) and (b) that the maximum number of weeks for which benefits may be paid during a benefit period is:

(a) because of pregnancy is 15;

(b) because the claimant is caring for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption is 35.

[19] Thus, given that the maximum number of weeks considered for maternity benefits is 15 weeks and for parental benefits is 35 weeks, the Tribunal is satisfied that the claimant received a total of 47 weeks (15 + 35 weeks) of benefits in special maternity and parental benefits. Indeed, the claimant confirmed having received 18 weeks of maternity benefits of a maximum of 15 weeks allowed under the *Employment Insurance Act* and 32 weeks of parental benefits under the QPIP of a maximum of 35 weeks allowed by the *Employment Insurance Act*.

[20] Thus, based on the Act, the claimant was able to receive 3 additional weeks before reaching the maximum 50 weeks allowed, if she met the prescribed conditions.

[21] The claimant reactivated her claim for regular employment insurance benefits on February 15, 2015 since she had received QPIP benefits until February 14, 2015.

## **Waiving the waiting period**

[22] Subsection 40(6) of the Regulations states:

(6) The Commission may waive the waiting period in respect of the benefit period of a claimant if

(a) the claimant qualifies to receive benefits in that benefit period by reason of an interruption of earnings as described in subsection 14(2) or section 14.01.

[23] Subsection 14(2) of the regulations adds:

(2) An interruption of earnings from an employment occurs in respect of an insured person at the beginning of a week in which a reduction in earnings that is more than 40% of the insured person's normal weekly earnings occurs because the insured person ceases to work in that employment by reason of illness, injury or quarantine, pregnancy, the need to care for a child or children referred to in subsection 23(1) of the Act or the need to provide care or support to a family member referred to in subsection 23.1(2) of the Act or to a critically ill child.

[24] Subsection 23(1) of the Act states:

(1) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.

[25] Thus, in accordance with subsection 40(6) of the Regulations, the claimant's waiting period may be waived because she ceased work to care for a child as provided for in subsection 23(1) of the Act.

## **Extension of the benefit period**

[26] The claimant filed a claim for employment insurance benefits on March 25, 2014 as a result of a lack of work that occurred on February 28, 2014. The claimant also started maternity

leave on March 2, 2014 and confirmed that she had received QPIP benefits from March 2, 2014 to February 14, 2015. The claimant reactivated her claim for regular benefits on February 15, 2015.

[27] Subsection 10(10) of the Act states:

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

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

(b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;

(c) in receipt of workers' compensation payments for an illness or injury; or

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

[28] Subsection 10(14) of the Act states:

(14) Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

[29] In keeping with paragraph 10(10)(b) of the Act, the claimant received severance pay of \$11,114.25 from her employer as a result of the termination of her employment. The Tribunal notes that the Commission informed the claimant that that payment was deducted from the benefits of February 23, 2014 to June 14, 2014. Thus, the Tribunal is satisfied that the severance pay entitled the claimant to an equivalent extension of her benefit period.

[30] Accordingly, the claimant was entitled to three weeks of regular employment insurance benefits after her QPIP claim, specifically, from February 15, 2015 to March 7, 2015. That benefit period ended because she had reached the maximum number of weeks that she could receive benefits under subsection 12(6) of the Act.

[31] As stated by the Commission, it is unfortunate that the claimant may have been misinformed by it in terms of her entitlement to benefits after her maternity leave. Despite its sympathy toward the claimant, the Tribunal cannot, nevertheless, override the Act.

### **CONCLUSION**

[32] The Tribunal is satisfied that the claimant received the maximum number of weeks of regular employment insurance benefits to which she was entitled because, under subsection 12(6) of the Act, the claimant could not receive more than 50 weeks of benefits, which she received.

[33] The appeal is dismissed.

*Charline Bourque*  
Member, General Division – Employment Insurance Section