

Citation: *L. M. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 199

Date: November 20, 2015

File number: GE-15-2945

Between: GENERAL DIVISION - Employment Insurance Section

L. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Richard Sterne, Member, General Division - Employment Insurance Section

Heard by Teleconference on November 18, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant, L. M., attended the hearing by telephone.

INTRODUCTION

[1] On June 17, 2015, the Appellant applied for Self-Employment Special employment insurance (EI) benefits.

[2] On July 7, 2015, the Canada Employment Insurance Commission (Respondent) advised the Appellant that her claim for Self-Employment Special EI benefits had been allowed.

[3] On July 15, 2015, the Appellant filed a request for reconsideration of the Respondent's July 7, 2015 decision, which was denied on September 8, 2015.

[4] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility is not anticipated to be a prevailing 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.
- e) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[5] Can the Appellant's 2015 self-employment earnings be included with her 2014 earnings to determine her EI maternity and parental benefit rate, pursuant to the *Employment Insurance Act* (Act)?

THE LAW

[6] **Subsection 152.01 of the Act:**

(1) The following definitions apply in this Part.

“balance-due day” of a self-employed person for a year means

- (a) if the person died after October in the year and before May in the immediately following year, the day that is 6 months after the day of death, and
- (b) in any other case, April 30 in the immediately following year.

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever, and includes an adventure or concern in the nature of trade but does not include an office or employment.

“disentitled” means not entitled under sections 49, 50, 152.03, 152.15 or 152.2 or under the regulations.

“family member”, in relation to an individual, means

- (a) a spouse or common-law partner of the individual;
- (b) a child of the individual or a child of the individual’s spouse or common-law partner;
- (c) a parent of the individual or a spouse or common-law partner of the parent; and
- (d) any other person who is a member of a class of persons prescribed for the purposes of this definition.

“initial claim for benefits” means a claim made for the purpose of establishing a self-employed person’s benefit period.

“qualifying period” means the period described in section 152.08.

“self-employed person” means an individual who

- (a) is or was engaged in a business; or
- (b) is employed but does not have insurable employment by reason of paragraph 5(2)(b).

However, individuals to whom regulations made under Part VIII apply, and individuals whose employment is included in insurable employment by a regulation made under paragraph 5(4)(c), are not included in this definition.

“waiting period” means the two weeks of the benefit period described in section 152.15.

(2) For the purpose of this Part, the amount of the self-employed earnings of a self-employed person for a year is,

- (a) in the case of a self-employed person who is an individual referred to in paragraph (a) of the definition “self-employed person” in subsection (1), the amount that is the aggregate of

- (i) an amount equal to

- (A) their income for the year, computed under the Income Tax Act, from their businesses, other than a business more than fifty per cent of the gross revenue of which consisted of rent from land or buildings,

- minus

- (B) all losses, computed under the Income Tax Act, sustained by the self-employed person in the year in carrying on the businesses they are engaged in, and

- (ii) their income for the year from employment described in paragraph 5(6)(c) that has been excluded from insurable employment by a regulation made under subsection 5(6), as that income is computed under the Income Tax Act;

(b) in the case of a self-employed person who is an individual referred to in paragraph (b) of the definition “self-employed person” in subsection (1), the amount that would have been the person’s insurable earnings for the year had the person’s employment not been excluded from insurable employment; and

(c) in the case of a self-employed person who is an individual referred to in both paragraphs (a) and (b), the amount that is the aggregate of the amounts referred to in both those paragraphs.

[7] **Subsection 152.08 of the Act:**

(1) The qualifying period of a self-employed person is the year immediately before the year during which their benefit period begins.

(2) A self-employed person’s self-employed earnings during a qualifying period may not be taken into account in respect of more than one initial claim for benefits.

[8] **Subsection 152.13 of the Act:**

If a benefit period has been established for a self-employed person, benefits may be paid to the person for each week of unemployment that falls in the benefit period, subject to the maximums established by section 152.14.

[9] **Subsection 152.14(1) of the Act:**

(1) The maximum number of weeks for which benefits under this Part may be paid in a benefit period to a self-employed person

(a) because of pregnancy is 15;

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

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

(d) because the person is providing care or support to one or more family members described in subsection 152.06(1), is 6; and

(e) because the self-employed person is providing care or support to one or more critically ill children described in subsection 152.061(1), is 35.

[10] **Subsection 152.16(1) of the Act:**

(1) The rate of weekly benefits payable to a self-employed person is 55% of the result obtained by dividing the aggregate of the amounts referred to in paragraphs (a) and (b) by 52:

(a) the amount of their self-employed earnings, determined under paragraph 152.01(2)(a), (b) or (c), as the case may be, for their qualifying period; and

(b) if they had insurable earnings from employment, including insurable earnings earned as a person to whom regulations made under Part VIII apply, for their qualifying period, the amount of those insurable earnings for that period, calculated without taking into account prescribed insurable earnings.

EVIDENCE

[11] On June 17, 2015, the Appellant applied for Self-Employment Special EI benefits.

[12] On July 7, 2015, the Respondent advised the Appellant that her claim for Self-Employment Special EI benefits had been allowed.

[13] On July 15, 2015, the Appellant filed a request for reconsideration of the Respondent's July 7, 2015 decision.

[14] On September 1, 2015, the Appellant told the Respondent that she was disputing her current benefit rate of \$212.00 per week. The Appellant stated that when she applied for Self-Employment Special EI benefits, she had reported her 2014 income as only \$20,000. However, she said that income was only for a two month period, from November to December, 2014. The Appellant requested that her 2015 income from January 1, 2015 to June 10, 2015 (\$49,840) be

included on top of the \$20,000 that she had reported in her application for benefits, in her EI benefit rate calculation.

[15] On September 8, 2015, the Respondent advised the Appellant that they had not changed their July 7, 2015 decision.

SUBMISSIONS

[16] The Appellant submitted that:

- a. her situation should be compared to any regularly employed individual.
- b. her 2015 earnings should be taken into account when calculating her claim for EI maternity benefits.

[17] The Respondent submitted that:

- a. the Appellant provided on her application for benefits that her net self-employment income as a real estate agent for the previous taxation year 2014, was \$20,000 (estimate).
- b. the benefit rate for a self-employed individual is determined by dividing the aggregate earnings from the prior tax year by 52. The weekly result is then multiplied by %55. i.e. $\$20,000 / 52 \times \%55 = \212 per week.
- c. following the Appellant's request for reconsideration, they reviewed the benefit rate calculation, but made no changes to the decision, as the Appellant had provided no new information to alter the 2014 income tax information.

ANALYSIS

[18] Subsection 152.08 of the Act states that the qualifying period of a self-employed person is the year immediately before the year during which their benefit period begins.

[19] During the hearing, the Appellant stated she was self-employed as a real estate agent. She said that she had given birth to her first child in November 9, 2013. She filed for her self-

employed EI maternity benefits, which ran to mid-November 2014. She said that she was pregnant in mid-September 2014 and returned to work. She stated that she had only earned \$20,000 for the balance of 2014. The Appellant stated that she had given birth to her second child in June 2015 and again filed a claim for EI maternity benefits which was allowed based on her \$20,000 earnings the year before. She said that she had earned \$49,840 from January 1, 2015 to June 10, 2015 that she would like included on top of the reported 20,000 in her EI benefit rate calculation. The Appellant stated that it was unfair that her qualifying period was not the twelve months immediately preceding the birth of her child.

[20] The Tribunal finds that the Appellant was a self-employed person as a real estate agent.

[21] The Tribunal finds that the Appellant's qualifying period as a self-employed person, was the calendar year 2014, which was the year immediately before the year during which her benefit period began, pursuant to subsection 152.08 of the Act.

[22] The Federal Court of Appeal re-affirmed the principle that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

Canada (AG) v. Knee, 2011 FCA 301

[23] The Tribunal finds that the Appellant's \$49,840 earnings from January 1, 2015 to June 10, 2015 are outside the Appellant's qualifying period as a self-employment person, and therefore cannot be included in the calculation of her benefit rate, pursuant to subsection 152.16(1) of the Act.

CONCLUSION

[24] The appeal is dismissed.

Richard Sterne
Member, General Division - Employment Insurance Section