

**Citation: *K. C. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 220**

**Date: December 18, 2015**

**File number: GE-15-2948**

**GENERAL DIVISION – Employment Insurance Section**

**Between:**

**K. C.**

**Appellant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Michael Sheffe, Member, General Division - Employment Insurance Section**

**Heard In person on December 15, 2015, at Toronto, Ontario.**

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Appellant attended the hearing. D. S., the Appellant's accountant, also attended the hearing.

### **INTRODUCTION**

[1] The Appellant filed an initial claim for employment insurance benefits (benefits) on June 9, 2015 (Exhibit GD3-18). The Appellant was sent a decision from the Canada Employment Insurance Commission (Commission), dated June 10, 2015, denying her benefits because it was determined by the Commission that the Appellant had not entered into an agreement with the Commission regarding an Employment Insurance Program for the Self-Employed for at least one year prior to filing her application for benefits (Exhibit GD3-19). The Appellant requested a reconsideration of this decision on July 9, 2015 (Exhibits GD3-20). The Appellant was sent a reconsideration decision, dated August 10, 2015, which upheld the original decision denying her benefits (Exhibit GD2-6)). The Appellant appealed this decision to the Social Security Tribunal (Tribunal) on September 18 2015 (Exhibits GD2-2 to GD2-5).

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

- a) The complexity of the issue under appeal.
- b) The information in the file, including the need for additional information.
- c) The fact that the appellant or other parties are represented.
- d) 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**

[3] Whether the decision not to establish an employment insurance benefit period under Section 152.07 of Part VII.I of the *Employment Insurance Act (Act)*, should be upheld.

## **THE LAW**

[4] Subsection 152.07 (1) of the *Act* states, “A self-employed person qualifies for benefits if

(a) at least 12 months have expired since the day on which the person entered into an agreement referred to in subsection 152.02(1) with the Commission, or if a period has been prescribed for the purpose of this section, a period that is at least as long as that prescribed period has expired since that day;

(b) the agreement has not been terminated or deemed to have been terminated;”

## **EVIDENCE**

[5] The Appellant’s representative wrote on her appeal to the Tribunal form that in both 2013 and 2014, the Appellant filed her income tax returns electing to pay her EI premiums as indicated on Schedule 13 of the returns. Her attempts to pay the premiums were not accepted and no reason was provided. When she called the Canada Revenue Agency (CRA) and Service Canada, no one there could provide her with the procedures to take to become eligible to receive benefits. She has paid EI premiums for 15 years from 1989 to 2005. Since then, she has been a self-employed real estate agent. When she had a baby on May 17, 2015 she believes that she should have been entitled to benefits. The decision she received was to not allow her benefits, but the decision did not provide reasons for the decision (Exhibit GD2-4).

[6] The Appellant submitted copies of her income tax returns indicating that she paid EI premiums (Exhibit GD3-10 to GD3-22)

[7] The Appellant wrote a letter to the Commission dated August 31, 2015, indicating that she gave birth on May 17, 2015. She believed that she was contributing premiums to EI. Previously, she and her accountant contacted Service Canada to ensure they were following the correct procedures so she would be eligible for maternity benefits. Service Canada personnel did not tell them to open an account. There would not have been a reason for her to omit opening an account as she was undergoing fertility treatments because this was a planned pregnancy. She believes that Service Canada did not provide appropriate information to her or her accountant regarding this matter.

[8] When the Appellant spoke with Service Canada staff, they were not able to provide her with a procedure of what she should do to ensure that she would be eligible to receive benefits.

[9] During the hearing, the Appellant submitted a copy of Service Canada's responsibilities, when a claimant requests EI benefits. One of these responsibilities is, to "give you accurate information about your claim, including how you may share parental benefits with your EI-eligible spouse or common-law partner, compassionate care benefits with other EI-eligible family members and benefits for parents of critically ill children with the other EI eligible parent; and whether or not you will be required to serve a two-week waiting period;" (Exhibit GD3-14).

[10] The Appellant pointed out that Service Canada agents did not provide her with accurate information. The representatives, with whom she spoke, were not able to assist her with the appropriate forms or procedures to follow so that she would have been properly enrolled in this program. They did not provide her with any information about the procedures to follow regarding this program for self-employed people. She is very upset about this.

[11] The Appellant received a letter dated June 10, 2015 which advised that Service Canada cannot pay her Employment Insurance Benefits for the Self-Employed because she must have entered into an agreement with the Commission for this Employment Insurance Program for the Self-Employed at least one year prior to filing her application for benefits. The letter continued by advising the Appellant that she filed her application for benefits on June 9, 2015. She was advised that she had not entered into an agreement with the Commission (Exhibit GD3-19).

[12] The Appellant spoke with a Commission agent on August 10, 2015. She told the agent that hers was a planned pregnancy. She had spent thousands of dollars in order to become pregnant and she tried to make sure that everything was in order. She had contributed over \$900.00 via her income tax return as employment insurance premiums for each of the previous two years. The Agent told her that she did not voluntarily enter into an agreement with the Commission for at least one year prior to the birth. The Appellant advised that she had no documentation indicating that she had entered into such an agreement (Exhibit GD3-24).

[13] The Appellant submitted copies of the information for Special Benefits for Self – Employed People page of the website (Exhibits GD5-1 and GD5-2). She also submitted a copy of an article critiquing this program. The article was written by a journalist, J. P., in April 2013 (Exhibits GD5-3 to GD5-6).

## **SUBMISSIONS**

[14] The Appellant submitted that she asked for advice from Service Canada representatives. They did not provide her with accurate or detailed information about her issue.

[15] The Appellant submitted that she called Service Canada and the CRA, but neither was able to tell her what steps she needed to take to become eligible for these benefits.

[16] The Appellant submitted that she has paid EI premiums and should be eligible to receive the benefits.

[17] The Respondent submitted that because there is no record that the Appellant entered into an agreement with the Commission for at least twelve months prior, she is not eligible to receive these benefits.

## **ANALYSIS**

[18] In *Wegener v. Canada (Attorney General)*, 2011 FC 137, the Federal Court upheld the principle that the Tribunal is not empowered to waive a statutory requirement regarding the eligibility to receive benefits. Among other requirements, the entering into an agreement, with the Commission, is a statutory precondition to being eligible to make a claim for benefits.

[19] The Federal Court of Appeal in *Canada (Attorney General) v. Knee*, 2011 FCA 301, upheld the principle that however tempting as it may be, adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[20] The Federal Court of Appeal in *Canada (Attorney General) v. Shaw*, 2002 FCA 325, upheld the principle that misinformation by the Commission is no basis for relief from the operation of the *Act*.

[21] The Federal Court of Appeal in *Robinson v. Canada (Attorney General)*, 2013 FCA 255, upheld the principle that the law must be followed even if there were errors made on the part of the Commission.

[22] The Act requires that the Appellant had to have entered into an agreement with the Commission at least one year prior to applying for benefits. The Appellant did not fulfil this requirement.

[23] The Appellant spoke with Service Canada representatives regarding her planned pregnancy to ensure she was provided with all of the information necessary so she could make her plans to become pregnant and subsequently be eligible to receive benefits.

[24] The Appellant did not receive accurate information from Commission representatives. They either did not know the answers to her questions or they provided inaccurate information. The Appellant acted on the information which they did provide to her. However, the information they provided was lacking in some important details and procedures for her to follow so that she would have been eligible to receive benefits.

[25] Even though the Appellant made contributions through her income tax returns to pay the employment insurance premiums, she did not have a valid agreement in place with the Commission for at least one year prior to applying for benefits, so benefits could not be paid to her. The Appellant contends that no one ever told her about this.

[26] The Tribunal finds that although the Appellant acted in good faith and on the inaccurate advice of Commission representatives, the *Act* must be applied as it is written. The Tribunal cannot interpret the *Act* in such a way as contrary to its plain meaning.

[27] The Tribunal finds that the Appellant, not having an agreement with the Commission in place for one year prior to applying for maternity/parental benefits, is not eligible to receive them.

[28] The Tribunal finds that the article submitted by the Appellant's representative, while interesting, is just the opinion of that journalist. It has no effect on the current status of the law or how the *Act* must be interpreted. Adjudicators are permitted neither to re-write legislation nor

to interpret it in a manner that is contrary to its plain meaning according to the decision by the Court in *Knee*.

[29] Although sympathetic to the Appellant's circumstances, the Tribunal cannot alter the requirements or provisions of the *Act*

[30] The Tribunal finds that the Appellant did not meet the requirements of the *Act* to establish a claim for benefits.

## **CONCLUSION**

[31] The appeal is dismissed.

Michael Sheffe  
Member, General Division - Employment Insurance Section