



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. P. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 40

Tribunal File Number: GE-15-3489

BETWEEN:

V. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

DATE OF HEARING: February 4, 2016

DATE OF DECISION: March 11, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

Ms. V. P., the claimant, was present at the hearing by teleconference.

INTRODUCTION

[1] The Appellant made a claim for employment insurance benefits starting on August 10, 2014. On August 28, 2015, the Canada Employment Insurance Commission (the “Commission”) notified the claimant that it could not pay her sickness benefits because no week of sickness benefits had been paid to her during the initial benefit period (GD3-20). On September 28, 2015, following her request for reconsideration, the Commission informed the claimant that the decision on the length of the benefit period was being upheld. The claimant appealed that decision to the Social Security Tribunal of Canada (the “Tribunal”) on October 29, 2015.

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

- a) The complexity of the issue or issues;
- b) The information in the file, including the need for additional information.
- c) 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.

ISSUE

[3] Can the claimant receive employment insurance sickness benefits for the period from August 8, 2015 to September 3, 2015?

THE LAW

[4] Subsection 10(2) of the *Employment Insurance Act* (the “Act”) states:

Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

[5] Subsection 10(13) of the Act states:

If, during a claimant’s benefit period, (a) regular benefits were not paid to the claimant, (b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and (c) the maximum total number of weeks established for those reasons is greater than 50, the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

[6] Subsection 12(3) of the Act states:

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.

[7] Subsection 12(5) of the Act states:

In a claimant's benefit period, the claimant may combine weeks of benefits to which they are entitled because of a reason mentioned in subsection (3), but the maximum number of combined weeks is 50. If the benefit period is extended under subsection 10(13), the maximum number of combined weeks equals the maximum number of weeks in the benefit period calculated under subsection 10(15) less two weeks.

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

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.

EVIDENCE

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

- a) The claimant's claim for employment insurance maternity benefits (GD3-3 to GD3-13).
- b) The record of employment showing the last day of work as June 20, 2014 due to a shortage of work.
- c) The medical certificate indicates that the claimant was absent from work from August 8, 2015 to September 3, 2015 for medical reasons (GD3-17).
- d) On August 7, 2015, the claimant requested that her claim for maternity/parental benefits be converted to sickness benefits. The Commission indicated that the claimant was not entitled to sickness benefits because no week of sickness benefits had been paid during the initial benefit period (GD3-20).

[10] The evidence adduced at the hearing through the Appellant's testimony is as follows:

- a) The claimant indicated that in May 2014, she went to the Dalhousie Service Canada Centre to get information on her maternity leave. She was told that she could continue her benefit claim, which ended on August 8, 2014. She was then told that her claim for maternity benefits would end on August 8, 2015. She indicated that she had asked whether, if she was sick afterwards, she would be entitled to sickness benefits and the answer she received was "yes".
- b) She stated that her doctor required her to stop work from August 8 to September 3, 2015. She then notified Employment Insurance that she wanted unemployment sickness benefits.
- c) She stated that she had followed the instructions from Service Canada and that she should have been entitled to four weeks of sickness benefits as Service Canada had told her.
- d) She confirmed that she had been absent for reasons of illness in April 2014, but had not received employment insurance benefits because she was paid by her employer.

PARTIES' ARGUMENTS

[11] The Appellant argued as follows:

- a) The claimant indicated that her claim for benefits had been refused even though she had a note from her doctor stating that she had to be absent from work because of illness.
- b) She stated that she had had confirmation from Ms. L., Dalhousie Service Canada Centre, that she could receive sickness benefits after her maternity and parental benefits.
- c) The claimant is seeking employment insurance sickness benefits from August 9 to September 3, 2015.

[12] The Respondent argued as follows:

- a) It is the position of the Commission that the claimant is not entitled to sickness benefits after 50 weeks of maternity and parental benefits because:
 - The initial benefit period was exhausted;
 - Under the section of the Act, the claimant does not meet the conditions required to be entitled to sickness benefits in conjunction with maternity and parental benefits.
- b) The Commission clarified that a type of special benefits that was not paid during the initial benefit period of 52 weeks cannot be paid beyond that period in the case where the benefit period is extended for one of the other reasons given in the section of the Act.
- c) In this case, the claimant did not receive sickness benefits during the initial 52-week benefit period. Thus, it was not possible to extend the benefit period to pay her sickness benefits.
- d) Furthermore, the Commission argued that, in her motion to appeal, the claimant had provided incorrect information regarding her claim and that the evidence she had put forward is not in the file:
 - The claimant indicated that she had a doctor's note advising her to stop work before she began receiving her maternity and parental benefits. The Commission confirmed that the information in the claimant's file indicates that she had applied for maternity and parental benefits and that there was no medical note in the file before she started her benefits. Moreover, she did not submit a medical note at the end of her parental benefits.
 - The claimant stated that she received 15 weeks of maternity and parental benefits. The Commission confirmed that the claimant received 50 weeks of special benefits, consisting of 15 weeks of maternity benefits and 35 weeks of parental benefits.

- The claimant referred to Appendix A. The Commission cannot find the Appendix A in question among the appeal documents.
 - The claimant stated that the General Division based its decision on an incorrect finding of fact, made in a perverse or capricious manner or without regard for the material before it. The Commission pointed out that the General Division had not yet rendered its decision on the issue since the appeal had not yet been heard.
- e) The Commission cited CUB 75177 which is identical to the current case. In that situation, the Umpire set aside the decision of the board of referees that had allowed the claimant's appeal.

ANALYSIS

[13] The claimant's claim for maternity and parental benefits began on August 10, 2014. At the end of her parental benefits, on August 8, 2015, the claimant was placed on a work stoppage for medical reasons from August 8, 2015 to September 3, 2015. The claimant made a claim for employment insurance sickness benefits for that period.

[14] The Commission indicated that the claimant was not entitled to sickness benefits after 50 weeks of maternity and parental benefits because:

- The initial benefit period was exhausted;
- Under the section of the Act, the claimant did not meet the conditions required to be entitled to sickness benefits in conjunction with maternity and parental benefits.

[15] The Tribunal notes that the issue is not the length of the benefit period (GD3-25), but rather the possibility of extending the claimant's benefit period.

[16] Subsection 10(2) of the Act states:

Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

[17] Thus, since the claimant's claim for benefits began on August 10, 2014, the maximum length of her 52-week benefit period was until August 9, 2015.

[18] The progression of the claim shows that the claimant served her two-week waiting period from August 10 to 23, 2014 and that she received 15 weeks of maternity benefits from August 24 to December 6, 2014 followed by 35 weeks of parental benefits from December 7, 2014 to August 8, 2015 (GD4-1).

[19] Accordingly, the Tribunal finds that the claimant received benefits for the entire length of her claim for employment insurance benefits.

[20] Subsection 10(13) of the Act provides for certain circumstances in which an extension of the benefit period can be granted:

If, during a claimant's benefit period, (a) regular benefits were not paid to the claimant, (b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and (c) the maximum total number of weeks established for those reasons is greater than 50, the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

[21] Paragraphs 12(3)(a) and (b) of the Act state:

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.

[22] Thus, based on the evidence and the arguments presented by the parties, the Tribunal is satisfied that the claimant received the maximum number of weeks for pregnancy, that being 15 weeks. The Tribunal is also satisfied that the claimant received the maximum number of weeks

of benefits for the care of one or more new-born children of the claimant, that being 35 weeks. Accordingly, under subsection 10(13) of the Act, no extension of the benefit period is possible.

[23] Taking into consideration the evidence and the arguments of the parties, the Tribunal is of the view that the claimant may not receive employment insurance sickness benefits for the period from August 8, 2015 to September 3, 2015 because no extension of the benefit period may be granted.

[24] The Tribunal has taken into consideration the difficulties that this situation may have created for the claimant, particularly since she indicated that she had asked the Commission about this situation even before the start of her employment insurance claim. Nevertheless, the Tribunal cannot contravene the Act.

CONCLUSION

[25] It is the Tribunal's view that the claimant may not receive unemployment insurance sickness benefits for the period from August 8, 2015 to September 3, 2015.

[26] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section