



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. K. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 45

Tribunal File Number: GE-14-4475

BETWEEN:

E. K.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: March 8, 2016

DATE OF DECISION: March 25, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Ms. E. K. and her husband, Mr. H. K., attended the teleconference hearing. The Claimant provided verbal authorization for her husband to represent her during the hearing.

INTRODUCTION

[1] The Claimant established a claim and was in receipt of 8 weeks of employment sickness benefits effective September 29, 2013. The Claimant was out of the country from December 9, 2013 until May 5, 2014. Upon her return, she was paid the remaining 7 weeks of sickness benefits until June 21, 2014. The Claimant was subsequently paid 8 weeks of maternity benefits from August 3, 2014 until September 27, 2014 because that's when her benefit period ended.

[2] On August 13, 2014, the Commission advised the Claimant that further maternity and parental benefits could not be paid because she had reached her last renewable week (September 27, 2014) and that there was no cause for extending her benefit period.

[3] On September 5, 2014, the Claimant requested that the Commission reconsider its decision however; on October 10, 2014, the Commission maintained its decision.

[4] On November 14, 2014, the Claimant appealed to the General Division of the Social Security Tribunal of Canada (Tribunal).

[5] In her notice of appeal, she raised constitutional issues with respect to the provisions of the *Employment Insurance Act* (EI Act). A prehearing conference was held on July 16, 2015 and the Claimant was advised of the process for constitutional appeals and was provided with the opportunity to make submissions by November 5, 2015. On November 19, 2015, having not received any submissions from the Claimant, the Tribunal advised her that her appeal would proceed as a regular appeal (GD8, GD9 and GD10).

[6] At the outset of this hearing, the Claimant confirmed that she would not be pursuing the constitutional issues that she had raised because the process would be too cumbersome and legal representation was too expensive.

[7] The hearing was held by teleconference because (a) the appellant was going to be the only party in attendance and (b) 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

[8] The Member must decide whether the benefit period can be extended pursuant to subsection 10(13) of the EI Act.

[9] The Member must decide whether the correct number of weeks of benefits was paid during the Claimant's benefit period pursuant to subsection 10(2) and 12(3) of the EI Act.

THE LAW

[10] Subsection 10(2) stipulates that except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

Extension of benefit period for special benefits

[11] Subsection 10(13) stipulates that 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.

[12] Subsection 10(15) of the EI Act stipulates that unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a

benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).

Maximum special benefits

[13] Subsection 12(1) of the EI Act stipulates that 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.

[14] Subsection 12(2) of the EI Act stipulates that 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 referencing the regional rate of unemployment applicable to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

[15] Subsection 12(3) of the EI Act stipulates that 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.

EVIDENCE

[16] The Claimant applied for employment insurance sickness benefits on October 10, 2013 after taking leave for illness/injury on September 27, 2009. Having met the minimum qualifying conditions, the Commission established a benefit period effective September 27, 2013 (GD3-3 to GD3-14).

[17] The Claimant was out of the country from December 9, 2013 until May 5, 2014. The Commission imposed a disentitlement for sickness benefits for this period. On May 13, 2014, upon her return, the Claimant applied for, and was paid the remaining 7 weeks of (the 15 weeks maximum) sickness benefits until June 21, 2014 (GD3-15 to GD3-30).

[18] The Claimant also reported that she was pregnant. She completed the Maternity and/or Parental Benefits Annex 3 indicating that her expected delivery date was October 2, 2014 and that she wished to apply for maternity benefits and 35 weeks of parental benefits (GD3-18 and GD3-31).

[19] On August 13, 2014, the Commission advised the Claimant that she is entitled to maternity benefits as early as 8 weeks prior to her expected delivery date, which for the Claimant was August 3, 2013. She was further advised that her maternity benefits are payable only up to the end of her claim on September 27, 2013. The Claimant was paid 8 weeks of maternity benefits from August 3, 2014 to September 27, 2014 (GD3-33 to GD3-35).

[20] On September 5, 2014, the Claimant requested that the Commission reconsider its decision noting that she had been advised by a Commission agent that she would receive her full 15 weeks of maternity benefits and 35 weeks of parental benefits. She requested that her claim be extended so that she can receive her full maternity and parental benefits (GD3-36 to GD3-38).

[21] On October 10, 2014, the Commission maintained its decision and advised the Claimant that further maternity and parental benefits could not be paid because she had reached her last renewable week (September 27, 2014) and that she did not meet the requirements for an extension of her benefit period (GD3-39 to GD3-43).

[22] At the hearing, the Claimant confirmed that her actual date of confinement was October 4, 2014. The Claimant stated that she was told by a Commission agent that if she completed Annex 3, she would be entitled to her full maternity benefits. She was also told that if her baby was born prior to September 27, 2014, she would also be entitled to parental benefits and that exceptions/extension can be made. The Member was referred to section 10(13) of the EI Act and her submission that she qualifies for such an extension as per GD2A-4, paragraph 7 already submitted to the Tribunal. The Claimant stated that she made personal decisions based on the information she was provided and that as a result, she has experienced financial hardship.

[23] The Claimant's representative stated that the Commission, acting on behalf of the Government, made a commitment, and it should be honoured. He further stated that although he understands the letter of the law, the intention of the law was to assist women on maternity leave and that the appeal should be allowed on humanitarian grounds.

SUBMISSIONS

[24] The Claimant submitted that she is eligible to collect the maximum 15 weeks maternity benefits and subsequent 35 weeks of parental benefits pursuant to subsection 12(3) of the EI Act. She also submitted that she meets all the requirements for an extension to her benefit period pursuant to subsection 10(13) of the EI Act so that she can collect the maximum entitlement of the said benefits (GD2 and GD2A).

[25] The Commission submitted that the Claimant did not meet the criteria for an extension of the benefit period pursuant to subsection 10(13) of the EI Act. The Claimant was paid was paid 15 weeks of sickness benefits and 8 weeks of maternity benefits for a total of 23 weeks of paid special benefits, which is well under the 50 weeks required under paragraph 10(13)(c) of the EI Act. The Claimant was correctly paid 8 weeks of maternity benefits from the start of the maternity window of August 3, 2014 until her benefit period ended on September 27, 2014.

ANALYSIS

[26] According to subsection 12(3) of the EI Act, the maximum number of weeks for which benefits may be paid in a benefit period because of a prescribed illness, injury or quarantine is also 15.

[27] In this case, the Claimant was initially paid 8 weeks employment insurance sickness benefits from September 27, 2013 until December 8, 2013. Upon her return to Canada, she was paid another 7 weeks of sickness benefits from May 4, 2014 to June 21, 2014. The Claimant was paid the maximum 15 weeks of sickness benefits pursuant to paragraph 12(3)(c) of the EI Act. The Claimant does not dispute her entitlement for employment insurance sickness benefits.

[28] The Claimant however, argues that she was told by a Commission agent that she would be entitled to the maximum 15 weeks of maternity benefits followed by 35 weeks of parental benefits pursuant to paragraphs 12(3)(a) and 12(3)(b) respectively. Instead, she was paid only 8

weeks of employment insurance maternity benefits from August 3, 2014 until September 27, 2014 because her benefit period ended on that date.

[29] The Member agrees with the Commission that according to subsection 10(2) of the EI Act, except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks. In this case, the Commission correctly determined that the Claimant's benefit period is from September 28, 2013 to September 27, 2014. It therefore paid the Claimant 8 weeks of maternity benefits from the start of her maternity window on August 3, 2014 until the benefit period ended on September 27, 2014.

[30] The Commission also considered whether the Claimant met the exception under subsection 10(13) of the EI Act in order to extend the benefit period beyond the 52-week maximum so that the Claimant can receive the maximum total number of special benefits. In order to qualify for the extension, the Claimant must meet all 3 conditions of subsection 10(13) of the EI Act. In this case, the Claimant was not paid regular benefits during her benefit period and therefore, met the requirement of paragraph 10(13)(a). Further, since she was paid both sickness and maternity benefits and was paid fewer than the applicable maximum number of weeks established for maternity benefits (she was paid 8 weeks of the established maximum of 15 weeks), she met the requirement of paragraph 10(13)(b). The Claimant however did not meet the requirement of paragraph 10(13)(c) because the maximum total number of weeks established for those reasons is not greater than 50. In other words, the maximum total number of weeks established for sickness and maternity benefits is 30 (15 weeks and 15 weeks respectively), which is not greater than 50 weeks. The Member notes that the Claimant, in her submissions, argued that she met this latter requirement because she added the maximum number of weeks established for sickness, maternity and parental benefits. The Claimant however, was not paid parental benefits during her benefit period so they cannot be considered under paragraphs 10(13)(b) and 10(13)(c) of the EI Act.

[31] The Member finds therefore, that although the Claimant may have been entitled to more weeks of maternity and parental benefits, she was correctly paid 8 weeks of maternity benefits from August 3, 2014 until the end of her benefit period on September 27, 2014 pursuant to subsection 10(2) of the EI Act. The Member also finds that the Claimant is not entitled to an extension of her benefit period pursuant to subsection 10(13) of the EI Act.

[32] The Member's findings are supported by similar cases where the Claimant cannot be paid the maximum number of weeks to which she was entitled because her benefit period ended (CUBs 80436, 80415, 77815).

[33] The Member acknowledges the Claimant's sentiment that she is being 'punished' for becoming sick and collecting sickness benefits just prior to becoming pregnant. The Member also understands that she may have been misinformed by a Commission agent as to her entitlement to maternity and parental benefits which resulted in financial hardship. The Member however, must apply the legislation as it is written, no matter how sympathetic and unfortunate the circumstances.

[34] The Member also noted the representative's submission that the 'spirit of the law' was to assist women during a maternity period and that under such circumstances, benefits should be allowed on humanitarian grounds. The Member agrees that the words of the EI Act should be read in their simple, grammatical and ordinary sense that is consistent with both the intent of the EI Act and that of Parliament. The Federal Court of Appeal has reaffirmed this principle stating that adjudicators are not permitted to re-write the legislation or interpret it a manner that is contrary to its plain meaning (Knee A-227-11). In this case, the legislation was interpreted and applied as it is written and intended. Subsection 10(13) of the EI Act was enacted with the intention of providing an extension to a benefit period so that the Claimant may be paid the maximum total number of weeks of special benefits however, only if the 3 criteria set out in that section are met. If not, the benefit period cannot be extended.

[35] The Member's findings are supported by case law that clearly states that the EI Act does not confer upon the Tribunal the power to depart from its provisions, for any reason, no matter how compelling the circumstances (Granger A-684-85).

CONCLUSION

[36] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section