



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. B. v Canada Employment Insurance Commission*, 2017 SSTGDEI 198

Tribunal File Number: GE-16-3298

BETWEEN:

A. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

DATE OF DECISION: February 13, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for employment insurance regular benefits on August 9, 2014. The Canada Employment Insurance Commission (Commission) established a benefit period on August 3, 2014. Due to an allocation of separation payments, benefits were not payable for several months. The Appellant made a renewal application and the Commission renewed his claim on August 2, 2015. On July 25, 2016, the Appellant requested a reconsideration of the calculation of the number of weeks of entitlement, pursuant to subsections 12(2.1) to 12(2.6) of the *Employment Insurance Act* (Act). The Commission determined that, because his benefit period was established on August 3, 2014, he did not meet the criteria to benefit from subsections 12(2.1) to 12(2.6) and notified him by letter dated August 9, 2016. The Appellant appealed to the Tribunal on August 29, 2016.

[2] The Tribunal notified the Appellant of its intention to summarily dismiss his appeal in a letter dated December 5, 2016 and requested that he make further submissions on the summary dismissal issue. The Appellant provided further submissions on December 20, 2016 and January 11, 2017.

ISSUE

[3] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[5] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[6] Subsections 12(2.1) to 12(2.6) of the Act temporarily increase the maximum number of weeks of regular benefits that may be paid to eligible claimants ordinarily resident in specific economic regions. These sections of the act also set out certain criteria for claimants to benefit from these amendments.

[7] Subsection 12(2.3) states:

(2.3) Subject to subsection (2.7), the number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 25 weeks if the following conditions are met:

(a) the claimant is a long-tenured worker;

(b) the claimant's benefit period began during the period beginning on January 4, 2015 and ending on October 29, 2016;

(c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and

(d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

[8] Subsection 12(2.5) states:

(2.5) The number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 17 weeks if the following conditions are met:

(a) the claimant is a long-tenured worker;

(b) the claimant's benefit period began during the period beginning on October 30, 2016 and ending on February 25, 2017;

(c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and

(d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

[9] Subsection 12(2.6) states:

(2.6) The number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 10 weeks if the following conditions are met:

(a) the claimant is a long-tenured worker;

(b) the claimant's benefit period began during the period beginning on February 26, 2017 and ending on July 8, 2017;

(c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and

(d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

EVIDENCE

[10] The Appellant applied for employment insurance regular benefits on August 9, 2014 (GD3-3 to GD3-12). On the Record of Employment (ROE), his employer stated that his last day of work was July 31, 2014 and that he received separation payments (GD3-13).

[11] The Commission established a benefit period on August 3, 2014. However, the Commission determined that the separation payments were earnings and that they would be

allocated from August 3, 2014 to August 1, 2015. The Commission notified the Appellant of this decision by letter dated October 17, 2014 and in the letter, suggested that the Appellant may wish to stop completing his bi-weekly reports and apply to renew his claim in the week of July 26, 2015 (GD3-15 to GD3-16).

[12] The Appellant submitted an application to renew his claim on August 3, 2015 (GD3-17 to GD3-27) and the Commission renewed his claim on August 2, 2015.

[13] The Appellant contacted the Commission on July 4, 2016 to inquire about the effect of recent legislation providing additional weeks of benefits to specific claimants and the possibility of receiving additional weeks of benefits. The Commission advised him that, while he lived in one of the affected economic regions, his benefit period had not been established within the period set out by the legislation (GD3-28). The Appellant noted that he had not become payable until after the legislation came into effect (GD3-29).

[14] The Appellant requested a reconsideration on July 25, 2016. On his request for reconsideration, he stated that the intent of the new legislation was to benefit long-tenured workers living in specific economic regions, and as a long-tenured oil industry worker living in a specific region, he met those criteria. He stated that his benefits began in September 2015 and if he had waited until January 2015 to submit an application, he would have been approved for additional weeks of benefits (GD3-30).

[15] The Commission contacted the Appellant on August 8, 2016 and advised him that, in order to qualify for additional weeks of benefits, his benefit period would have had to start between January 4, 2015 and July 2, 2017. The Commission advised him that if he had delayed applying for benefits, it would have affected the calculation of his qualifying period and he would have fewer hours in his qualifying period (GD3-31). The Commission maintained its decision on the number of weeks of benefits payable and notified the Appellant by letter dated August 9, 2016 (GD3-32 to GD3-33).

[16] The Appellant appealed to the Tribunal on August 29, 2016. On his notice of appeal, he stated that he was a long-tenured worker in the oil industry in the Calgary region. He stated that he served his waiting period from August 2, 2015 to August 15, 2015 and so his benefit period

ran from August 16, 2015 to July 30, 2016. He stated that his last week of benefits was April 23, 2016 and he collected 36 weeks of benefits. He noted that he could have waited until after January 4, 2015 to start his claim and would have qualified for additional weeks of benefits (GD2-1 to GD2-3).

[17] The Appellant submitted a letter from the Commission, describing the effect on his entitlement if he had applied for benefits on January 5, 2015. The Commission calculated that, if he had established a benefit period on January 5, 2016, based on the regional rate of unemployment and the hours in his qualifying period, he would have been entitled to 20 weeks of regular benefits. If he was also entitled to a benefit period extension pursuant to subsection 12(2.3) of the Act, he would have received an additional 25 weeks of benefits (GD8-5).

[18] The Appellant stated that the unemployment rate continued to rise after he stopped working, resulting in additional weeks of benefits for other claimants (GD8-1 to GE8-4).

SUBMISSIONS

[19] The Appellant submitted that:

- a) The Commission advised him that his claim had been delayed and that he would have to “reapply” for benefits in the week of July 26, 2015. As a result, his benefit period did not start until he began receiving benefits, which was within the period set out in the legislation.
- b) If he had waited until January 4, 2015 to apply for benefits, he would have been entitled to 45 weeks, rather than the 36 weeks he received. Furthermore, the unemployment rate continued to rise after he initially applied for benefits, and so others who applied later received additional weeks of benefits.
- c) His benefit period should be deemed “not ended,” pursuant to subsection 10(13.4) so that he may receive additional weeks of benefits.

- d) The intent of the legislation was to provide additional assistance to people in his situation; he was a long-tenured worker in the oil industry affected by the drop in oil prices.

[20] The Respondent submitted that:

- a) The sections of the Act providing additional weeks of benefits refers to the start state of the claim, not the date that benefits become payable. The Appellant's benefit period started on August 3, 2014 and the Act provides additional weeks of benefits to claimants with a benefit period starting between January 4, 2015 to July 2, 2017.
- b) The sections of the Act extending the benefit period only applies to claimants who meet the entitlement conditions set out in subsections 12(2.1) to 12(2.6) of the Act.
- c) The Act does not allow the Commission to cancel the benefit period to adjust the start date of the claim in these circumstances.

ANALYSIS

[21] Subsection 53(1) of the DESD Act states that the Tribunal must summarily dismiss an appeal if it has no reasonable chance of success. The Appellant was advised in writing of the Tribunal's intent to summarily dismiss his appeal and, pursuant to section 22 of the *Social Security Tribunal Regulations*, was given a reasonable period of time to make further submissions.

[22] The concept of "no reasonable chance of success" is not defined in the DESD Act and subsection 53(1) has not yet been interpreted by the courts. However, the Tribunal relies on guidance from the Appeal Division, in *J.S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1132, and on the legal test stated in *Lessard-Gauvin v. Canada (AG)*, 2013 FCA 147: is it plain and obvious on the face of the record that the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing?

[23] The Appellant disputes the start date of his claim. He argues that because benefits were not payable until August 3, 2015, his benefit period effectively started within the time frame set out by the Act. He further argues that he could have delayed making an application and would have been entitled to more weeks of benefits.

[24] The Commission argues that the sections of the Act providing additional weeks of benefits refer to the start date of a benefit period and not the date that benefits are paid or payable.

[25] The Tribunal finds that the Appellant's benefit period started on August 3, 2014. He applied for benefits shortly after he stopped working on July 31, 2014 and the Tribunal notes that the Commission's letter of October 17, 2014 states that the benefit period started on August 3, 2014. The Tribunal acknowledges that, due to an allocation, the Appellant did not begin to serve his waiting period until August 2, 2015 and that he did not receive benefits until August 16, 2015. Nevertheless, the date that benefits were payable do not alter the fact that the Appellant's benefit period started on August 3, 2014. The Tribunal further notes that paragraph 12(2.3)(d) of the Act refers to benefits being paid or payable, highlighting the fact that the benefit period start date and the date that benefits are paid or payable are separate concepts.

[26] Paragraph 12(2.3)(b) of the Act states that the benefit period must begin between January 4, 2015 and October 29, 2016 in order for a claimant to receive 25 additional weeks of benefits. Having already found that the Appellant's benefit period started on August 3, 2014, the Tribunal finds that the Appellant's benefit period did not start within the period set out by subsections 12(2.1) to 12(2.6) of the Act.

[27] The Tribunal acknowledges that the Appellant could have met the entitlement conditions of subsections 12(2.1) to 12(2.6) of the Act if he had established a benefit period after January 4, 2015. He could have also requested a benefit period cancellation, pursuant to subsection 10(6) of the Act. However, neither of these issues are before the Tribunal in this appeal – the issue is simply whether, having established a benefit period on August 3, 2014, the Appellant can benefit from subsections 12(2.1) to 12(2.6) of the Act.

[28] Accordingly, when the Tribunal considers the entitlement conditions for the temporary increase in the maximum number of weeks of benefits, it is obvious that this appeal is bound to fail. There is no evidence or argument that could raise the possibility of a different conclusion. The Tribunal is bound by the legislation and does not have any authority to vary its requirements.

[29] For these reasons, the Tribunal is satisfied that this appeal has no reasonable chance of success.

CONCLUSION

[30] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Amanda Pezzutto
Member, General Division - Employment Insurance Section