



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. E. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 21

Tribunal File Number: GE-15-1288

BETWEEN:

M. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: November 22, 2016

DATE OF DECISION: February 20, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, Mr. M. E. and his representative, Mr. Wesley Jamieson, Ross & McBride LLP attended the hearing by teleconference.

INTRODUCTION

[1] On December 5, 2013 the Claimant applied for employment insurance regular benefits and the Canada Employment Insurance Commission (Commission) allowed and paid 16 weeks of benefits. On January 30, 2015 however, the Claimant requested that the Commission reconsider the number of weeks of entitlement and his weekly benefit rate because during his qualifying period he was off work and on reduced hours due to a work-related injury which effected his insurable hours.

[2] On March 12, 2015, the Commission maintained its decision regarding the number of weeks of benefits to which the Claimant was entitled but changed the benefit rate from \$235.00 per week to that of \$313.00 per week.

[3] On January 18, 2016, the Claimant submitted a complete appeal to the General Division of the Social Security Tribunal (Tribunal) however, it was considered late. On February 24, 2016, the Member allowed for an extension of time to appeal (GD5).

[4] The Member notes that in addition to appealing the above issue, the Claimant indicated that the Commission did not account for the reduction of insurable hours due to his disability. He submitted that the *Employment Insurance Act* and how it was applied by the Commission infringed on his rights under *the Charter* and the *Canadian Human Rights Act* (GD3- 30 to GD3- 35).

[5] On May 19, 2016, the Claimant attended a prehearing conference so that the Charter process can be explained (GD6 and GD7). The Claimant was provided until July 19, 2016 to submit his formal notice to pursue the constitutional challenge before the Tribunal. He

however; did not submit a formal notice so the Tribunal advised the Claimant that the appeal was going to proceed as a regular appeal on the issue/merits (GD8 and GD9). At the hearing, the Claimant's representative confirmed on the record that the Charter issue will not be pursued.

[6] The hearing was held by teleconference given (a) the complexity of the issues under appeal 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.

ISSUES

[7] The Member must decide whether the correct number of entitlement weeks of benefits was paid during the Claimant's benefit period pursuant to subsection 12(2) of the *Employment Insurance Act* (EI Act).

[8] The Member must also decide whether the correct weekly benefit rate was paid to the Claimant pursuant to section 14 of the EI Act.

EVIDENCE

[9] On December 5, 2013, the Claimant applied for employment insurance regular benefits. He indicated that he resides in the Hamilton region and noted that he was unable to work for medical reasons from February 1, 2013 to August 19, 2013 (GD3-3 to GD3-15).

[10] The Claimant's record of employment (ROE) indicates that he had accumulated 719 hours of insurable employment and earned \$11,267.27 in the year prior to his claim (GD3-16).

[11] On September 22, 2014, the Commission determined that since the Claimant lived in the economic region of Hamilton, the rate of unemployment was 6.7% at the time of his application. Accordingly it determined that the Claimant was entitled to 16 weeks of benefits at a rate of \$235.00 per week (the best 21 weeks of work) effective December 8, 2013 (GD3-18 to GD3-24).

[12] On January 30, 2015 however, the Claimant requested that the Commission reconsider its decision. He argued that due to his disability (a work-related injury; bilateral carpal tunnel syndrome) he has been off work from around November 2012 until February 2013 and had two surgeries on February 1, 2013 and February 27, 2013. He was off work or working reduced hours until August 19, 2013 and unable to accumulate as many insurable hours for a period of 40 weeks or more. He had worked only 15 weeks of full-time employment when he was terminated without cause on December 5, 2013. He therefore requested that the Commission take into consideration his inability to work during his qualifying period. The Claimant provided evidence of his WSIB claim and return to work program, his earnings prior to his injury and tax returns for 2013 (GD3-25 to GD3-44).

[13] The employer confirmed that the Claimant was injured but indicated that he was still working some hours each pay period and provided details of the Claimant's insurable earnings and hours per week from May 13, 2012 until his last day December 5, 2013 (GD3-46 to GD3-53).

[14] On March 12, 2015, the Commission contacted and explained to the Claimant that his qualifying period is from December 9, 2012 until December 7, 2013 and that he cannot be granted the maximum 52 week extension to this period because he has not shown that he was incapable of working his normal or other suitable employment, and had no insurable earnings, for the 52-week extension that he is requesting. The Commission however, did grant a 2 week extension to the qualifying period because he met these requirements for the weeks of February 24, 2013 to March 2, 2013 and March 3 to 9, 2013. Further, due to this extension, it changed the benefit rate from \$235.00 per week to that of \$313.00 per week by taking the best 21 weeks in the extended qualifying period (GD3-61 to GD3-65). This decision also resulted in a change of his insurable hours to 757 (719 plus 38 additional hours) however, this did not change the 16 weeks of benefits to which he was entitled. The Commission provided the Claimant a final 2-week opportunity to provide a detailed breakdown of any other weeks that he did not work and had no earnings due to his illness/injury. The Claimant did not provide any further information (GD3-54 to GD3-59).

[15] In his notice of appeal, the Claimant provided a copy of his 2013 taxes and T4 statement, pay stubs from his employer from January, May, September to December 2013, his T5007 Statement of benefits from the WSIB for 2013 and a letter from his employer indicating that his services were not required from April 3 to 8, 2013 due to shortage of work (GD2).

[16] At the hearing, the Claimant confirmed that he worked full-time from May 2012 until February 2013. The Claimant indicated that he had 2 surgeries on February 1 and 27, 2013 and that he was off work (incapable of working) from February 1, 2013 until the end of March 2013 (approximately 8 weeks), then on modified duties and reduced hours until he was fully recovered and working his regular duties on September 8, 2013. The Claimant testified that he was paid by the employer for the hours he worked and received LOE benefits from the WSIB from March 2013 until September 8, 2013. The Claimant confirmed he was in receipt of approximately 40 weeks of WSIB LOE benefits from February 1, 2013 to September 8, 2013.

[17] The Member noted that the employer at GD3-52 indicates that the Claimant had insurable earnings during this period and that the parties agreed, and the employer evidence at GD3-52 confirms, that he had no earnings and he was incapable of working for only the two weeks of February 24, 2013 to March 9, 2013. The Claimant's representative indicated that he will provide evidence to rebut the hearsay evidence of the employer at GD3-52. The Claimant's representative indicated that the Claimant was unable to work and did not have insurable earnings because he was in receipt of full WSIB loss of earnings benefits. The Claimant was provided until December 23, 2016 to submit further evidence from the WSIB, employer and/or doctor to support his position that he was incapable of working, had not insurable earnings and from February 1, 2013 until the end of March 2013 and/or any/which period(s).

[18] The Claimant confirmed that he had no other employment in 2012 and 2013. He stated that during the 2-week extension of his qualifying period (November 25, 2012 to December 7, 2013) he thinks he worked more than the 38 insurable hours considered by the Commission.

[19] With respect to the second issue under appeal regarding the benefit rate, the Claimant's representative stated that one issue leads to the other; that if the qualifying period can be extended then the best 21 weeks used will also change.

[20] On December 20, 2016, the Claimant's representative submitted evidence from the WSIB that indicates the weeks (from December 2012 until August 2013) that the Claimant received loss of earnings (LOE) benefits at a rate of \$498.37 per week (GD11).

[21] The Member, pursuant to section 32 of the *Social Security Tribunal Regulations*, requested that the Commission respond to the following questions: (1) Given GD11, can the Claimant's qualifying period be extended? Why/why not? How does this change the weeks of entitlement? (2) Could you please confirm with the employer the number of insurable hours for the two week extension already granted from November 25, 2012 to December 7, 2013? The Claimant indicated that he worked more than 38 hours in those two weeks." (GD12).

[22] The Commission responded to the Member's request and made further submissions (see below). The evidence from the employer shows that there were 6 weeks total where the Claimant had no insurable earnings. Two of these weeks have already been considered for the qualifying period extension (February 24, 2013 to March 9, 2013). Further, the evidence from the employer shows that during the 2-week extended qualifying period, the Claimant worked 34.75 hours in the week of November 25, 2012 until December 1, 2012 and 6.25 hours in the week of December 2, 2012 to December 8, 2012 which amounts to 41 hours total (not 38 hours) for these two weeks (GD13-6).

SUBMISSIONS

[23] The Claimant submitted that although he acknowledges the two week extension already granted, he had an injury that reduced his ability to work for several weeks during his qualifying period. He submitted that the Commission did not take into account that he was only able to work full-time for about 15 weeks during his qualifying period because he was either off work and/or working on reduced hours due to an injury for the balance of the qualifying period. This, in turn, reduced his insurable hours and commensurate earnings which also affected his benefit rate. The Claimant submitted that he therefore, should be granted an extension of his qualifying period pursuant to paragraph 8(2)(a) of the EI Act given the WSIB evidence that shows he was off of work and receiving LOE benefits.

[24] The Commission submitted that it correctly determined that the Claimant was entitled to 16 weeks of regular benefits pursuant to subsection 12(2) of the EI Act even after a 2 week extension to his qualifying period was granted pursuant to paragraph 8(2)(a) of the EI Act. Further, its calculation of the Claimant's weekly benefit rate of \$313.00 is correct having considered the best 21 weeks of earnings for the extended qualifying period from November 25, 2012 to December 7, 2013.

[25] The Commission further submitted that although the Claimant may have been in receipt of LOE benefits from the WSIB (GD11), he does not automatically qualify for an extension of another 52 weeks to his qualifying period. The Commission submitted that the Claimant was engaged in insurable employment for some of the weeks that he received WSIB LOE benefits. He therefore, was not incapable of performing the functions of either his regular or other suitable employment as is required according to subsection 40(4) of the *Employment Insurance Regulations* (Regulations) in order for him to be eligible for an extension of the qualifying period under subsection 8(2)(a) of the Act. The Commission submitted however, that the evidence shows (GD13-6) that there were 6 weeks during which the Claimant was not engaged in insurable employment and could be considered for a qualifying period extension. The Claimant has already been granted a 2-week qualifying period extension for the weeks of February 24, 2013 to March 2, 2013 and March 3 to 9, 2013. He however, also had no insurable earnings for another 4 weeks i.e. the weeks of January 6 to 12, 2013, February 3 to 9, 2013, August 4 to 10, 2013 and August 11 to 17, 2013. He however, has not submitted any medical evidence to substantiate his illness for these 4 weeks (GD13).

ANALYSIS

[26] The relevant legislative provisions are reproduced in the Annex to this decision.

Weeks of Entitlement

[27] According to subsection 12(2) of the EI Act, in order to establish the maximum number of weeks of benefits that can be paid in a benefit period, for a reason other than those mentioned in subsection 12(3), one has to refer to the table in Schedule I of that subsection. The Member notes that the two factors that determine the number of weeks of benefits, to

which a claimant is entitled, are the regional rate of unemployment and the number of insurable hours in the qualifying period. If the qualifying period therefore could be extended, the insurable hours and commensurate earnings during the extension would be included in the determination of the number of weeks of benefits to which he would be entitled pursuant to subsection 12(2) of the EI Act and would affect the weekly benefit rate pursuant to section 14 of the EI Act.

[28] In the case at hand, it is undisputed that the Commission established that the Claimant lived in the economic region of Hamilton where the unemployment rate was 6.7% in the week prior to when the benefit period was established. Further, the Commission initially established that the Claimant accumulated 719 hours of insurable employment during the Claimant's qualifying period from December 9, 2012 to December 7, 2013 pursuant to paragraph 8(1)(a) of the EI Act. Accordingly, the Commission determined that the Claimant was entitled to 16 weeks of benefits pursuant to subsection 12(2) of the EI Act.

[29] The Claimant submitted however that during his qualifying period he was unable to work or was on reduced hours for several weeks and was only able to work full-time for about 15 weeks during his qualifying period. As a result, the Claimant argues that since he was incapable of working during his qualifying period because of an injury, the Commission should have granted him an extension of his qualifying period pursuant to paragraph 8(2)(a) of the EI Act up to the maximum of 104 weeks pursuant to subsection 8(7) of the EI Act. To show that he was incapable of working or was on reduced hours, the Claimant provided evidence of his WSIB claim, pay stubs and tax returns for 2013 (GD2-17 to GD2-14, GD3-37 to GD3-44). He also provided evidence from the WSIB to show that he was in receipt of LOE benefits from December 2012 until August 2013 (GD11). The Claimant testified that he was incapable of working when he had his two surgeries from February 1, 2013 until March 30, 2013 then, was on modified duties and reduced hours until he returned to his regular employment on September 8, 2013.

[30] The Member considered that according to paragraph 8(2)(a) of the EI Act the qualifying period mentioned in paragraph 8(1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct,

that throughout the week the person was not employed in insurable employment because the person was incapable of work because of a prescribed illness, injury, quarantine or pregnancy.

[31] Subsection 40(4) of the Regulations stipulates that for the purposes of paragraphs 8(2)(a) and 18(1)(b) and subsections 28(7) and 152.03(1) of the Act, illness, injury or quarantine is any illness, injury or quarantine that renders a claimant incapable of performing the duties of their regular or usual employment or of other suitable employment.

[32] Therefore, in order for the qualifying period to be extended, the onus is on the Claimant to prove, in a manner the Commission may direct, that throughout any given week he was (a) not employed in insurable employment because and (b) incapable of performing his regular, usual or other suitable employment because of his injury.

[33] The Commission, given the evidence from both the employer and the Claimant, agreed that the Claimant met these requirements for the weeks of February 24, 2013 to March 2, 2013 and March 3 to 9, 2013 and therefore granted a 2 week extension of the qualifying period. It determined that the extended qualifying period was now from November 25, 2012 to December 7, 2013. The Commission determined that the Claimant had 757 hours of insurable employment (719 plus 38 additional hours) in this qualifying period. At the hearing however, the Claimant had indicated that he thought he had worked more than 38 hours during the 2 week extension. The Commission confirmed that from the evidence provided by the employer, the Claimant actually worked a total of 41 hours (34.75 hours in the week of November 25 to December 1, 2012 and 6.25 hours in the week of December 2 to 8, 2012) in the extended 2 week period (GD13-4 and GD13-6). The Member finds therefore, that the Claimant worked 760 insurable hours (719 plus 41 additional hours), not 757, in his qualifying period November 25, 2012 to December 7, 2013. The Member further finds that despite this change, the Commission has correctly determined that according to subsection 12(2) and Schedule 1, the Claimant is entitled to a maximum of 16 weeks benefits.

[34] With respect to any further extension to the qualifying period, the Member agrees with the Commission that, for the reasons below, the Claimant has not met the onus of proving that he was not employed in insurable employment and incapable of performing the functions of

either his regular or other suitable employment due to his injury for any other week so that his qualifying period can be further extended.

[35] The Member considered the Claimant's testimony that he was incapable of working due to his injury (for 8 weeks) from February 1, 2013 to March 30, 2013. The documentary evidence however, does not support his testimony. Evidence from the employer shows that the Claimant had no insurable hours or earnings for only 3 of these weeks, February 3 to 9, 2013 and February 24, 2013 to March 9, 2013. He's already been granted an extension for the latter 2 weeks however, he has not shown that he was incapable of working the week of February 3 to 9, 2013 (see below) and evidence from the employer shows that he worked, albeit reduced hours, for the remainder of the weeks (GD13-6, GD3-51 to GD3-53).

[36] The Claimant argued that the employer's evidence is hearsay and to rebut that evidence, submitted evidence from the WSIB to show that he had been in receipt of LOE benefits during this period (GD11-2). The Member notes however, that in fact, the Claimant did not receive LOE benefits for all the weeks from February 1, 2013 to March 30, 2013. For instance, the Claimant did not receive LOE benefits for the weeks that the employer shows he worked reduced hours (e.g. February 17 to 23, 2013 and March 10 to 16, 2013). Plus, the Member finds that the Claimant's pay stubs (GD2-17 to GD2-24) confirm the accuracy, and thus give credence to, the evidence of the employer (GD3-52 and GD3-53). The Member finds therefore that the Claimant's testimony that he was incapable of working due to his injury for all the weeks from February 1, 2013 to March 30, 2013 is not supported by either the employer's evidence (GD13-6 and GD3-51 to GD3-53) or the WSIB LOE benefits statement he provided (GD11-2). An extension of the qualifying period because of these 8 weeks therefore cannot be granted.

[37] The Member acknowledges however that this same evidence shows that when the Claimant was not engaged in insurable employment (working), he was in receipt of WSIB LOE benefits (GD13-6 and GD11-2). The Commission, in its last submissions identified 6 weeks where the Claimant was not engaged in insurable employment (GD13-4). The Claimant has already been granted a 2-week qualifying period extension for the weeks of February 24, 2013 to March 2, 2013 and March 3 to 9, 2013. The Claimant was also not engaged in insurable

employment for the weeks of January 6 to 12, 2013, February 3 to 9, 2013, August 4 to 10, 2013 and August 11 to 17, 2013. The Member agrees with the Commission and case law however, that receipt of WSIB LOE benefits during these 4 weeks is not sufficient evidence that the Claimant was incapable of performing his regular or other suitable employment (CUB 27930 and CUB 30939). He therefore does not automatically qualify for an extension of his qualifying period.

[38] The Member finds that the onus is on the Claimant to prove, “in such manner as the Commission may direct” that throughout any given week he was (a) not employed in insurable employment and (b) was incapable of performing his regular or other suitable employment because of his injury. In this case, the Commission provided the Claimant 2 weeks to submit medical evidence (GD3-56) to prove that he was incapable of working. At the hearing, the Member provided the Claimant the same opportunity however; the Claimant again did not provide any medical evidence. The Member finds that since the Claimant was capable of working one week and not/part of another, it is not unreasonable for the Commission to request medical evidence his inability to work (CUB 69704).

[39] The Member agrees with the Commission that for these 4 weeks, the Claimant could be considered for a qualifying period extension back to October 28, 2012. The Commission went as far as to calculate that the Claimant would have an additional 152 hours in this further extension. When added to what the Member notes (above) as the insurable hours in the present qualifying period (760 hours), the Claimant would have 912 insurable hours which would entitle him to 19 weeks of benefits pursuant to subsection 12(2) and Schedule 1 of the EI Act (GD13-4). Unfortunately, the Claimant has not provided sufficient evidence to show that he was incapable of performing his regular or other suitable employment because of his injury for these 4 additional weeks.

[40] The Member notes that the issue before the Tribunal is regarding weeks of entitlement. Whether the Commission considers a further extension to the qualifying period upon presentation of any new evidence is a matter between the parties. In CUB 79062, the Umpire found that the Board had exceeded its jurisdiction when it extended the claimant’s qualifying period noting that “While the medical evidence submitted by the claimant may have justified an

extension of his qualifying period under paragraph 8(2)(a) of the Act, the Board should have referred the matter back for review as only the Commission has jurisdiction to extend qualifying periods”.

[41] The Member finds therefore, that even with the correction to the number of insurable hours (760 hours vs. 757 hours), the Commission correctly determined that the Claimant was entitled to 16 weeks of regular benefits pursuant to subsection 12(2) of the EI Act.

Benefit Rate

[42] Section 14 of the EI Act stipulates how the benefit rate is calculated. Accordingly, subsection 14(1) indicates that the rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings. In turn, subsection 14(2) stipulates that a claimant’s weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined in accordance with the table in that section given the applicable regional rate of unemployment.

[43] In this case, the Commission determined that the Claimant’s qualifying period to be from November 25, 2012 to December 7, 2013 and that he resides in the economic region of Hamilton where the rate of unemployment was 6.7% at the time of his claim. According to the table in subsection 14(2), the Commission used the highest 21 weeks of earnings in his qualifying period given the employer’s pay period details (GD3-51 to GD3-53) which amounted to \$11,941.00. The Commission calculated the Claimant’s weekly benefit rate to be \$313.00 ($\$11,941.00 / 21 \times 55\%$).

[44] The Member understands the Claimant’s submission that because of his injury he was unable to work or was on reduced hours during his benefit period (GD3-30). As a result, he was had reduced insurable earnings in his qualifying period. The Member notes however, that other than the provisions above that consider an extension to the qualifying period due to an inability to work, the benefit rate must be calculated as prescribed section 14 of the EI Act. The Member cannot depart from this provision. Case law 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).

[45] The Member finds that the Claimant's weekly benefit rate of \$313.00 is correct.

CONCLUSION

[46] The appeal is dismissed for both issues.

Eleni Palantzas

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Extension of the Qualifying Period

Subsection 8(1) of the EI Act stipulates that subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

- (a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and
- (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

Subsection 8(2) of the EI Act stipulates that a qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which

- the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was
- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c) receiving assistance under employment benefits; or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

Subsection 8(7) of the EI Act stipulates that no extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.

Subsection 40(4) of the Regulations stipulates that for the purposes of paragraphs 8(2)(a) and 18(1)(b) and subsections 28(7) and 152.03(1) of the Act, illness, injury or quarantine is any illness, injury or quarantine that renders a claimant incapable of performing the duties of their regular or usual employment or of other suitable employment.

Weeks of Entitlement

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.

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.

Weekly Benefit Rate

Subsection 14(1) of the EI Act stipulates that the rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings.

Subsection 14(1.1) of the EI Act stipulates that the maximum weekly insurable earnings is

- (a) \$750 if the claimant's benefit period begins during the years 1997 to 2000; and
- (b) if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

Subsection 14(2) of the EI Act stipulates that a claimant's weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined in accordance with the following table by reference to the applicable regional rate of unemployment.

TABLE

<u>Regional Rate of Unemployment</u>	<u>Number of Weeks</u>
not more than 6%	22
more than 6% but not more than 7%	21
more than 7% but not more than 8%	20
more than 8% but not more than 9%	19
more than 9% but not more than 10%	18
more than 10% but not more than 11%	17
more than 11% but not more than 12%	16
more than 12% but not more than 13%	15
more than 13%	14

Subsection 14(3) of the EI Act stipulates that insurable earnings in the calculation period are equal to the total of the following amounts established and calculated in accordance with the regulations:

(a) the claimant's insurable earnings during the calculation period including those from insurable employment that has not ended but not including any insurable earnings paid or payable to the claimant by reason of lay-off or separation from employment in the qualifying period; and

(b) the insurable earnings paid or payable to the claimant, during the qualifying period, by reason of lay-off or separation from employment.

Subsection 14(4) of the EI Act stipulates that the calculation period of a claimant is the number of weeks, whether consecutive or not, determined in accordance with the table set out in subsection (2) by reference to the applicable regional rate of unemployment, in the claimant's qualifying period for which he or she received the highest insurable earnings.

Subsection 14(4.1) [Repealed, 2012, c. 19, s. 604]

Constitutional Issues

Social Security Tribunal Regulations, SOR/2013-

60 Filing and service

20. (1) If the constitutional validity, applicability or operability of any provision of the *Canada Pension Plan*, the *Old Age Security Act*, the *Employment Insurance Act*, Part 5 of the *Department of Employment and Social Development Act* or the regulations made under any of those Acts is to be put at issue before the Tribunal, the party raising the issue must

(a) file a notice with the Tribunal that

(i) sets out the provision that is at issue, and

(ii) contains any submissions in support of the issue that is raised; and

(b) at least 10 days before the date set for the hearing of the appeal or application, serve notice of that issue on the persons referred to in subsection 57(1) of the *Federal Courts Act* and file a copy of the notice and proof of service with the Tribunal.

Failure to prove service

(2) If the proof of service required by paragraph (1)(b) has not been filed in accordance with that paragraph, the Tribunal may, on its own initiative or on the request of a party, adjourn or postpone the hearing.

Time limits for documents and submissions

(3) If a notice is filed under paragraph (1)(a), the time limits for filing documents or submissions set out in these Regulations do not apply and the Tribunal may direct the parties to file documents or submissions within the time limits it establishes.