



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. J. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 87

Tribunal File Number: GE-16-3970

BETWEEN:

M. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: June 5, 2017

DATE OF DECISION: June 16, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant made two applications for sickness benefits under the *Employment Insurance Act* (Act). The first application was made in February 2014. She was approved for benefits but no benefits were paid to her because she was in receipt of wage loss insurance benefits. When the wage loss insurance benefits stopped the Appellant tried to reopen her claim from February 2014 but her benefit period had ended.

[2] She reapplied for sickness benefits in June 2016. The Canada Employment Insurance Commission (Commission) determined that the Appellant did not have sufficient hours to establish a benefit period and therefore denied her initial claim.

[3] The Appellant requested a reconsideration and the Commission maintained its decision. The Appellant has now appealed this decision to the Tribunal.

HEARING

[4] The Tribunal decided to hold the hearing by way of teleconference after considering that credibility was not anticipated to be a prevailing issue and to respect the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as permitted by the circumstances and the considerations of fairness and natural justice.

[5] No one attended the hearing.

[6] Section 12 of the *Social Security Tribunal Regulations* allows the Tribunal to proceed in a party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[7] Upon reviewing the file the Tribunal was satisfied that:

- a) the Respondent received notice of the hearing by electronic means; and
- b) the Appellant received notice of the hearing by way of letter sent to her via Canada Post ExpressPost because the letter was signed for as having been received.

[8] Therefore, the Tribunal proceeded with the hearing despite the absences of the parties.

JURISDICTION AND ISSUES

[9] Although the Commission's reconsideration decision deals only with the benefit period for the second application for benefits, the Commission has made submissions and arguments with respect to an extension of the benefit period under Appellant's first application for benefits and the Appellant's request for reconsideration was with respect to both applications. Therefore, the Tribunal finds that it has jurisdiction with respect to the issues relating to both of the Appellant's applications for benefits.

[10] The first issue is whether the Appellant's benefit period under her first application can be extended.

[11] The second issue is whether the Appellant has enough hours to qualify for sickness benefits during her qualifying period under her second application.

EVIDENCE

[12] The Appellant applied for sickness benefits on February 23, 2014 and a benefit period was established. She was approved for 15 weeks of sickness benefits with a benefit period from February 23, 2014 to February 21, 2015. (GD4-4)

[13] The letter (Letter) sent to the Appellant advising her of her approval was somewhat contradictory in that it stated that she had to declare her wage-loss insurance payments (WLI) on her reports and also that they were aware of the WLI so she should not include the WLI on her reports. The letter also indicated that the allocation of the WLI would prevent the payment of any sickness benefits *but* if she was still unable to work after she had received all of the monies to which she was entitled she should have her doctor complete the attached medical certificate and return it to her local Service Canada Centre or mail it to the address at the top of the letter. (GD3-22)

[14] The Appellant's WLI ended in December 2015. As instructed in the letter she had her doctor complete the medical certificate and filed it at a Service Canada Centre. She indicated that she thought this was all she had to do. After some time, she tried to contact the Commission about her application. She was told that she had to reapply on-line.

[15] The Appellant reapplied for sickness benefits on June 15, 2016.

[16] In a letter dated July 2016 the Commission indicated that the Appellant had no hours of insurable employment between June 15, 2014 and June 11, 2016 and needed 600 hours of insurable employment to qualify for benefits.

[17] On her first application for benefits in February 2014, the Appellant indicated that she was in receipt of workers' compensation payments at some time during the previous two years. She left the dates she received workers' compensation payments blank. She provided the claim number.

[18] In her second application in June 2016 the Appellant answered that she had not received and would not receive any money through workers' compensation.

SUBMISSIONS

[19] The Appellant submitted that she should be entitled to benefits because the Letter indicated that she would receive benefits after her WLI ended and she was counting on receiving sickness benefits for her income. She submitted that she did what she was supposed to do and filed the medical form when her WLI ended.

[20] The Appellant submitted that she has no hours because she could not return to work. She submitted that she is now being penalized for something that she could not help.

[21] The Appellant submitted that she hopes the Tribunal will see that she is being honest and deserves to receive benefits because she paid into the plan for many years. She feels she fell through a crack in the process.

[22] The Commission submitted that the Appellant does not qualify to have her benefit period from her first application extended because WLI are not considered workers' compensation payments under the Act.

[23] The Commission submitted that the Appellant cannot be paid sickness benefits because she has not accumulated a sufficient amount of hours of insurable employment. The

Respondent bases its submissions on subsection 93(1) of the *Employment Insurance Regulations* (Regulations) and section 7 of the Act.

[24] The Commission submitted that the Appellant's qualifying period was established from June 15, 2014 to June 11, 2016 pursuant to paragraph 8(1)(a) of the Act.

[25] The Commission submitted that the Appellant requires 595 hours to qualify for benefits pursuant to section 7 of the Act based on the rate of unemployment in the Appellant's region of 8.3%.

ANALYSIS

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

[27] If the Appellant's benefit period can be extended to a date after her WLI payments ended in December 2015 the Appellant may be able to receive sickness benefits.

Can the Appellant's benefit period under her first application be extended?

[28] No. The Tribunal finds that the Appellant's benefit period under her first application cannot be extended.

[29] The Act allows a benefit period to be extended in certain circumstances. In this case, a claimant's benefit period can be extended by the aggregate of any weeks during the benefit period for which the *claimant* proves that she was not entitled to benefits because she was in receipt of workers' compensation payments for an illness or injury.

[30] In the case at hand, the Commission states that the Appellant's benefit period for her first application was from February 23, 2014 to February 21, 2015.

[31] The Appellant has not provided any evidence as to an alternative benefit period.

[32] The Appellant has not provided any evidence as to the dates she received workers' compensation payments and there is no indication on file that she received workers' compensation payments during her benefit period from February 23, 2014 to February 21, 2015.

[33] Therefore, on the evidence before it, the Tribunal finds that the Appellant's benefit period is from February 23, 2014 to February 21, 2015.

[34] The Tribunal finds that the benefit period cannot be extended because the Appellant has not proven that she was in receipt of workers' compensation payments and therefore does not meet the criteria for an extension of her benefit period.

Does the Appellant have enough hours to qualify for sickness benefits during her qualifying period under her second application?

[35] No, the Appellant does not have enough hours to qualify for sickness benefits during her qualifying period under her second application.

[36] In order to qualify for sickness benefits, a claimant must qualify for benefits under section 7 of the Act or under section 93 of the Regulations.

[37] Neither the Appellant nor the Commission provided evidence as to the rate of unemployment in the Appellant's region, although the Commission submits that it is 8.3%.

[38] Accepting the Commission's undisputed statement, pursuant to the table in subsection 7(2) of the Act, the Appellant requires 595 hours to qualify for benefits under section 7 of the Act.

[39] Section 93 of the Regulations provides that an insured person who does not qualify to receive benefits under section 7 of the Act may still receive sickness benefits if, among other things, they have 600 or more hours of insurable employment in their qualifying period.

[40] To determine the number of hours the Appellant has in her qualifying period, the Tribunal must establish the Appellant's qualifying period.

[41] The Appellant made no submissions on her qualifying period. The Commission indicated in its submissions and in a letter to the Appellant that her qualifying period was from June 15, 2014 to June 11, 2016.

[42] The Tribunal agrees with the Commission's undisputed calculation of the Appellant's qualifying period and finds that it is in compliance with subsection 8(1) of the Act. It is the maximum length of qualifying period allowed by law.

[43] The evidence on file is that the Appellant has no hours of insurable employment from Sunday, June 15, 2014 to Saturday, June 11, 2016. The Appellant indicated that she was not able to work during this time and that is why she has no hours of insurable employment during this time. It is not surprising, therefore, that there are no records of employment or rulings on insurable hours from the Canada Revenue Agency on file for this period of time.

[44] Where the Appellant has no hours of insurable employment during her qualifying period, the Appellant does not qualify for benefits either under section 7 of the Act or under section 93 of the Regulations.

[45] The Tribunal understands the Appellant's submissions and sympathizes with her. The Tribunal found the Letter to be confusing and misleading. The Appellant complied with the Letter but, unfortunately benefits cannot be paid to her because she no longer qualifies to receive sickness benefits. The Appellant's disappointment could have been avoided if the Letter had set out that benefits can only be paid during a certain prescribed benefit period and that if the Appellant's WLI extended beyond that period she would not have sickness benefits paid to her.

[46] That said, the Tribunal must interpret and apply the law as it is set out in the Act and the Regulations. It cannot use the principles of equity or consider extenuating circumstances to allow the Appellant to receive benefits when she does not meet the requirements under the legislation.

CONCLUSION

[47] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

7 (1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

(2) An insured person qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

(3) to (5) [Repealed, 2016, c. 7, s. 209]

(6) An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the *Agreement Between Canada and the United States Respecting Unemployment Insurance*, signed on March 6 and 12, 1942.

8 (1) 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).

(2) 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.

(3) 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

(a) earnings paid because of the complete severance of their relationship with their former employer have been allocated to weeks in accordance with the regulations; and

(b) the allocation has prevented them from establishing an interruption of earnings.

(4) A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in such manner as the Commission may direct, that

(a) in the case of an extension under subsection (2), the person was not employed in insurable employment because of a reason specified in that subsection; or

(b) in the case of an extension under subsection (3), the person had earnings paid to them because of the complete severance of their relationship with their former employer.

(5) For the purposes of subsections (2) to (4), a week during which the person was in receipt of benefits does not count.

(6) For the purposes of subsection (3) and paragraph (4)(b), a week during which the person was employed in insurable employment does not count.

(7) No extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.

Employment Insurance Regulations

93 (1) An insured person who does not qualify to receive benefits under section 7 of the Act and who is claiming special benefits qualifies to receive the special benefits if the person

(a) has had an interruption of earnings from employment; and

(b) has had 600 or more hours of insurable employment in their qualifying period.

(2) Notwithstanding section 9 of the Act, where an insured person who qualifies under subsection (1) to receive special benefits makes an initial claim for benefits, a benefit period shall be established in respect of the person and, once it is established, special benefits are payable to the person in accordance with this section for each week of unemployment that falls in the benefit period.

(3) Subject to subsection (4), sections 22 to 23.2 of the Act apply to the payment of special benefits under this section.

(4) Notwithstanding section 18 of the Act, a claimant is not entitled to be paid special benefits for a working day, in a benefit period established under this section, in respect of which the claimant fails to prove that on that day the claimant was

(a) unable to work because of an illness, injury or quarantine referred to in subsection 40(4) or (5) and that the claimant would otherwise be available for work; or

(b) entitled to benefits under section 22, 23, 23.1 or 23.2 of the Act.

(4.1) A claimant to whom benefits are payable under any of sections 23 to 23.2 of the Act and whose claim for benefits because of illness, injury or quarantine is made for a week that begins on or after the day on which this subsection comes into force is not disentitled under paragraph (4)(a) for failing to prove that they would have been available for work were it not for the illness, injury or quarantine.

(5) Subject to section 18 of the Act, regular benefits and additional special benefits are payable for a week of unemployment to a claimant who has received special benefits under this section where

(a) the claimant has accumulated, since the beginning of their benefit period, a number of hours of insurable employment that, when added to the number of those hours in their qualifying period, equal or exceed the number of hours set out in the table to subsection 7(2) of the Act in relation to the regional rate of unemployment that was applicable to the claimant at the beginning of their benefit period; and

(b) any regular benefits or additional special benefits are payable to the claimant in that benefit period in accordance with the Act, based on the hours of insurable employment in the claimant's qualifying period.

(6) Except as otherwise provided in this section, the provisions of the Act and these Regulations apply to claimants claiming benefits under this section.