



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. Q. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 120

Tribunal File Number: GE-16-4699

BETWEEN:

N. Q.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: July 13, 2017

DATE OF DECISION: July 21, 2017

REASONS AND DECISION

OVERVIEW

[1] The claimant made an initial claim for Employment Insurance (EI) benefits on September 8, 2015, establishing a claim for EI benefits on August 30, 2015. The claimant received his full entitlement to EI benefits including the additional five weeks authorized under the *Budget Implementation Act, 2016* (BIA 2016); however, on November 8, 2016, the claimant submitted a Request for Reconsideration requesting that he be given more weeks as he considered himself to be a long tenured worker. The Canada Employment Insurance Commission (Commission) denied the Request for Reconsideration on November 29, 2016. The claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on December 13, 2016.

[2] The Tribunal must decide whether the claimant has received the correct number of weeks of EI benefits during his benefit period in accordance with section 12 of the *Employment Insurance Act* (EI Act).

[3] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue under appeal.
- b) The fact that the claimant will be the only party in attendance.
- c) The information in the file, including the need for additional information.

[4] N. Q., the claimant, did not attend the hearing scheduled for July 13, 2017.

[5] The Tribunal waited for more than a week to hear from the claimant however, the claimant did not contact the SST. Information retrieved from Canada Post indicates that the Notice of Hearing was successful delivered on May 28, 2017 and signed for by the claimant.

[6] Subsection 12(1) of the *Social Security Tribunal Regulations* states that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[7] Based on the information received from Canada Post, the Tribunal is satisfied that the claimant received notice of the hearing.

[8] The Tribunal finds that the claimant received his full entitlement to EI benefits. The reasons for this decision follow.

EVIDENCE

[9] The employer submitted a Record of Employment (ROE) dated November 6, 2014 indicating that the claimant began working in February 22, 2011 and he was no longer working due to a leave of absence on October 24, 2014 accumulating 2036 hours of insurable employment.

[10] The same employer submitted another ROE dated September 3, 2015 indicating that the claimant began working on May 4, 2015 and he was no longer working due to a shortage of work on August 27, 2015 accumulating 606 hours of insurable employment.

[11] The claimant applied for regular EI benefits on September 8, 2015 stating that it was unknown if he would be returning to this employer.

[12] The Commission provided the EI Economic Region Unemployment Rate and Benefit Table for the period of August 9, 2015 and September 5, 2015 which shows that the unemployment rate in the region where the claimant normally resides was 5.8% and he required 700 hours of insurable employment in order to qualify for EI benefits.

[13] The Commission provided a Calculation Result on File Entitlement Weeks Attestation Certificate which indicates that the claimant's separation monies were allocated from August 23, 2015 to January 17, 2016 and the claimant was entitled to 36 weeks of EI benefits.

[14] The Commission provided the Attestation Certificate Special Coding – Occasional Claimant.

[15] The Commission provided the Attestation Certificate Benefit Period Extension Bill C-15 – Additional Entitlement Weeks which indicated the claimant was entitled to five additional entitlement weeks.

[16] The Commission provided the Attestation Certificate EI Premiums showing the claimant had contributed at least 30% of the maximum annual employee's premium in 6 out of the 10 years prior to the benefits period commencement date.

[17] The Commission provided the Entitlement Weeks Attestation Certificate which indicates that the claimant was entitled to a total of 41 weeks of EI benefits and he was paid 41 weeks of EI benefits.

[18] Following the claimant's Request for Reconsideration, he was contacted by the Commission and confirmed that he disagreed with the number of weeks to which he is entitled stating that he feels that he should be entitled to additional weeks of EI benefits due to the fact that the Alberta economy has not recovered to the point where he can find full-time work. He stated that there is not enough work available and therefore he wants to be entitled to EI benefits until March or April 2017 as he feels this should be enough time for him to secure full-time employment.

[19] The claimant submitted a Patient Discharge Teaching Checklist which indicates that the claimant had surgery on January 27, 2017. The claimant submitted a medical note dated February 5, 2017 which indicates that the claimant is unable to work for the next six months.

SUBMISSIONS

[20] The claimant submitted the following:

- a) He worked for the same employer for 4.5 years and was laid off in August 2015. He is currently working but does not have sufficient hours to sustain himself. He requested an increase of EI for a few weeks as some people working less got more additional weeks.
- b) He worked the last seven years (2007, 2008, 2009, 2011, 2012, 2013, 2014 and 2015) out of ten years and his EI premiums were highest in the years 2008 and 2010 to 2015. He is short one year to pay the amount that they have as a minimum which is 2007 and the amount he is short is about \$37.00 however he got his last 2007 paycheque in 2008.
- c) He thinks there should be more break down between five weeks and 21 weeks and he should be getting extended weeks closer to 21 weeks.
- d) He has recently undergone two surgeries and is still not able to return to work. He was only paid nine week of sickness EI benefits instead of 15 weeks.

[21] The Commission submitted the following:

- a) The claimant met all of the conditions for an extension to his benefit period as his claim was established after January 4, 2015 and he resides in one of the affected economic

regions. The claimant also had regular EI benefits paid on the claim. However, as an occasional claimant he was only entitled to the maximum of five additional weeks of EI benefits and his benefit period was extended by seventeen weeks in which to collect those additional weeks of benefits.

- b) The claimant did not contribute at least 30% of the maximum annual employee's premium in at least 7 of the 10 years before the beginning of his benefit period effective August 30, 2015. The evidence shows that the claimant contributed at least 30% of the maximum annual employee's premium in only 6 of the 10 years before the beginning of his benefit period effective August 30, 2015.
- c) The claimant does not meet the provisions for a long tenured worker because he unfortunately has not contributed at least 30% of the maximum annual employee's premium in at least 7 of the 10 years prior to the benefit period commencement date. The information received from Canada Revenue Agency (CRA) shows there are a few years (2010, 2006 and 2005) in which the claimant had not contributed at all; as they are listed as N/A – No data received and then in the year 2007 regrettably the claimant did not contribute at least 30% of the maximum annual employee's premium.
- d) There may be times where a claimant's complete tax information is not in the system and therefore with this the claimant is required to provide proof of the premiums paid in order to determine if they meet the premiums paid threshold and this proof can be supplied in the form of a notice of assessment or a letter from CRA.
- e) Therefore; with the information from the file the claimant does not meet the eligibility criteria for any further weeks of additional entitlement as per Bill C-15, in accordance with sections 10 and 12 of the EI Act.

ANALYSIS

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

[23] Benefits may be paid during a benefit period for each week of unemployment in that benefit period however, the legislation sets out maximum entitlements. Those maximums depend on the regional rate of unemployment applicable to the claimant, the number of hours of insurable employment the claimant had in the qualifying period and on the type of benefits sought.

[24] The BIA 2016 amended the EI Act to temporarily increase the maximum number of weeks of regular EI benefits that may be paid to eligible claimants. If a claimant meets the criteria to receive an increase in the maximum number of weeks of regular benefits available, the amendments also extend the length of the claimant's benefit period.

[25] In order to receive an extension to the maximum number of weeks of regular EI benefits in accordance with the BIA 2016:

- the claimant must ordinarily reside in one of the 15 regions identified in subsection 12(2.8) of the EI Act and schedule 1 of the *Employment Insurance Regulations* (Regulations);
- the claimant must establish a benefit period between January 4, 2015 and July 8, 2017; and
- at least one week of regular benefits must have been paid or payable to the claimant during their benefit period.

[26] For a claimant who is not a long-tenured worker (occasional claimant), the maximum number of weeks of regular EI benefits available is increased by 5 weeks. For a claimant who is a long-tenured worker, the maximum number of weeks of regular benefits available is increased by either 25, 17 or 10 weeks; depending on when the benefit period is established.

[27] The Tribunal accepts the evidence in the file that the claimant was entitled to 36 weeks of regular EI benefits in accordance with subsection 12(2) of the EI Act. The Tribunal further accepts that the claimant lives in one of the 15 economic regions in accordance with subsection 12(2.8) of the EI Act, he established a benefit period after January 4, 2015 under section 10 of the EI Act and at least one week of regular EI benefits were paid to the claimant during his benefit period. Therefore, the Tribunal is satisfied that the claimant met the criteria to receive an increase in the maximum number of weeks of regular EI benefits during an extended benefit period under BIA 2016.

[28] The claimant argued that he received five extra weeks but he should be entitled to more weeks of EI benefits as some people who were working less got more additional weeks. He further argued that he worked the last 7 years out of 10.

[29] The Commission categorized the claimant as an occasional worker and not a long-tenured worker entitling him to five extra weeks of EI benefits under BIA 2016.

[30] A long-tenured worker is defined as “a claimant who was paid less than 36 weeks of regular benefits in the 260 weeks (5 years) before the beginning of their benefit period and who, according to their income tax returns for which notices of assessment have been sent by the Canada Revenue Agency, paid at least 30% of the maximum annual employee’s premium in 7 of the 10 years before the beginning of their benefit period.”

[31] The Tribunal notes that the Employment Insurance Premiums Attestation Certificate shows that no data was provided for the years 2005, 2006 and 2010. Further, the claimant argued that in 2007, the amount he was short to meet the 30% premiums paid threshold is about \$37.00 but he got his last 2007 paycheque in 2008. The Tribunal respects these arguments; however, it is the claimant’s responsibility to provide proof of the premiums paid to determine if they meet the premiums paid threshold; the claimant has provided no evidence to show that he met the premiums paid threshold in 2005, 2006, 2007 and 2010.

[32] While the claimant did meet the 30% threshold in 2015, the Tribunal finds that this year cannot be included in the calculation because the definition of long-tenured worker clearly states that the claimant must have paid at least 30% of the maximum annual employee’s premium in 7 out of 10 years before the beginning of their benefit period. The Tribunal accepts that the claimant’s benefit period was established on August 30, 2015; therefore, the premiums paid in 2015 cannot be included in the calculation to determine if the claimant is a long-tenured worker because this is the year the benefit period was established and not the year before the beginning of his benefit period.

[33] Accordingly, the Tribunal finds that the claimant does not meet the definition of long-tenured worker found in subsection 2(1) of the EI Act because he has paid at least 30% of the maximum annual employee’s premium in only 6 out of 10 years. The Tribunal further finds that the Commission was correct in classifying the claimant as an occasional worker thereby entitling him to five additional weeks of EI benefits.

[34] The Tribunal finds that the claimant was entitled to a total of 41 weeks of EI benefits and he was paid 41 weeks of EI benefits.

[35] The claimant further argued that he had only received nine weeks of sickness EI benefits instead of 15 weeks. The Tribunal is unable to decide on this issue because there is no information to indicate that the claimant submitted a Request for Reconsideration regarding his entitlement to sickness EI benefits; therefore, this issue is not before the Tribunal. The Commission must always be given an opportunity to reconsider their decision before an appeal can be heard by the Tribunal.

[36] The claimant argued that he has undergone two surgeries and is still not able to return to work. Notwithstanding the claimant's unfortunate circumstances, neither the BIA 2016 nor the EI Act provide any discretion or allow for any exceptions; the claimant did not meet the requirements to be considered a long-tenured worker.

[37] For these reasons, the Tribunal concludes that the claimant received the correct number of weeks of EI benefits during his benefit period under subsection 12(2) of the EI Act.

CONCLUSION

[38] The appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

10 (1) A benefit period begins on the later of

- (a) the Sunday of the week in which the interruption of earnings occurs, and
- (b) the Sunday of the week in which the initial claim for benefits is made.

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

12 (1) 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.

(2) Subject to subsections (2.1) to (2.6), 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 reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

(2.1) 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 five weeks if the following conditions are met:

- (a) the claimant is not a long-tenured worker;
- (b) the claimant's benefit period began during the period beginning on January 4, 2015 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.

(2.2) If subsection (2.1) applies in respect of a claimant whose benefit period is deemed under subsection 10(13.2) not to have ended,

(a) the claimant may, for weeks beginning on or after July 3, 2016, be paid benefits because of a reason mentioned in subsection (2) for no more than the five additional weeks referred to in subsection (2.1); and

(b) the claimant may not be paid those additional five weeks of benefits for any week that began before July 3, 2016.

(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.

(2.4) If subsection (2.3) applies in respect of a claimant whose benefit period is deemed under subsection 10(13.4) not to have ended,

(a) the claimant may, for weeks beginning on or after July 3, 2016, be paid benefits because of a reason mentioned in subsection (2) for no more than the 25 additional weeks referred to in subsection (2.3); and

(b) the claimant may not be paid those additional 25 weeks of benefits for any week that began before July 3, 2016.

(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.

(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.

(2.7) If more than one benefit period in respect of a claimant began before July 3, 2016, subsection (2.1) or (2.3), as the case may be, applies to increase the number of weeks of benefits only in the benefit period that began on the day that is closest to that day.

(2.8) The regions, for the purposes of subsections (2.1) to (2.6), are the following regions described in Schedule I to the *Employment Insurance Regulations*:

(a) the region of Northern Ontario described in subsection 2(3) of that Schedule;

(b) the region of Sudbury described in subsection 2(14) of that Schedule;

(c) the region of Northern Manitoba described in subsection 6(3) of that Schedule;

(c.1) the region of Southern Interior British Columbia described in subsection 7(1) of that Schedule;

(d) the region of Northern British Columbia described in subsection 7(5) of that Schedule;

(e) the region of Saskatoon described in subsection 9(2) of that Schedule;

(e.1) the region of Southern Saskatchewan described in subsection 9(3) of that Schedule;

(f) the region of Northern Saskatchewan described in subsection 9(4) of that Schedule;

(g) the region of Calgary described in subsection 10(1) of that Schedule;

(g.1) the region of Edmonton described in subsection 10(2) of that Schedule;

(h) the region of Southern Alberta described in subsection 10(3) of that Schedule;

- (i) the region of Northern Alberta described in subsection 10(4) of that Schedule;
 - (j) the region of Newfoundland/Labrador described in subsection 11(2) of that Schedule;
 - (k) the region of Whitehorse described in subsection 12(1) of that Schedule; and
 - (l) the region of Nunavut described in subsection 14(2) of that Schedule.
- (3) 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.
- (4) The maximum number of weeks for which benefits may be paid
 - (a) for a single pregnancy is 15; and
 - (b) for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is 35.
- (5) 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.
- (6) 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 or, if the maximum number of weeks for which benefits may be paid to a claimant because of a reason mentioned in subsection (2) is greater than 45 weeks as a result of the application of any of subsections (2.1), (2.3), (2.5) and (2.6), the number that corresponds to that maximum number of weeks increased by five weeks.
- (8) For the purposes of this section, the placement with a major attachment claimant, at the same or substantially the same time, of two or more children for the purpose of adoption is a single placement of a child or children for the purpose of adoption.