



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. S. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 121

Tribunal File Number: GE-17-1707

BETWEEN:

**J. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

---

DECISION BY: Katherine Wallocha

HEARD ON: July 24, 2017

DATE OF DECISION: July 27, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The claimant made an initial claim for Employment Insurance (EI) benefits on November 6, 2015, establishing a claim for EI benefits on November 8, 2015. On March 19, 2017, the Canada Employment Insurance Commission (Commission) informed the claimant that she received her last EI benefit payment. The claimant requested a reconsideration of this decision, and on April 21, 2017, the Commission maintained its decision that the claimant had received her full entitlement to EI benefits. The claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on May 17, 2017.

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

[3] The hearing was scheduled for July 27, 2017; however, the claimant contacted the Tribunal on July 12, 2017 and informed that she was unable to attend the hearing on July 27, 2017 and requested a hearing on Monday July 24, 2017. The hearing was adjourned and rescheduled for July 24, 2017.

[4] 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.

[5] J. S., the claimant, attended the hearing via teleconference.

[6] The Tribunal finds that the claimant received the correct number of weeks of EI benefits during her extended benefit period.

[7] The reasons for this decision follow.

## **EVIDENCE**

### **Information from the Docket**

[8] The claimant's last day of work was November 3, 2015. She applied for regular EI benefits on November 6, 2015 stating that she would not be returning to work for this employer.

[9] The employer submitted a Record of Employment (ROE) dated November 12, 2015 indicating that the claimant began working as a dispatcher on December 15, 2014 and she was no longer working due "other" on November 3, 2015 accumulating 1789 hours of insurable employment; the employer commented "Elimination of role." The claimant was paid \$612.00 in vacation pay, \$1,124.00 in pay in lieu of notice and \$1,124.80 in severance pay.

[10] The Commission provided another ROE indicating that the claimant had other employment starting on July 6, 2014 and she quit on December 7, 2014 to take another job accumulating 824 hours of insurable employment.

[11] The Commission provided the Calculation Result on File showing the claimant had accumulated the maximum 1820 hours of insurable employment during her qualifying period from November 9, 2014 to November 7, 2015. The claimant lives in a region with an unemployment rate of 6.8% requiring 665 hours of insurable employment; she was entitled to 38 weeks of EI benefits at the benefit rate of \$524 and her benefit period was extended by two weeks due to earnings received upon separation.

[12] On February 14, 2017, the claimant requested that her regular EI benefits be changed to sickness EI benefits. She stated that she could not look for work for medical reasons for 15 weeks; the claimant provided a medical note from her doctor dated February 13, 2017. The claimant provided a subsequent medical note dated May 10, 2017 which indicates that the claimant remains unable to work for the next few weeks due to medical reasons.

[13] The Commission provided the Full Text Screens Telephone Reporting Service questions and answers for the period of February 5 to February 18, 2017 in which the claimant indicated that she was not ready, willing and capable of working each day, Monday through Friday, during this period.

[14] The Commission provided the EI benefit statement for the week starting March 19, 2017 and this statement indicated that this was the claimant's last payment.

[15] The claimant submitted a Request for Reconsideration dated April 4, 2017 stating that her medical situation has gotten worse and she will be off work for the next couple of months. She asked that the Commission reconsider the decision and allow her to collect her weeks of entitlement for her medical claim.

[16] The claimant was contacted by the Commission and confirmed that she is disputing that she is not entitled to be paid further EI benefits after receiving only seven weeks of sickness benefits.

[17] The claimant confirmed that she has not been employed in insured employment since November 8, 2015. The claimant further confirmed that she was paid 61 weeks of regular EI benefits and seven weeks of sickness EI benefits.

[18] The Commission explained that the claimant was entitled to 38 weeks of regular EI benefits but under the *Budget Implementation Act, 2016* (BIA 2016), it was determined that the claimant was a long tenured worker so she was granted an additional 25 weeks [38 + 25 = 63 weeks of regular benefits].

[19] The claimant confirmed that sickness EI benefits were requested effective February 5, 2017 and she was paid sick benefits until March 25, 2017. The Commission explained that the combined weeks of regular and special (sickness) benefits that can be paid is the regular entitlement of 63 weeks plus 5 weeks = 68 weeks and as the claimant was paid 61 weeks of regular EI benefits and seven weeks of sickness EI benefits, she cannot be paid beyond 68 weeks combined EI benefits.

[20] The Commission provided the Full Text Screens Pay History Details which show that the claimant established a claim for EI benefits on November 8, 2015, her separation monies were allocated to the first two weeks following which she served her two week waiting period. The claimant began receiving regular EI benefits on December 6, 2015 for 61 weeks until February 5, 2017; she received seven weeks of sickness EI benefits until March 19, 2017.

[21] The claimant provided supporting documents showing her monthly bills explaining that her savings is used up completely to cover her bills; she can no longer pay her mortgage or other bills and has been paying out of pocket for her medication because she has not had employer benefits since November 2015.

[22] The claimant submitted a Patient Medical History showing the medication that she was required to take starting November 11, 2015.

### **Testimony from the Hearing**

[23] The claimant testified at the hearing that from 2012 until now her health has not been good. She stated that she is borderline diabetic, and has vertigo and fibromyalgia and while she still managed to work full-time, she missed a lot of work. She stated that she was off work for seven months on medical leave in the past but she is still fighting to keep her life on track.

[24] The claimant stated that she has struggled to find work for over a year just so she can keep her home and as things started getting tighter for her financially, her health started to deteriorate again. She stated that her doctor would not allow her to even look for work so she could stay focused on getting her health back on track. The claimant stated that she received a few weeks of sickness EI benefits but then the Commission cut her off because she exhausted her EI claim; this left her with no income at all.

[25] The claimant stated that she has been working since the 1980 and being a single mom, raising two kids, working two or three jobs, she could never afford to get her own place. She stated that she finally managed to buy a house in November 2015 and now she is on the verge of losing everything she has worked for. She stated that this is heart wrenching to have worked that hard in her life and this is all she has to show for it and she is about to lose it.

[26] The claimant stated that she has not had any income or employer benefits since November 2015 and has to pay for all of her medications out of pocket; she applied for the Provincial benefit plan but was denied because she was told she made too much money in 2015. She stated that she tried to apply again multiple times and every time she gets a different answer. She stated that she was told she was not eligible for social services because she owns her own house; is she required to lose her home before someone will help her. She stated that she tried to

just get medical benefits so she can at least get her medications paid for; it has been frustrating trying to get any kind of help.

[27] The claimant stated that she is able to work with her illnesses but she is unable to afford physiotherapy and while her doctor said she was not to work or even look for work, she frantically put out resumes so that they would not lose their home.

[28] The claimant stated that she worked in 2015 and she collected EI benefits for all of 2016; however, the claimant stated that her EI benefits did not cover all of her expenses. She stated that she just needs her sickness EI benefits so she can continue working.

[29] The claimant confirmed that she was paid 61 weeks of regular EI benefits and is asking for the remaining weeks of her sickness EI benefits. She stated that she started a new job at the end of May 2017; it is full-time employment about 30 to 35 hours per week but she is worried because she does not know how her health will be. If her sickness EI benefits were paid to her; she would have something to fall back on and get her back on track financially.

## **SUBMISSIONS**

[30] The claimant submitted the following:

- a) She has been laid off for over a year and has had great difficulty finding work. Since 2012 her health has not been good but she has struggled to work full-time. At present her health issues got worse and her doctor has taken her off work and is not to look for work right now.
- b) She paid \$11,000 in taxes in 2015 and has been without income since her last EI cheque dated March 29, 2017. She has had no employer benefits since November 2015 and was forced to pay for all her medicine out of pocket; she can no longer afford her medicine.
- c) She has lived and paid taxes in her area for 37 years and today she is ill and would greatly appreciate the assistance that she has paid into for many years.
- d) After 30+ years of working hard and raising 2 children on her own, she finally purchased her own home on November 19, 2015; her monthly mortgage payments are \$1,600.00 but due to sickness and no income, she risks losing the only home she fought so hard to purchase.

- e) The stress and anxiety this has caused is overwhelming. She has been in hospital and still undergoing many tests; she is waiting to see a specialist. She requests that she be allowed to collect her sickness EI benefits while she is not able to work.
- f) She is asking that her remaining weeks of sickness EI benefits be paid to her. If it were not for her poor health, she would be able to work and this would not be a concern but if her health turns and she is taken off work, she is afraid that she will lose her house. The Commission needs to understand that not everybody's circumstances are the same; she battles a lot more as far as her health goes otherwise she could just work full-time.
- g) This has been the hardest time, she is struggling and she does not know what the future holds; she will be in a lot of trouble financially if she is not able to work.

[31] The Commission submitted the following:

- a) The claimant accumulated 1820 hours of insurable employment in her qualifying period and the regional rate of unemployment was 6.8% when the benefit period was established. Accordingly, the number of weeks for which regular EI benefits may be paid pursuant to Schedule I in subsection 12(2) of the EI Act is 38 with an additional 25 weeks under subsection 12(2.3) of the EI Act for a maximum entitlement to regular EI benefits of 63 weeks.
- b) The maximum entitlement for sickness benefits is 15 weeks as specified in paragraph 12(3)(c) of the EI Act.
- c) However, the EI legislation also stipulates in subsection 12(6) of the EI Act that the combined maximum weeks of benefits that can be paid in a benefit period when the weeks of entitlement have been increased under subsection 12(2.3). This provision states that the maximum number of weeks for which EI 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 is increased by five weeks.
- d) In the claimant's case, the maximum regular weeks of entitlement under subsection 12(2) and 12(2.3) is 63 weeks thus plus 5 weeks = 68 weeks of combined EI benefits as the maximum allowed in this benefit period.

## ANALYSIS

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

[33] The number of weeks of EI benefits that may be paid to a claimant shall be based on the number of insurable employment hours accumulated in the qualifying period and the applicable regional rate of unemployment. The number of weeks payable is defined in the EI Act and its Schedule I.

[34] 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.

[35] The Tribunal accepts the evidence in the appeal docket that the claimant lived in an economic region with an unemployment rate of 6.8% at the time she applied for EI benefits. The Tribunal further accepts that the claimant had accumulated the maximum number of insurable hours and therefore qualified for 38 weeks of regular EI benefits. The claimant had earnings upon separation and the allocation of these earnings allowed her benefit period to be extended by two weeks.

[36] However, the BIA 2016 amended the EI Act to temporarily increase the maximum number of weeks of regular benefits that may be paid to eligible claimants ordinarily residing in one of 15 economic regions. 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.

[37] 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.

[38] The Tribunal finds that the claimant ordinarily resides in one of the 15 economic regions under subsection 12(2.8) of the EI Act and section 1 of the Regulations, she 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 her 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.

[39] On February 14, 2017, the claimant requested that her regular EI benefits be changed to sickness EI benefits and the Tribunal accepts that this occurred after the claimant received 61 weeks of regular EI benefits.

[40] The claimant stated that she only received seven weeks of sickness EI benefits. She argued that she did not receive her full entitlement to sickness EI benefits and asked that these benefits which she has paid into for many years, be paid to her. She explained that her health has not been good and she is unable to pay for her medications, the financial stress she is under is causing her health to deteriorate again and she is fearful that she will lose her house as she is unable to pay her mortgage payments.

[41] The Commission argued that subsection 12(6) of the EI Act stipulates the combined maximum weeks of EI benefits that can be paid in a benefit period when the weeks of entitlement have been increased under subsection 12(2.3) of the EI Act and the claimant received the maximum number of weeks for which EI benefits may be paid.

[42] Subsection 12(2.3) of the EI Act states that 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.

[43] The Tribunal finds that the claimant's benefit period was established on November 8, 2015 and this is within the range allowed in subsection 12(2.3) of the EI Act; therefore, the Tribunal finds that the claimant was entitled to an additional 25 weeks of EI benefits in accordance with subsection 12(2.3) of the EI Act.

[44] However, subsection 12(6) of the EI Act states that 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 is increased by five weeks.

[45] Following the maximums set out in subsection 12(6) of the EI Act, the claimant was initially entitled to 38 weeks of regular EI benefits and she received an extension of 25 weeks under subsection 12(2.3) of the EI Act for a total benefit entitlement of 63 weeks. The Tribunal finds that the claimant's maximum number of weeks for which combined benefits may be paid is greater than 45 weeks and therefore, the claimant was entitled to combined weeks of EI benefits equal to the maximum number of weeks increased by five weeks or  $63 + 5 = 68$  weeks.

[46] The Tribunal accepts the evidence in the file and the claimant's statements and testimony that she received 61 weeks of regular EI benefits and seven weeks of sickness EI benefits before her claim ended. From this, the Tribunal is satisfied that the claimant received 68 weeks of EI benefits and finds that she received the maximum number of weeks allowed in accordance with subsection 12(6) of the EI Act.

[47] The claimant argued that she has been laid off for over a year and has had great difficulty finding work and, due to her health, she is struggling to work full-time. She stated that she has worked and paid taxes for 37 years and she is ill and needs the assistance that she has paid into for many years. She further stated that she is unable to afford her medications and treatments and she is afraid that she will lose her house. While the Tribunal is sympathetic to the claimant's circumstances, neither the BIA 2016 nor the EI Act provide any discretion or allow for any exceptions; the claimant received her maximum entitlement to EI benefits as set out in the legislation.

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

#### **CONCLUSION**

[49] The appeal is dismissed.

*K. Wallocha*

Member, General Division - Employment Insurance Section

## ANNEX

### THE LAW

#### Employment Insurance Act

**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.

**(2.8)** 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.

**(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.

**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.

**(10)** A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

**(a)** confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

**(b)** in receipt of earnings paid because of the complete severance of their relationship with their former employer;

**(c)** in receipt of workers' compensation payments for an illness or injury; or

**(d)** in receipt of payments under a provincial law on the basis of having ceased to work

because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

**(11)** A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

**(12)** If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

**(13)** 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.

**(13.3)** A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.4)** Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(14)** Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

**(14.1)** The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

**(15)** 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).