



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. B. v. Canada Employment Insurance Commission*, 2018 SST 340

Tribunal File Number: GE-17-3393

BETWEEN:

W. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: March 8, 2018

DATE OF DECISION: April 13, 2018

REASONS AND DECISION

DECISION

[1] The appeal is dismissed. The Appellant cannot be paid additional 10 weeks of benefits because his benefit period ended and cannot be extended any further.

OVERVIEW

[2] The Appellant filed an application for employment insurance benefits and established a benefit period effective October 23, 2016. He had accumulated 912 hours during his qualifying period, which was from October 25, 2015, to October 22, 2016. The Appellant's benefit period was extended by one week to a 53-week benefit period as he was in receipt of pay in lieu of notice upon separation with the benefit period ending on October 28, 2017. The Appellant was entitled to a maximum of 19 weeks of regular benefits. The Appellant received 15 weeks of sickness benefits, ending on February 25, 2017. The Appellant filed a renewal claim for benefits effective August 27, 2017, and received an additional 9 weeks of regular benefits before his benefit period was exhausted. The Appellant believes he should be entitled to receive the additional 10 weeks because when he was able to return to work, he was still unemployed and he has paid into the employment insurance program. The Canada Employment Insurance Commission (Respondent) denied the Appellant the extension because he failed to meet the grounds to allow a further extension.

ISSUE

[3] Whether or not the Appellant's benefit period can be extended further pursuant to section 10 of the *Employment Insurance Act* (Act).

ANALYSIS

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

Issue: Whether or not the Appellant's benefit period can be extended further.

[5] When an insured person who qualifies under section 7 or 7.1 of the Act makes an initial claim for benefits, a benefit period is established and, once it is established, benefits are payable to the person for each week of unemployment that falls in the benefit period (section 9 of the Act). Except as otherwise provided in subsections 10(10) to 10(15) of the Act, the benefit period is 52-week long (subsection 10(2) of the Act).

[6] The maximum number of weeks of benefits that a person may receive during his or her benefit period is determined pursuant to section 12 of the Act; it depends on the claimant's regional rate of unemployment and the number of hours of insurable employment the claimant had during his or her qualifying period. Regular benefits can only be paid, up to that maximum amount determined in accordance with section 12 of the Act, for weeks of unemployment that fall within the benefit period. If a claimant's benefit period ends before having been paid the maximum number of weeks, no further benefits would be payable as the benefit period has ended.

[7] Paragraph 10(10)(b) of the Act states: 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

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

[8] The Appellant's benefit period was established on October 25, 2016, and extended one week to a 53-week benefit period ending October 28, 2017, because he had received payment in lieu of notice upon separation pursuant to paragraph 10(10)(b). He received 15 weeks of sickness benefits, up to February 25, 2017, and was entitled to a maximum of 19 weeks of regular benefits during the benefit period. The Appellant conceded that he did not request his claim to be

converted to regular benefits following his claim for sickness benefits because he was seeking long-term disability insurance and he would not have met the conditions of availability for regular benefits at that time. The Appellant renewed his claim for benefits on August 27, 2017, and received an additional 9 weeks of regular benefits before his benefit period was exhausted.

[9] The Appellant argues that he should be entitled to receive the additional benefits because he is still unemployed and he has paid into the employment insurance program.

[10] The Respondent determined that the Appellant had a maximum entitlement of 19 weeks of regular benefits on his claim payable upon recovery. This is not a guarantee of entitlement but the maximum that can be paid within a benefit period. In the Appellant's case, the benefit period ended before the maximum entitlement to regular benefits was paid out. The Respondent submits that the Appellant was correctly paid 9 weeks of entitlement when he renewed his claim for regular benefits, and then the benefit period ended on October 28, 2017.

[11] The Tribunal acknowledges the Appellant's arguments, unfortunately, the Appellant's benefit period ended on October 28, 2017. Once a benefit period has ended, no further benefits are payable, even if the Appellant has not been paid the maximum number of weeks of benefits that he could have potentially received.

[12] The Tribunal acknowledges the Appellant's frustrations and that he has paid into the employment insurance program so he should be entitled to receive benefits, but a claimant is not entitled to benefits solely because of making contributions, the conditions to qualify must first be met.

[13] The Tribunal sympathies with the Appellant's circumstances. However, the Tribunal must apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

[14] There is no flexibility or room for interpretation in the applicable legislative provisions that would allow the Appellant to be entitled to benefits beyond what is provided in the Act.

CONCLUSION

[15] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

APPEARANCE:	W. B., Appellant
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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.

(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.