



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. E. v. Canada Employment Insurance Commission*, 2018 SST 352

Tribunal File Number: GE-17-2381

BETWEEN:

B. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD BY TELECONFERENCE ON: March 7, 2018

DATE OF DECISION: April 25, 2018

REASONS AND DECISION

DECISION

[1] The appeal is dismissed. The Appellant cannot be paid 38 weeks of benefits because his benefit period ended and cannot be extended.

OVERVIEW

[2] The Appellant filed an application for employment insurance benefits and established a benefit period effective July 12, 2015, and was entitled to a maximum of 38 weeks of regular benefits. The Appellant first received 15 weeks of sickness benefits, ending on October 25, 2015. The Appellant did not request his claim be converted to regular benefits at that time because he was unable to work and was in receipt of disability payments from his insurance provider during the remainder of his benefit period. The Appellant's benefit period ended on July 9, 2016, the standard 52-week benefit period.

[3] The Appellant believes due to extenuating circumstances that his benefit period should be extended and he should be entitled to be paid the full 38 weeks of regular benefits. The Appellant stated he believes he has met the criteria to have his benefit period extended. The Canada Employment Insurance Commission (Respondent) denied the Appellant the extension because he failed to meet the grounds to allow an extension.

ISSUE

Whether the Appellant's benefit period can be extended 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 the Appellant's benefit period can be extended.

[5] The Tribunal finds the Appellant's benefit period cannot be extended because he does not meet the criteria to do so.

[6] The Tribunal finds that the Appellant's benefit period was established on July 12, 2015, and it ended on July 9, 2016, after the standard 52-week benefit period. He received 15 weeks of sickness benefits, up to October 24, 2015, and was entitled to a maximum of 38 weeks of regular benefits during the benefit period. Which he did not receive. The Appellant did not request his claim to be converted to regular benefits following his claim for sickness benefits because he had been in a motor vehicle accident and unable to work and he received disability payment from his vehicle insurance provider. He was unable to work due to his injuries and conceded that he would not have met the conditions of availability for regular benefits at that time or within the remaining 52 weeks of his benefit period.

[7] 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).

[8] 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.

[9] The Tribunal acknowledges the Appellant's arguments; however, finds there have been no provisions made to section 10(10)(d) in the legislation and the language cannot be altered to only a portion to fit the Appellant's situation. The Act clearly states (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.

[10] The Tribunal finds the Appellant was receiving disability payments from his motor vehicle insurance provider because he was unable to work due his injuries sustained from a motor vehicle accident. The Appellant may have considered returning to work would pose a danger to himself but he did not receive payments under a provincial law on the basis of having to cease work because continuing to work would have resulted in a danger to himself.

[11] The Appellant conceded that part of 10(10)(d), specifically “unborn children: and “breast feeding” does not apply to him but argues that he should be granted an extension because he meets the criteria in paragraph 10(10)(d) and that provision allows for a claimant’s benefit period to be extended where the claimant was not entitled to be paid benefits because the claimant was in receipt of payments under a provisional law on the basis of having ceased work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breastfeeding. He argues that “in his opinion paragraph 10(10)(d) is not a stipulation but rather an example of potential claimants and does not negate his claim to the aforementioned proviso preceding the comma”. He argues he meets this requirement because he was paid by his provincial motor vehicle insurer and there was a preventative withdrawal of work on the basis of having ceased work because a continuing work would have resulted in a danger to him.

[12] 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

(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.

[13] The Tribunal finds that the section 5.11.5 of Digest of Benefit Entitlement Principles that the Appellant is relying on is not a new provision in the legislation and it does not relate to the issue of extension of benefits. But rather it relates to the allocation of earnings and the

withdrawal of services as preventative measures payments, which is not the issue before the Tribunal. The Tribunal can only render a decision on the issue before it of the extension of benefits and apply the law (*Levesque* 2001 FCA 304).

[14] The Appellant argues that there has been a new provision in the legislation that the withdrawal of services as a preventative measure is no longer gender specific as stated in the Digest of Benefit Entitlement Principles in section 5.11.5. Specifically he argues that the section states, “Continuing to work in a particular job may entail physical danger to a worker's health. The physical danger that the job presents may not only be to the worker's health. It includes danger to an unborn child or to the child that the worker is breast-feeding. If the worker in this situation cannot be reassigned by the employer, unemployment may result. The individual in these situations are not incapacitated, however, “he or she” may have been if these preventative measures were not taken.

[15] The Digest of Entitlement Principles is not law. It contains the principles applied by the Commission when making decisions on claims for benefit under the Employment Insurance legislation.

[16] The Appellant argued that he believes that he had not been treated fairly and the real issue is that he needs the benefit as he is \$400.00 away from being homeless and this is his last resort. He is asking for his case to be heard on its own merit and consider his extenuating circumstances. He stated that employment insurance is “insurance” that he is forced to pay. He is stressed out and is appealing to the side of compassion.

[17] The Tribunal acknowledges the Appellant’s has faced significant challenges involving physical injuries and his mental well-being during his recovery following his motor vehicle accident. The Tribunal understands 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.

[18] The Tribunal has considered the Appellant's appeal based on the merit relating to the issue under appeal. The Tribunal considered the facts as presented by the Appellant and the evidence on the file.

[19] Unfortunately, the Appellant's benefit period ended on July 9, 2016. 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.

[20] 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).

[21] 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

[22] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

APPEARANCES:	B. E., Appellant
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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.