



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v. Canada Employment Insurance Commission*, 2018 SST 996

Tribunal File Number: GE-18-386

BETWEEN:

**D. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Raelene R. Thomas

HEARD ON: August 29, 2018

DATE OF DECISION: October 5, 2018

## **DECISION**

[1] The appeal is dismissed. The benefit period cannot be extended to permit the payment of the maximum number of weeks of EI regular benefits.

## **OVERVIEW**

[2] The Appellant (Claimant), made an initial claim for employment insurance (EI) illness benefits and established a benefit period beginning October 23, 2016, and ending on October 19, 2017. The benefit period is the period of time during which she could collect any type of EI benefits; no benefits can be collected once the benefit period ends. The Claimant served her two week waiting period and was then paid fifteen weeks EI illness benefits. She remained ill and was not cleared to return to work by her doctor for a further six weeks. Once cleared to return to work, she claimed and began to receive EI regular benefits. The maximum number of weeks for which her EI regular benefits could be paid was thirty-eight weeks. However, as there were only twenty-nine weeks remaining in the benefit period, the Canada Employment Insurance Commission (Commission) stopped paying EI regular benefits after twenty-nine weeks and she did not receive nine weeks of EI regular benefits. The Respondent, the Commission, would not extend the benefit period, resulting in nine weeks of EI regular benefits remaining unpaid. The Claimant requested a reconsideration of the Commission's decision to not extend her benefit period and the Commission upheld its decision. The Claimant appeals this decision to the Social Security Tribunal (Tribunal).

## **ISSUE**

[3] Can the Claimant's benefit period be extended beyond October 19, 2017?

## **ANALYSIS**

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

[5] Benefits are paid to claimants for each week of unemployment that falls in a benefit period (subsection 12(1) of the *Employment Insurance Act* (Act)). The length of a benefit period is 52 weeks, unless a claimant qualifies for an extension (section 10, Act). An extension, if granted, cannot result in a benefit period of more than 104 weeks (subsection 10(14), Act).

[6] In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of EI regular benefits and EI special benefits to which the claimant is entitled, but the total number of weeks of benefits shall not exceed fifty (subsection 12(6), Act).

**Issue 1: Can the Claimant's benefit period be extended beyond October 19, 2017?**

[7] No, the Tribunal finds the Claimant has not demonstrated that her circumstances meet any of the requirements of the legislation for an extension to the benefit period.

[8] The Claimant testified that she received fifteen weeks of EI illness benefits. She was ill for a further six weeks and unable to work. Once the fifteen weeks elapsed, she was unable to complete the online claim reports for EI. When she was cleared to return to work, she contacted the Commission to find out how to proceed. The Commission told the Claimant that the reports for the prior six weeks would now be available for her to complete and, once completed, she could start collecting EI regular benefits. The Claimant testified that she was entitled to a maximum of thirty-eight weeks of EI regular benefits but was only paid twenty-nine weeks of EI regular benefits. The Claimant submitted that she should not be penalized by including the six week period she was ill following her EI illness benefits. She submitted she should receive all thirty-eight weeks of EI regular benefits and be paid for her lost weeks of EI regular benefits from the date those benefits were stopped to whenever the remaining weeks of her EI regular benefits would end.

[9] The Claimant agrees that the maximum number of weeks for which EI regular benefits could have been paid, based on her hours of insurable earnings and the EI economic region in which she resides, was thirty-eight weeks.

[10] The Commission submitted that the Act establishes the maximum number of weeks for which employment insurance benefits may be paid in a benefit period, based on the number of insurable hours accumulated in the qualifying period and the applicable regional rate of unemployment (Act, subsection 12(2)). The number of weeks for which regular benefits may be paid to the Claimant is thirty-eight and there is no reason to extend the benefit period.

[11] Establishing an entitlement to benefits is distinct from establishing a benefit period. The benefit period, unless extended, limits the time period over which any EI benefit may be paid out

regardless of the number of weeks of any EI benefit entitlement. Put another way, EI benefits cannot be paid once the benefit period has expired.

[12] The benefit period for the Claimant was effective from October 23, 2016 to October 19, 2017, a period of fifty-two weeks. Within this fifty-two week timeframe the two week waiting period, the fifteen weeks of EI illness benefit payments, six weeks of illness and with no clearance to work, and, twenty-nine weeks of EI regular benefit payments elapsed. These periods of time, all occurring within the benefit period, amount to fifty-two weeks, after which the Commission could not pay any more benefits because the benefit period had expired.

[13] The maximum number of weeks of EI illness benefits available to and paid to the Claimant was fifteen weeks. The Claimant continued to be ill and was not capable of or available for work for a further six weeks. Unfortunately, the Claimant remained unwell for a further six weeks and, having exhausted the EI illness benefits and not being capable of or available for work, she was not eligible for any EI benefits during this portion of the benefit period.

[14] The Claimant submitted that, regardless of the six weeks of illness following the fifteen weeks of EI illness benefits being paid, she should receive the full thirty-eight weeks of EI regular benefits to which she was entitled. The Tribunal notes that to receive the full thirty-eight weeks of EI regular benefits would require an extension to the benefit period. The Tribunal finds that extending a benefit period to permit the pay out of the full entitlement of EI regular benefits is not a circumstance that falls within any of the legislative requirements for extension to the benefit period. As a result, the benefit period cannot be extended beyond fifty-two weeks and the Claimant cannot receive the remaining nine weeks of EI regular benefits.

[15] The Tribunal is sympathetic to the Claimant's circumstances. However, the legislation cannot be interpreted "in a manner contrary to its plain meaning" (*Attorney General of Canada v. Kneé*, 2011 FCA 301). The legislation "does not allow any discrepancy and provides no discretion" regardless of individual circumstances (*Attorney General of Canada v. Lévesque*, 2001 FCA 304).

**CONCLUSION**

[16] The benefit period cannot be extended beyond the fifty-two week period because the Claimant's circumstances do not meet the requirements for an extension as specified in the legislation. As a result, without an extension to the benefit period, the Claimant cannot be paid the remaining nine weeks of EI regular benefits.

[17] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	August 29, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. S., Appellant

## ANNEX

### THE LAW

#### *Employment Insurance Act*

**9** When an insured person who qualifies under section 7 or 7.1 makes an initial claim for benefits, a benefit period shall be established and, once it is established, benefits are payable to the person in accordance with this Part for each week of unemployment that falls in the benefit period.

**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.

(3) Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

(5) A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

(5.1) A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

(a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

(b) the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or

(c) the claim is made in any other circumstances set out in the regulations.

**(5.2)** A claim for benefits referred to in section 23.2 with respect to a critically ill child or children must not be regarded as having been made on an earlier day under subsection (4) or (5) if

**(a)** at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

**(b)** the beginning of the period referred to in subsection 23.2(3) has already been determined with respect to that child and the claim would have the effect of moving the beginning of that period to an earlier date; or

**(c)** the claim is made in any other circumstances set out in the regulations.

**(5.3)** A claim for benefits referred to in section 23.3 with respect to a critically ill adult must not be regarded as having been made on an earlier day under subsection (4) or (5) if

**(a)** at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

**(b)** the beginning of the period referred to in subsection 23.3(3) has already been determined with respect to that adult and the claim would have the effect of moving the beginning of that period to an earlier date; or

**(c)** the claim is made in any other circumstances set out in the regulations.

**(6)** Once a benefit period has been established for a claimant, the Commission may

**(a)** cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

**(b)** whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

**(i)** establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

**(ii)** shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

**(7)** A cancelled benefit period or portion of a benefit period is deemed never to have begun.

**(8)** A benefit period ends when any of the following first occurs:

**(a)** no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

**(b)** the benefit period would otherwise end under this section; or

**(c)** [Repealed, 2002, c. 9, s. 12]

**(d)** the claimant

**(i)** requests that their benefit period end,

**(ii)** makes a new initial claim for benefits under this Part or Part VII.1, and

**(iii)** qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

**(9)** Whether or not the benefit period has ended, a request under paragraph 8(d) shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the request was made.

**(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.

**(12.1)** If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

**(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 (f) 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.

**(13.01)** The benefit period is extended by 26 weeks so that benefits may be paid for the reason mentioned in paragraph 12(3)(b) up to the maximum number of weeks if, during a claimant's benefit period,

**(a)** benefits were paid to the claimant for that reason and the applicable maximum number of weeks is established in subparagraph 12(3)(b)(ii);

**(b)** regular benefits were not paid to the claimant; and

**(c)** benefits were not paid for any reason mentioned in paragraph 12(3)(a), (c), (d), (e) or (f).

**(13.02)** If, during a claimant's benefit period, regular benefits were paid, benefits were paid for the reason mentioned in paragraph 12(3)(b) in the case where the applicable maximum number of weeks is established under subparagraph 12(3)(b)(ii), and benefits were paid for fewer than the total number of weeks established under subsection 12(6) as determined under subsection 12(7), the benefit period is extended so that benefits may be paid up to that total number of weeks. The extension must not exceed 26 weeks.

**(13.03)** Only the regular benefits and benefits for any of the reasons mentioned in paragraphs 12(3)(a) to (f) that were paid during the claimant's benefit period before it was extended under subsection (13.02) are payable during that extension.

**(13.1) to (13.7)** [Repealed, 2016, c. 7, s. 211]

**(14)** An extension under one or more of subsections (10) to (13.02) must not result in a benefit period of more than 104 weeks.

**(14.1)** [Repealed, 2016, c. 7, s. 211]

**(15)** Subject to subsection (14), 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 (f) during the claimant's benefit period before it was extended under subsection (13).

**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)** 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) to (2.8)** [Repealed, 2016, c. 7, s. 212]

**(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, in accordance with the election under section 23,

**(i)** 35, or

**(ii)** 61;

**(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;

**(e)** because the claimant is providing care or support to one or more critically ill children described in subsection 23.2(1), is 35; and

**(f)** because the claimant is providing care or support to one or more critically ill adults described in subsection 23.3(1) is 15.

**(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, in accordance with the election under section 23, 35 or 61.

**(4.01)** If a claim is made under this Part in respect of a child or children referred to in paragraph (4)(b) and a claim is made under section 152.05 in respect of the same child or children, the maximum number of weeks of benefits payable under this Act in respect of the child or children is, in accordance with the election under section 23, 35 or 61.

**(4.1)** Even if more than one claim is made under this Act, at least one of which is made under section 23.1 — or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.1 — for the same reason and in respect of the same family member, the maximum number of weeks of benefits payable under this Act in respect of that family member is 26 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.1(4)(a).

**(4.2)** If a shorter period is prescribed for the purposes of subsection 23.1(5), then that shorter period applies for the purposes of subsection (4.1).

**(4.3)** When a shorter period referred to in subsection (4.2) has expired in respect of a family member, no further benefits are payable under section 23.1 in respect of that family member until the minimum prescribed number of weeks has elapsed.

**(4.4)** Even if more than one claim is made under this Act, at least one of which is made under section 23.2 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 - for the same reason and in respect of the same critically ill child, the maximum number of weeks of benefits payable under this Act in respect of that child is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(3)(a).

**(4.5)** Even if more than one claim is made under this Act, at least one of which is made under section 23.3 — or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.3 — for the same reason and in respect of the same critically ill adult, the maximum number of weeks of benefits payable under this Act in respect of that adult is 15 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.3(3)(a).

**(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.

**(7)** For the purpose of determining whether the total number of weeks of benefits established under subsection (6) has been reached, in the case where benefits have been paid for the reason

mentioned in paragraph 12(3)(b) and the applicable maximum number of weeks is established under subparagraph 12(3)(b)(ii),

(a) the number of weeks of benefits that were paid for the reason mentioned in paragraph 12(3)(b) is converted to the number of weeks of benefits that would have been paid at a rate of weekly benefits of 55%, as set out in the table in Schedule IV; and

(b) other than the weeks referred to in subsections 10(10) to (12.1) in respect of which the benefit period is extended and the week referred to in section 13, the weeks for which no benefits were paid are deemed to be weeks for which benefits were paid at a rate of weekly benefits of 55%.

**(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.

**18 (1)** A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

(a) capable of and available for work and unable to obtain suitable employment;

(b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or

(c) engaged in jury service.

**(2)** A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.