



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. M. v. Canada Employment Insurance Commission*, 2018 SST 1112

Tribunal File Number: GE-18-1384

BETWEEN:

K. M.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: September 4, 2018

DATE OF DECISION: October 16, 2018

DECISION

[1] The appeal is dismissed. I find there is no error in the calculation of the maximum number of weeks of benefits the Claimant was entitled to receive during his benefit period.

OVERVIEW

[2] The Claimant was laid off from his employment. On termination, he was provided a severance package which included salary continuance and full benefits. The Claimant made a claim for employment insurance (EI) benefits once his severance was exhausted. The Canada Employment Insurance Commission (Commission) calculated the Claimant to be entitled to a maximum of 18 weeks of benefits. The Claimant requested reconsideration, and asked that his benefit period start on February 12, 2017, when he finished his employment. The Commission decided that the Claimant had good cause for the delay in applying for benefits and antedated his initial claim to February 12, 2017, and recalculated the Claimant's maximum weeks of entitlement to be 38 weeks. The Claimant appeals this decision to the Social Security Tribunal (Tribunal).

ISSUE

[3] Is the Claimant entitled to a greater number of weeks in his benefit period?

ANALYSIS

[4] The Claimant established a benefit period effective September 10, 2017, after being laid off from his long-term employment. The benefit period was based on a qualifying period from September 11, 2016, until September 9, 2017, where the Claimant accumulated 894 hours of insurable employment.

[5] The Claimant lives in the Montreal region, where the regional rate of unemployment at the relevant time was 6.7%. Based on the regional rate of unemployment and the number of hours of insurable employment, the Claimant was entitled to 18 weeks of EI benefits (*Employment Insurance Act* (Act), subsection 12(2), Schedule I). These facts are not in dispute.

[6] The Claimant was provided severance, paid as salary continuance, when he was laid off from his employment. The Claimant requested reconsideration of the Commission's decision on the question of his entitlement weeks. The Commission contacted the Claimant following the request for reconsideration, and he stated that he was not satisfied with the number of weeks of benefits he was entitled to receive. The Claimant also stated to the Commission that he applied late for EI benefits because he was in receipt of severance and was waiting for it to be paid out. Given this information, the Commission agreed to antedate the Claimant's initial claim to February 12, 2017—immediately following his last day of employment.

[7] When antedated to February 12, 2017, the Claimant accumulated 1820 hours of insurable employment in his new qualifying period, and the maximum number of weeks of benefits he could be paid changed to 38.

[8] The Claimant appealed the decision on weeks of entitlement to the Tribunal, stating the EI benefits should start on August 27, 2017, because he did not receive a lump sum severance payment. He submitted that because he was on salary continuance through until August 27, 2017, EI benefits should start from that date.

[9] The Act establishes the maximum number of weeks for which EI benefits may be paid in a benefit period (Act, subsection 12(2)). The number of weeks is based on the number of hours of insurable employment accumulated in the qualifying period, and the regional rate of unemployment. Except as otherwise provided, the maximum benefit period is 52 weeks (Act, subsection 10(2)).

[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 receiving a severance pay from his employer (Act, paragraph 10(10)(b)).

[11] The Record of Employment (ROE) states severance pay in the amount of \$17,464.00 and pay in lieu of notice in the amount of \$6,985.60 were both provided to the Claimant. Additionally, the Claimant received \$3,354.16 in vacation pay. Severance is allocated in amounts equal to the claimant's "normal weekly earnings" (*Employment Insurance Regulations*

(Regulations), subsection 36(9)). The Commission totalled these monies to be \$27,803.76, determined this sum amounted to 31 weeks of salary, and allocated it over a period of 31 weeks following the Appellant's lay-off, during which time he was not entitled to be paid benefits. In this case, the Claimant's maximum number of weeks where benefits can be paid in the extended 83 week benefit period (52 week basic period plus 31 weeks of extension) is 38 weeks.

[12] To be more precise, the Commission extended the Claimant's 52-week benefit period by 31 weeks, because the benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves that he was not entitled to benefits because he was receiving severance pay from his employer (Act, paragraph 10(10)(b)). This extended the benefit period to 83 weeks. While the Claimant's benefit period was originally established from February 12, 2017, until February 10, 2018, the additional 31 weeks extended the benefit period to September 9, 2018, and allowed him to collect all 38 weeks of his benefit entitlement.

[13] The Claimant submitted that he was paid severance via salary continuance, including full benefits, thus his benefit period should start once his severance pay and monies paid on termination have been exhausted.

[14] I find the Claimant's weeks of entitlement have been correctly calculated and there is no basis to increase the maximum number of weeks for which benefits may be paid. The Claimant's maximum number of weeks is 38, based on the regional rate of unemployment in Montreal at the relevant time, and the number of hours of insurable employment the Claimant accumulated.

[15] The Claimant expressed concern that if his claim started on August 26, 2017, he may receive more benefit weeks. While not an issue before me, if the Claimant's benefit period began on August 26, 2017, his qualifying period would be impacted and he would likely have less hours of insurable employment accumulated. The likely outcome would be a reduction in the number of weeks for which benefits may be paid.

CONCLUSION

[16] The appeal is dismissed. The maximum number of weeks for which EI benefits may be paid has been correctly calculated based on the Act and Regulations.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	September 4, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	K. M., Appellant Casimiro Panarello, Representative for the Appellant

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.

(2.4) 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.

(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 35.

(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 23.2 - 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 children who are critically ill as a result of the same event, the maximum number of weeks of benefits payable under this Act in respect of those children is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(4)(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 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.

(7) [Repealed, 2000, c. 14, s. 3]

(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.