Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *E. O. v Canada Employment Insurance Commission*, 2018 SST 1313

Tribunal File Number: GE-18-1777

BETWEEN:

E. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: September 27, 2018

DATE OF DECISION: October 26, 2018

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant took paternity leave and received Québec Parental Insurance Plan (QPIP) benefits from September 17 to November 11, 2017. He then returned to work for X and X, but both employers laid him off soon after his return. As a result, he filed a claim for regular benefits on December 6, 2017, and began receiving benefits as of December 3, 2017. After carrying out checks, the Employment Insurance Commission (Commission) decided that the Appellant's benefit period should have been established as of September 17, 2017, because the Appellant received QPIP benefits as of that date. It therefore amended the start date of the benefit period and changed it to September 17, 2017. Moreover, after its calculations, the Commission determined that the Appellant did not have enough hours of insurable employment as of September 17 to qualify for benefits. This amendment generated an overpayment of $4,400.

ISSUES

[3] The Tribunal must decide the following issues:

a) Did the Commission have just cause to amend the start of the Appellant's benefit period?

b) Did the Appellant accumulate enough hours of insurable employment to be entitled to Employment Insurance benefits?

ANALYSIS

[4] The relevant statutory provisions appear in the annex of this decision.

[5] Section 7 of the Act specifies the entitlement conditions for receiving Employment Insurance benefits.

Issue 1: Did the Commission have just cause to amend the start of the Appellant's benefit period?

[6] Before checking whether the Appellant met the entitlement conditions for receiving benefits, it is important to determine his qualifying period and benefit period.

[7] In this case, the Tribunal finds that the Appellant's benefit period must start on December 3, 2017, and therefore that the Commission did not have just cause to amend the start date to September 17, 2017.

[8] Section 10(1) states that a benefit period begins on the Sunday of the week in which the interruption of earnings occurs. In this case, the interruption of earnings occurred on the Appellant's last day of work, December 1, 2017. The first Sunday after that interruption was December 3, 2017. The Tribunal finds that December 3, 2017, should be the start date of the benefit period, in accordance with section 10(1) of the Act.

[9] The Commission decided to amend the start of the benefit period based on section 76.19 and the fact that the Appellant received QPIP paternity benefits for five weeks starting on September 17, 2017. The Commission submits that section 76.19 means that the Appellant's benefit period must start on September 17, 2017, the date his benefit period began under the provincial plan.

[10] The Appellant in turn maintains that section 76.19 does not apply in his case because the benefits he received are paternity benefits and that that type of benefit does not exist in the Employment Insurance plan.

[11] The wording of section 76.19 indicates that benefits from a provincial plan that are **corresponding types of benefits** as Employment Insurance benefits must be considered federal Employment Insurance benefits for purposes that include calculating weeks of benefits and the benefit period. The Commission applied this provision, which resulted in the Appellant's QPIP paternity benefits as of September 2017 being considered to correspond to the benefits available federally, and as a result, those benefit weeks are the equivalent of weeks of Employment Insurance benefits. The Commission relies on this provision to maintain that the Appellant's benefit period had already begun in September 2017.

[12] The Tribunal must therefore address the issue of whether the QPIP benefits the Appellant received constitute benefits that correspond to the benefits he would have been entitled to under the federal Employment Insurance plan.

[13] The Tribunal notes that no federal court has ruled specifically on this type of issue to date. The Tribunal also notes that the Act does not offer any definition of the notion of corresponding types of benefits. Therefore, there is no legal reference to rely on to answer the question of whether the paternity benefits the Appellant received correspond to Employment Insurance parental benefits. It is therefore open to interpretation.

[14] The Commission submits that QPIP paternity benefits correspond to Employment Insurance parental benefits. It indicates in its argument that it is basing its interpretation on the *Politique nationale révisée d'équivalence entre les prestations du RQAP et les prestations d'assurance-emploi* [revised national policy for equivalency between QPIP benefits and Employment Insurance benefits]. Firstly, this policy was not submitted to the appeal file. It is therefore impossible to read it and determine its underpinnings. Secondly, this policy does not have the force of law, and nothing indicates that it complies with the law in force.

[15] The Tribunal does not share the Commission's point of view and cannot conclude that QPIP paternity benefits are comparable to Employment Insurance parental benefits.

[16] The Tribunal accepts the Appellant's interpretation that QPIP paternity benefits correspond to a separate benefit plan that does not exist under the federal Employment Insurance plan. In terms of benefits for a family that has had a child, the federal Employment Insurance plan offers two types of benefits: maternity benefits, which only the birth mother of a newborn can receive, and parental benefits, which are available to the two parents with the flexibility of splitting the benefits as they see fit.

[17] As for the QPIP, the provincial plan also allows a family that has had a child to take advantage of maternity[1] and parental[2] benefits similar to their federal equivalent. However, the

[1] Also exclusive to the biological mother. *Act respecting parental insurance*, ss 7, 8, 14, 15, and 23.
[2] Benefits that can be shared between the parents under the *Act respecting parental insurance*, ss 10, 14, 15, 16, 18, and 23.

provincial plan also offers a third type of benefit—paternity benefits. These benefits are exclusively for fathers and for a total of three or five weeks following the child's birth.[3]

[18] There being no precise definition of what corresponding types of benefits should be, the Tribunal finds that paternity benefits are not benefits that correspond to parental benefits because they constitute a unique type of benefits that does not exist under the federal plan (Act). It is therefore false to state that these benefits correspond wholly to parental benefits that are governed by distinct provisions.

[19] I grant significant weight to the wording of section 76.19, which indicates that not only must benefits be of a corresponding type but the claimant must also have been entitled to them. In this case, it is clear that the Appellant would not have been entitled to paternity benefits according to the Act because this type of benefits does not exist.

[20] The Tribunal notes that it seems reasonable to believe that Parliament put the provisions of section 76.19 of the Act in place to prevent the duplication of benefits and/or a claimant receiving the same type of benefits under the federal plan as under the provincial plan. However, such a situation is inapplicable and baseless in this case because the Appellant could not receive paternity benefits from the Employment Insurance plan at any time. It is therefore impossible for him to receive double the amount of paternity benefits. This reflection on the probable intent of Parliament argues in favour of the fact that paternity benefits do not constitute benefits that correspond to the parental benefits provided under the Act. As a result, section 76.19 does not apply in this case, and the Commission did not have just cause to change the date of the Appellant's benefit period.

Issue 2: Did the Appellant accumulate enough hours of insurable employment to be entitled to Employment Insurance benefits?

[21] To be entitled to Employment Insurance benefits, a person must meet the entitlement conditions set out in section 7 of the Act. Notably, the Act stipulates that a certain number of hours of insurable employment is required to establish a benefit period.

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[3] *Act respecting parental insurance*, ss 9, 14, 15, 18, and 23.

[22] In this case, I find that the Appellant accumulated enough hours to be entitled to Employment Insurance benefits.

[23] To determine whether the Appellant established a benefit period, the equation is relatively simple based on section 7 of the Act. The facts are that the Appellant lives in the Central Québec economic region where the unemployment rate was 6.3% when his benefit period was established on December 3, 2017. The Tribunal notes, based on the table in section 7(2) of the Act, that with an unemployment rate of 6.3% in the area where the Appellant resides, he must have accumulated at least 665 hours of insurable employment during his qualifying period.

[24] In this case, according to section 8(1) of the Act, the Appellant's qualifying period constitutes the 52-week period immediately before the beginning of the benefit period from December 3, 2017. Based on the evidence on file, which consists of the Appellant's Records of Employment, the Tribunal finds that he accumulated 600 + 245 hours of employment for X during his qualifying period and 154.75 hours for X. As a result, the Tribunal finds that the Appellant accumulated 999.75 hours of work during his qualifying period, which constitutes a sufficient number of hours to be entitled to benefits under section 7(2) of the Act.

CONCLUSION

The appeal is allowed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	September 27, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. O., Appellant

ANNEX

THE LAW

Employment Insurance Act

7 (1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

(2) An insured person qualifies if the person

> **(a)** has had an interruption of earnings from employment; and
>
> **(b)** has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

(3) to (5) [Repealed, 2016, c. 7, s. 209]

(6) An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the *Agreement Between Canada and the United States Respecting Unemployment Insurance*, signed on March 6 and 12, 1942.

Employment Insurance Regulations

76.19 (1) Subject to subsection (2), the provincial benefits paid to a claimant in respect of a week in a benefit period are considered to be benefits paid in respect of a week under the Act if the claimant would have been entitled to the corresponding types of benefits under the Act, and any week in respect of which the claimant receives provincial benefits counts as a week for the purpose of calculating

(a) the overall maximum number of weeks for which benefits may be paid in a benefit period under paragraphs 12(3)(a) and (b) of the Act taken together; and

(b) the maximum number of weeks for which benefits may be paid under subsection 12(4) of the Act.

(1.1) A benefit period is deemed to be established when a benefit period was established under a provincial law, and it is deemed to have begun the same week as the period established under the provincial law if the claimant would have been entitled to the corresponding types of benefits under the Act in respect of the same period.