



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. M. v Canada Employment Insurance Commission*, 2018 SST 1403

Tribunal File Number: GE-18-2309

BETWEEN:

T. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: October 2, 2018

DATE OF DECISION: November 2, 2018

DECISION

[1] The appeal is dismissed

OVERVIEW

[2] The Appellant filed an application for benefits on April 28, 2017. An initial benefit period was established effective May 14, 2017 according to subsection 10(1) of the *Employment Insurance Act* (the Act).¹

[3] On April 6, 2018 the Appellant submitted a renewal application for Family Caregiver Benefits. The claim was renewed effective April 1, 2018.²

[4] Because the benefit period was established as of May 14, 2017, the standard 52 week benefit period ended as of May 12, 2018 according to subsection 10(2) of the Act.³

[5] The Respondent advised the Appellant that he was entitled to benefits from April 8, 2018 to May 12, 2018.⁴

[6] The Appellant made a request for reconsideration of the Respondent's decision and argued that the 52 week benefit period should be extended on compassionate grounds.⁵

[7] On the reconsideration decision, the Respondent maintained its initial decision.⁶ The Appellant appealed this decision to the Social Security Tribunal.

ISSUE

[8] Can the length of the Appellant's benefit period be extended on compassionate grounds?

¹ (GD3-3 to GD3-10)

² (GD3-11 to GD3-20)

³ (GD3-27)

⁴ (GD3-21 to GD3-22)

⁵ (GD3-23)

⁶ (GD3-25)

ANALYSIS⁷

[9] Subsection 10(2) of the Act establishes the benefit period is 52 weeks and can be extended under section 10(10) of the Act (up to a maximum 104 week benefit period) according to subsection 10(14).

Can the length of the Appellant's benefit period be extended on compassionate grounds?

[10] Subsection 10(10) of the Act states that:

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] I find that the Appellant's benefit period cannot be extended on compassionate grounds.

[12] The Respondent submitted that the requirements of the Act cannot be ignored or amended based on the Appellant's personal circumstances.

[13] Although I was moved by the description of the Appellant's mother's health issues and his personal health issues, I am bound by legislation to find that his request for an extension of

⁷ The relevant legislative provisions are reproduced in the Annex to this decision

his benefit period should be denied. The Appellant's situation does not meet any of the criteria that subsection 10(10) of the Act provides.

[14] The Federal Court of Appeal has made it clear that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.⁸

CONCLUSION

[15] The appeal is dismissed.

Takis Pappas
Member, General Division - Employment Insurance Section

HEARD ON:	October 2, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. M., Appellant

⁸ (Canada (AG) v. Knee, 2011 FCA 301)

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.

(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 who are critically ill as a result of the same event 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) or (4) has already been determined with respect to that child or those children 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 (e) 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.

(13.1) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.2) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.3) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.4) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.5) A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

(13.6) A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

(13.7) A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

(14) Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

(14.1) The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

(15) 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 (e) during the claimant's benefit period before it was extended under subsection (13).